

THE INTERNATIONAL CENTRE FOR THE SETTLEMENT OF
INVESTMENT DISPUTES

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In the Matter of Arbitration :
Between: :
:
LUPAKA GOLD CORP., :
:
Claimant, :
:
and : Case No. ARB/20/46
:
THE REPUBLIC OF PERÚ, :
:
Respondent. :
:
- - - - -x Volume 3

HEARING ON THE MERITS

Wednesday, March 29, 2023

The World Bank Group
1125 Connecticut Avenue, N.W.
Conference Room C3-150
Washington, D.C.

The hearing in the above-entitled matter
came on at 9:29 a.m. before:

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DR. GAVAN GRIFFITH KC, Co-Arbitrator

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C O N T E N T S

	PAGE
PRELIMINARY MATTERS.....	669
WITNESSES:	
<div></div>	
Continued Cross-Examination by Mr. DiRosa.....	696
Redirect Examination by Mr. Velarde.....	733
Question by the Tribunal.....	765
LUIS BRAVO	
Direct Examination by Mr. Gallego.....	769
Cross-Examination by Mr. Grané.....	773
Continued Cross-Examination by Mr. Grané.....	922
ROMAN RUTUERTO	
Direct Examination by Mr. Grané.....	814
Cross-Examination by Mr. Velarde.....	816
Redirect Examination by Mr. Grané.....	911
CONFIDENTIAL SESSION: (None)	

P R O C E E D I N G S

PRESIDENT CROOK: Good morning. I open this third session of the hearing. Our order of the day, I think as everyone is aware, we begin with an exchange of remarks on Claimant's submission to suppress an expert report. We'll then hear from the Respondent.

The Tribunal will then deliberate over the course of the day and try to get you a response by today, if possible, but certainly by tomorrow morning.

Now, is there any other procedural matters we need to address?

I see none from the Claimant's side. None from the Claimant's side. None from the Respondent's side.

Madam Secretary, we're all set for the remote examination later today?

SECRETARY: We are. Let me check on the transcript.

Okay, is the Spanish transcript working now? Yeah.

Okay. Thank you.

PRESIDENT CROOK: We're okay on translation?

1 SECRETARY: Yes, yes, I just didn't see it
2 working.

3 PRESIDENT CROOK: The reporter, I know, is
4 hard at it. We're okay on interpreters.

5 So over to the Claimants for their five to
6 seven--five--preferably five-minute submission.

7 MR. GALLEG0: Thank you, Mr. President. On
8 this, I will defer to my colleague, Mr. Foden.

9 MR. FODEN: Good morning, members of the
10 Tribunal.

11 PRESIDENT CROOK: Good morning, Mr. Foden.

12 MR. FODEN: I'll address the two issues here
13 as we see them, whether the submission of the Dufour
14 report breaches Paragraph 14.4 of Procedural Order
15 Number 1, and whether we waived an objection on that
16 basis pursuant to ICSID Arbitration Rule 27.

17 We say it did, and we say that we did not.

18 There's no doubt that Ms. Dufour's report
19 falls beyond the scope of the arguments raised in the
20 Reply Submission and offends Paragraph 14.4. Indeed,
21 the Tribunal seemed to acknowledge as much on Monday
22 that this is effectively a series of new arguments.

1 Indeed--and our friends, their rather
2 excited response to our objection on the Dufour report
3 suggested a certain vulnerability--

4 ARBITRATOR GRIFFITH: Counsel, for myself, I
5 don't have any view whatsoever other than that, as a
6 member of this Tribunal, we flagged the issue. I
7 don't have a predisposition as to what this--and I
8 have an open mind to your submissions.

9 MR. FODEN: Thank you.

10 Because our friends appear to protest just a
11 bit much. And as a basic matter of content, if the
12 Dufour report was not beyond the scope of the Reply,
13 the Tribunal could expect that the Claimant's expert,
14 Micon, might be able to respond to that report, you
15 know, in a direct, in its presentation on its
16 evidence, but I've met the guys at Micon. They're
17 mining engineers. They're not lawyers. Their range
18 of expertise simply does not cover regulatory issues
19 or social license.

20 They were only engaged because the
21 Respondent's damages expert, AlixPartners, criticized
22 the assumptions concerning mining and production rates

1 that were in the Accuracy report.

2 Now, confronted with that evidence, the
3 Respondent chose not to address it through a mining
4 expert of its own. No, it decided to add new
5 arguments, those put forth by Ms. Dufour, and the
6 Claimant's been unable to submit a corresponding
7 report to that evidence in the time between the
8 Rejoinder and this hearing.

9 Now, I won't trouble the Tribunal by reading
10 the into the record the text of Article--excuse me,
11 Rule 27, but the focus here is going to be on the word
12 "promptly."

13 The ICSID rules obviously don't define
14 "promptly," but commentators tell us that what would
15 be considered "promptly" will depend on the nature of
16 the violation, the procedural framework agreed between
17 the parties, and the stage of the proceedings at which
18 the issue arises.

19 Tribunals have interpreted the term
20 variously in different procedural contexts. So in
21 CEMEX versus Venezuela, in the context of a Rule 9
22 challenge, the arbitrators recognized that that rule

1 imposes no fixed deadline to submit a challenge, and
2 noted that it is on a case-by-case basis that
3 Tribunals must decide whether or not a proposal for
4 disqualification has been filed in a timely manner.

5 In this case, they dismissed Venezuela's
6 challenge because it had waited more than five months
7 since learning all information on which the challenge
8 was based.

9 CDC versus Seychelles, the State requested
10 that an ad hoc committee annul an award on various
11 grounds, but including that the Tribunal had been
12 constituted improperly. The ad hoc committee rejected
13 the annulment request, holding that in the absence of
14 having challenged the Arbitrator on the basis of
15 Article 57 of the ICSID convention and Rule Number 9,
16 at any time during the 147 days that followed the
17 conclusion of the preliminary hearing and the issuance
18 of the award, the State had to have been deemed to
19 have waived its objection.

20 And then in von Pezold versus Zimbabwe, the
21 Tribunal considered that an applicant for provisional
22 measures had waited over three months; and therefore,

1 had waived its right to object.

2 So as you can see, there's not a
3 hard-and-fast timeline or rule on promptness, nor a
4 fixed time limit within which an objection must be
5 raised, but we have some rough sense of offending time
6 frames. You have five months there, 147 days and
7 three months.

8 Now let's look at the time frame in this
9 case.

10 On the 20th of February 2023, only 26 days
11 from the day that the Rejoinder was filed, the
12 Claimant flagged to the Tribunal that the introduction
13 of Ms. Dufour's report was beyond the scope of the
14 Reply.

15 Specifically, the Claimant stated in its
16 letter that the Respondent introduced a substantial
17 number of new arguments with its Rejoinder, which it
18 should have provided with its Counter-Memorial.

19 The Claimant further added that the most
20 notable example concerned the outstanding regulatory
21 requirements that Lupaka needed to comply with before
22 it could begin exploiting the Invicta Mine, and that,

1 "The Respondent submitted together with its Rejoinder
2 a 140-page mining legal report by Ms. Dufour, who
3 opines that under Peruvian law, Lupaka needed to
4 undertake various other actions and obtain additional
5 permits and approvals before it could start
6 exploitation."

7 The Claimant then raised its objection to
8 the introduction of Ms. Dufour's report into the
9 record on Monday.

10 Now, when it comes to waiver, in Abaclat
11 versus Argentina, the PCA Secretary found timely an
12 objection that Argentina raised to two of the
13 Arbitrators, despite the fact that it had filed the
14 challenge 42 days after becoming aware of the relevant
15 facts.

16 The Secretary of the PCA accepted
17 Argentina's argument that the proposal was made as
18 soon as the Respondent learned of such facts, such
19 time being at the point at which the Respondent
20 asserts that it completed its "thorough analysis."

21 And that's the situation here. We saw that
22 the content of the report appeared to be new by the

1 time of the February letter.

2 But remember, the Rejoinder was a mammoth
3 submission, and it took us time to thoroughly analyze
4 it. In the process of preparing for this hearing and
5 performing the thorough analysis, we concluded that it
6 was beyond the scope of the Reply conclusively. And
7 on that basis, we considered that it should be
8 excluded.

9 But in the event the Tribunal does keep it
10 in, we'd be very troubled by the Tribunal relying on
11 it in its award; though any reliance may be
12 unnecessary after Ms. Dufour's cross-examination.

13 Now, as I mentioned earlier, I have to
14 return to a demand that, on Monday, our friends made
15 concerning the Dufour report being excluded and then
16 the Micon report, too, must be excluded.

17 This appeared to be a sort of knee-jerk
18 reaction to what they referred to as an ambush,
19 without acknowledging, of course, that Dufour report,
20 in and of itself, was an ambush.

21 Now, I don't know if the Respondent, with
22 the wisdom that comes with time, will maintain that

1 demand. We'll see in a few moments, but if they do, I
2 wish to make two points.

3 First--

4 PRESIDENT CROOK: Counsel, you're at the
5 seven-minute mark. You want to continue, but it will
6 come out of Claimant's time allocations.

7 MR. FODEN: Yeah. I think the minute that I
8 will--in which I will finish, we're happy to lose.

9 PRESIDENT CROOK: As you elect.

10 MR. FODEN: So two points on this demand
11 that we sort of remove Micon, if we remove Dufour.

12 As a matter of procedural logic, it just
13 doesn't work.

14 Procedurally, the Micon report, as
15 mentioned, responded to AlixPartners criticism of the
16 Accuracy report. It was properly responsive. As a
17 matter of logic, this demand has more in common with
18 the tit-for-tat games that my twin boys that I
19 mentioned on Monday play than a proper legal
20 submission. That the Respondent decided to breach
21 Paragraph 14.4 doesn't mean they get to exclude
22 legitimately submitted evidence.

1 But of course that argument also belies the
2 waiver argument that they're about to make, because if
3 they think that they haven't waived an objection to a
4 report filed on the 23rd of September, 2022, i.e., six
5 months ago, then they certainly can't contend that we
6 waived the right to object to a report that was filed
7 two months ago.

8 Thank you.

9 PRESIDENT CROOK: All right. Thank you,
10 sir.

11 I have a question or two, but let me ask my
12 colleagues. Perhaps we can hold any questions until
13 both parties have presented, then we can question them
14 on our time, and not theirs.

15 All right, if that's agreeable, let's hear
16 from the Respondent.

17 MR. GRANÉ: Thank you very much,
18 Mr. President.

19 Perú submits that Claimant's baseless and
20 untimely request for the exclusion of Ms. Dufour's
21 expert report from the record in this arbitration must
22 be rejected. There can be no doubt that Ms. Dufour's

1 expert report is responsive to arguments, exhibits,
2 witness statements, and expert evidence submitted by
3 Claimant for the first time in its Reply.

4 And let us recall how we got here. In the
5 Memorial, Claimant alleged that it was on the cusp of
6 commercial exploitation. This is in Paragraph 5 of
7 the Memorial. And to support this position, Claimant
8 alleged that, and I quote, the commencement of
9 production was mainly contingent on two outstanding
10 items (as read):

11 First, MINEM's approval of an amendment to
12 the mine closure plan, and second, MINEM's final
13 inspection of development works. And this is in
14 Memorial Paragraph 343.

15 Perú responded to that argument in the
16 Counter-Memorial. It explained that in October 2018,
17 Claimant needed to address deficiencies in Claimant's
18 third ITS which included the need to certify and
19 implement an alternative mine water treatment system,
20 and this is in Counter-Memorial Paragraph 292.

21 With its Reply, Claimant submitted a second
22 witness statement from Mr. Castañeda whose

1 responsibilities now included securing permits. In
2 the second witness statement, Mr. Castañeda addressed
3 the Claimant's failure to obtain environmental
4 certifications necessary to operate the Invicta Mine,
5 a permitting requirement that was wholly omitted from
6 his first witness statement.

7 Only in his second witness statement does he
8 address the water treatment system as a component of
9 the mine, and argue that the certification of that
10 system could have been obtained, and I quote,
11 approximately one month, even accounting for some
12 delay, end of quote.

13 And this is in Castañeda second witness
14 statement, Paragraph 89.

15 In addressing the environmental
16 certification issue raised by Mr. Castañeda, Claimant
17 cites, among other documents, Exhibits C-399, 406,
18 415, 416, 417, 418, 419.

19 These were new exhibits that Claimant
20 submitted for the first time with its Reply.

21 Now, Mr. Castañeda's approach to the
22 timeline for commercial exploitation of the Invicta

1 Mine was mirrored in the Micon International Limited
2 expert report, which is a new report introduced with
3 Claimant's Reply.

4 The Micon report posits the Claimant was
5 ready to commence lawful, commercial operation of the
6 Invicta Mine in November 2018, which entails a legal
7 conclusion of when Invicta could have obtained the
8 permits.

9 Now, that submission, made for the first
10 time in this arbitration in the Micon report included
11 with the Reply, is based on the premise that Claimant
12 would have obtained all the necessary permits and
13 approvals by that date.

14 Now, Claimant's damages, Accuracy, relies on
15 that date, the November 2018 date in its second report
16 submitted with the Reply. They do that to change
17 their valuation model.

18 In that second report, Accuracy moved
19 forward with their assumed start date--moved forward
20 their assumed start date for commercial
21 by--exploitation by nine months, so from November 2018
22 instead of August 2019, which was the start date that

1 Accuracy used in its first report.

2 Accuracy makes clear in its second report
3 that this changed the start date for commercial mining
4 is based only on the Micon report, which, to recall,
5 Claimant introduced with the Reply.

6 That's indicated in Accuracy's second report
7 at Paragraphs 143, 147, 149, 2.7, 2.9, 6.7, among
8 others.

9 Moreover, in Paragraph 320 and 321 of its
10 second report, Accuracy also indicates that the
11 modified start date for commercial mining is Micon's
12 basis for concluding that Claimant allegedly could
13 service the PLI loan instead of defaulting on that
14 loan, which, as you know, is a key issue in dispute.

15 Now, these assertions by Accuracy and Micon
16 that are based on the changing start date for the
17 commercial mining from August 2019 to November 2018,
18 which in turn depends on when all of the necessary
19 permits and authorizations would have been obtained,
20 are assertions that Perú had no opportunity to address
21 until the Rejoinder, because they had not been made
22 before the Reply.

1 Now, Ms. Dufour's report contains essential
2 evidence and testimony for assessing the alleged
3 feasibility of changing the start date from August
4 2019 to November 2018, which as noted, Claimant
5 introduced in its Reply.

6 Another issue covered by Ms. Dufour's report
7 concerns the processing ore milling facilities. In
8 the Memorial Paragraph 87, Claimant merely asserted
9 that the experience with the processing plants was,
10 quote, not optimal, end of quote.

11 But in its Reply, in Section 3.4, Claimant
12 significantly expands on that argument, submitting
13 that, and I quote, it would have had sufficient
14 processing capacity to comply with its old gold
15 repayment obligations, end of quote.

16 It relies, in part, on Castañeda's second
17 witness statement at Paragraph 100 where he argues
18 that Claimant, and I quote, could have overcome the
19 issues we identified when testing the offsite
20 processing plants, asserting that it was, and I quote,
21 a matter of refining internal procedures to avoid
22 operational errors, repairing the mechanical failures

1 which would not have meant incurring delays or high
2 costs and something of the sort, end of quote.

3 Now, we can submit to the Tribunal a
4 detailed list of the many references in Ms. Dufour's
5 report to the many new exhibits introduced by Claimant
6 in its Reply, the factual and legal allegations
7 included in that submission in the second witness
8 statements, the Micon report, and the Accuracy second
9 report.

10 But the above-high-level explanation
11 demonstrates that Ms. Dufour's report is responsive to
12 the allegations in Claimant's Replies, its new
13 exhibits, Castañeda's second witness statement,
14 Micon's expert report, and Accuracy's second report.
15 It is thus compliant with PO-1 Section 14.4.

16 In addition, Claimant's belated and
17 unfounded application to exclude Ms. Dufour's report
18 must be rejected because Claimant has waived its right
19 to object to the introduction of Ms. Dufour's report.

20 Claimant received the report on 25 January
21 2023, and it did not raise an objection or make an
22 application to the Tribunal.

1 PRESIDENT CROOK: Counsel, again, you have
2 hit the seven-minute mark.

3 Do you want to continue with time out of
4 your other available time?

5 MR. GRANÉ: Yes, please, Mr. President.

6 PRESIDENT CROOK: About how long, do you
7 think?

8 MR. GRANÉ: One minute.

9 PRESIDENT CROOK: Okay.

10 MR. GRANÉ: In fact, Claimant called
11 Ms. Dufour for cross-examination well before it raised
12 its objection and before Claimant argued that Perú
13 raised new arguments.

14 Now, surely, Claimant conducts a thorough
15 analysis before it decides which witnesses and experts
16 it desires to call for cross-examination.

17 In fact, it was, as you know, at this
18 hearing that Claimant for the first time made an
19 application. In its opening Claimant argued that
20 Ms. Dufour's report should be disregarded. That was
21 the word that they used.

22 The Tribunal followed up on that remark to

1 seek clarification about what that meant. It was only
2 yesterday, prompted by the Tribunal, that Claimant has
3 for the first time applied for the exclusion of the
4 expert evidence.

5 Therefore, it is only on the second day of
6 the hearing that Claimant asked for the exclusion of
7 expert evidence that it has had for several months,
8 and after it was fully prepared to cross-examine
9 Ms. Dufour this week.

10 Now, based on those facts, there can be no
11 doubt that, under Rule 27, Claimant waived its right
12 to seek the exclusion of Ms. Dufour's report. And as
13 you know, Mr. President, because you acknowledged
14 yesterday, that you didn't expect us to do anything
15 other than reserve our rights, and we do so again at
16 this moment. Perú does reserve its rights on this
17 issue, but we await the Tribunal's decision. Thank
18 you.

19 PRESIDENT CROOK: All right. Thank you,
20 Counsel. Let me ask, do either of my colleagues have
21 questions?

22 ARBITRATOR GARIBALDI: I have one question.

1 PRESIDENT CROOK: Arbitrator Garibaldi.

2 ARBITRATOR GARIBALDI: One thing that, quite
3 apart from the arguments put forth by both parties,
4 there is one thing that--one fact that I think is
5 remarkable. In the Counter-Memorial, Perú objected to
6 the proposition that the mine was ready for commercial
7 operation, was on the verge of a commercial operation,
8 because of the failure of, say, A, B, and C permits
9 that were needed. And in the Rejoinder, the A, B, C
10 permits turned out to be A, B, C, D, E, F, G, or
11 something like that.

12 Question is: Why didn't the Respondent
13 raise those additional permits that were needed in the
14 Counter-Memorial?

15 MR. GRANÉ: Thank you, Mr. Garibaldi. That
16 question goes to what I was explaining about the date,
17 the change in the date that the Claimant has invoked
18 as the commencement of exploitation. They had not
19 introduced that date, the November 2018 date.

20 Now, to determine how you get to that date,
21 you need to have a more detailed discussion of all of
22 the necessary steps and permits that were required to

1 commence commercial exploitation.

2 It's one thing to say we had all the
3 necessary permits to commence exploitation. We were
4 on the cusp, as they said in the Memorial in Paragraph
5 5. It's something quite different to be specific
6 about when they expected to commence exploitation.

7 That, in turn, has consequences for, as I've
8 explained, the calculation of the alleged damages on
9 which Accuracy picks up.

10 So that date takes relevance in the context
11 of this discussion about what were the necessary
12 permits that needed to be had but had not been
13 obtained.

14 And again, this discussion at the stage of
15 the Counter-Memorial could not have been addressed
16 because the argument that they had made was very
17 general and broad, simply saying we were on the cusp
18 of commercial exploitation.

19 It's only with the alleged new facts that
20 were introduced, including in the second witness
21 statements of Castañeda, and also Gordon Ellis refers
22 to this to some extent, but it's mostly Castañeda.

1 It's on the basis of that new evidence that was
2 introduced with the Reply that we had to address what
3 were all of the missing components and how long that
4 would have taken.

5 And as you know, because--well,
6 the--Ms. Dufour's expert report goes into detail about
7 the time that it would have taken Invicta to commence
8 commercial exploitation, and that requires an
9 analysis, a more detailed analysis of all those
10 necessary steps to calculate the date.

11 I hope I have answered your question,
12 Mr. Garibaldi.

13 ARBITRATOR GARIBALDI: I don't have any
14 further questions.

15 MR. FODEN: May I respond?

16 ARBITRATOR GARIBALDI: Please.

17 ARBITRATOR GRIFFITH: Sorry, Counsel,
18 supplementary question.

19 For the four additional of today that my
20 colleague referred to, aren't we in the position that
21 the Claimant doesn't have an opportunity to answer the
22 four new matters raised?

1 Would you be prepared to accept admission of
2 the full statement, apart from those new four
3 elements, which one might say is a measure of fairness
4 and procedural fairness, the Claimant doesn't have an
5 opportunity to respond to?

6 MR. GRANÉ: Thank you, Mr. Griffith.

7 We would argue that the Claimant, being
8 Claimant, bears the burden of proof. If they
9 had--having made the submission that they made, that
10 they were on the cusp of being able to commence
11 exploitation, and later to indicate a date, a precise
12 date--which, of course, Claimant could have done so in
13 the Memorial.

14 Surely, Claimant is not arguing that it did
15 not have an opportunity to come up with that date when
16 it submitted its Memorial.

17 So then having the burden of proof means
18 that they should have introduced the evidence.

19 Now, if the Tribunal decides that, as a
20 matter of fairness, Claimant should be given be an
21 opportunity to respond on the basis, of course, that
22 the--Ms. Dufour's second expert report would remain on

1 the record, Perú would have no objection, provided, of
2 course, that it's a reasonable submission and not
3 create the situation that we're in now, that they're
4 introducing new elements that should have been
5 introduced before, but they failed to do so because
6 they didn't meet their burden of proof.

7 ARBITRATOR GRIFFITH: Counsel, we're at the
8 point the evidence is long closed, so just trying to
9 get a result which accords procedural fairness.

10 Is your position that the Claimant remains
11 at risk of not having an opportunity, and you're not
12 prepared to offer halfway house on these four elements
13 and say you're prepared to give them up?

14 MR. GRANÉ: We believe that they do have an
15 opportunity. It's their failing that we're trying to
16 address.

17 ARBITRATOR GRIFFITH: You've made your
18 submission.

19 MR. GRANÉ: Yeah, they've had their
20 opportunity. They failed to meet that opportunity.
21 They have an opportunity at this hearing to respond,
22 but, Mr. Griffith, if that halfway measure would

1 preserve the fairness, as perceived by Claimant, we
2 would have no objection.

3 ARBITRATOR GRIFFITH: Thank you, Counsel.

4 I shouldn't have tried to stop you finishing
5 your ultimate sentence.

6 MR. GRANÉ: No, thank you.

7 PRESIDENT CROOK: Question first to
8 Respondent.

9 So the essence of your argument is
10 essentially that they moved--they, for the first time,
11 set a date in the Reply, and all of this is aimed at
12 responding to that date. In the essence, that's the
13 argument.

14 MR. GRANÉ: In the essence, it is, yes,
15 Mr. President.

16 PRESIDENT CROOK: Okay.

17 MR. GRANÉ: Just to remind--if I may just
18 remind the Tribunal very briefly that, again,
19 Ms. Dufour's report is not simply limited to that.

20 PRESIDENT CROOK: We've read it, trust me.

21 Now, next question: You alluded to the
22 prospect of the Tribunal suppressing, as well, the

1 Micon report. Are you asking that that be done or
2 not?

3 MR. GRANÉ: On that point, Mr. President, we
4 will await the decision of the Tribunal, which is why
5 we have reserved the right--

6 PRESIDENT CROOK: I see. So when you
7 reserve your rights, you're reserving the right to
8 ask, as well, to suppress the Micon report?

9 MR. GRANÉ: Among other things, yes.

10 PRESIDENT CROOK: Among other things.

11 MR. GRANÉ: Yes.

12 PRESIDENT CROOK: Okay. I am not enamored
13 of the position of, we'll reserve the right to see if
14 you do something we don't like, and then we'll do
15 something else.

16 Just as a matter of orderly procedure, I'm
17 not enamored of that.

18 MR. GRANÉ: I understand, Mr. President.

19 We are not prepared to offer, as a potential
20 compromise, the exclusion of both expert reports. We
21 have no objection to both--

22 PRESIDENT CROOK: All right. That's fine.

1 A quick question, then, to Claimants.

2 The Tribunal certainly noted that in your
3 letter arguing for three-hour openings, you did raise
4 this issue. We took note of it and sort of pondered,
5 but would not have been--if you were going to seek the
6 relief you seek now, would that not have been the
7 appropriate time to do it?

8 It was clear that you were aware of the
9 issue. You were concerned about the fairness. Your
10 proposed remedy was a three-hour opening. You got the
11 three-hour opening, and now we're seeking further
12 relief.

13 Is there some disconnect there?

14 MR. FODEN: I can certainly see,
15 Mr. President, why you would think that. And
16 certainly, the letter lays out, as I just quoted, that
17 we were troubled by the new arguments adduced.

18 But like I said, you know, it's a pretty
19 weighty report, as we're going to find out on Friday,
20 perhaps. And it took us time to go through it and
21 match it up against the allegations that Mr. Grané
22 says led to its genesis, and we just don't agree with

1 the submission that we just heard, to that effect.

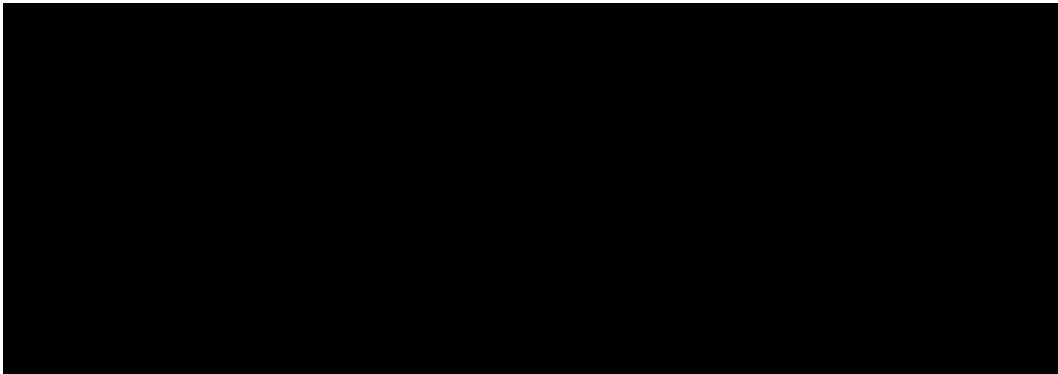
2 The idea that we only made a statement that
3 we were on the cusp of production and a Reply is
4 belied by Paragraph 30 of the request for arbitration
5 where we said we're on the verge of exploitation.
6 They've had the opportunity to counter that all along.

7 The idea that movement of a date--mind you,
8 the date got longer, not shorter, somehow led to the
9 genesis of three new categories of environmental
10 permits that presumably have always existed, just
11 demonstrates that they're clutching at straws here.

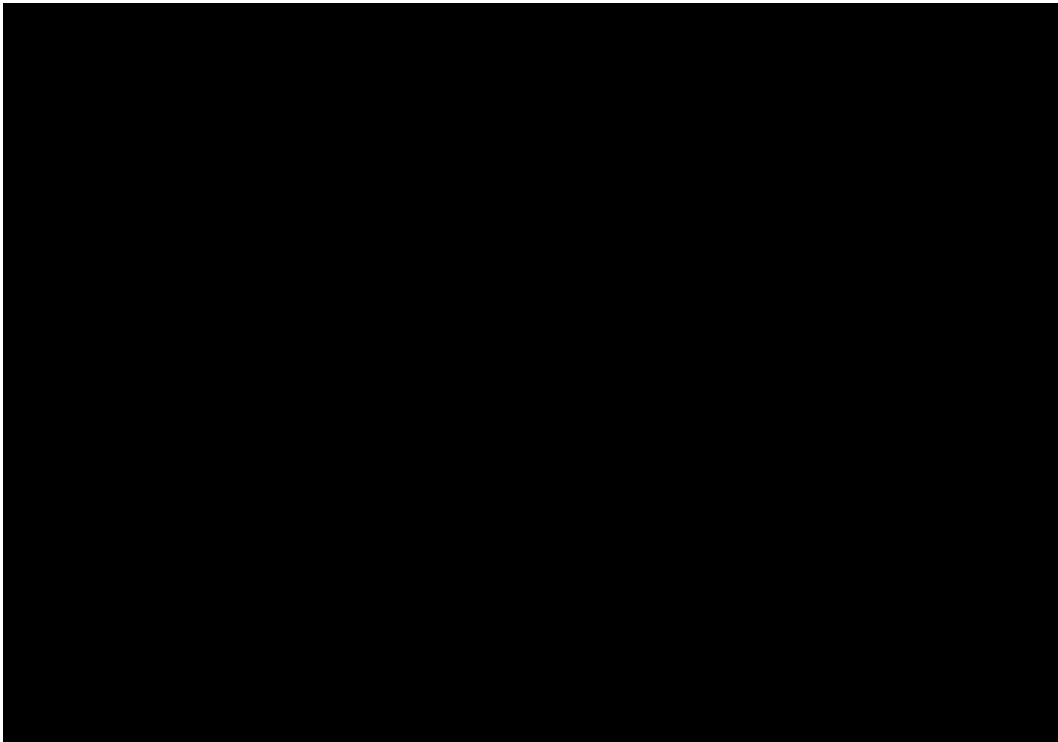
12 PRESIDENT CROOK: Thank you, sir.

13 Any other comments?

14 All right. At that point, let's close this
15 discussion. The Tribunal will deliberate. We will
16 turn to the witness, who has been sitting there
17 patiently through all of this.



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PRESIDENT CROOK: All right.

Now, turning immediately to the next
witness, how do we proceed? What are the plans?

MR. GALLEG0: We'll go and get him and start
the direct examination immediately.

PRESIDENT CROOK: Seems like an excellent
plan.

Well, while we're doing that, let's take a
five-minute break.

(Whereupon, there was a recess in the
proceedings, 12:00 p.m. - 12:05 p.m.)

PRESIDENT CROOK: All right. Everyone

1 ready?

2 Claimants, are you ready? I'm probing for
3 some response from Claimants.

4 MR. GALLEG0: Yes.

5 PRESIDENT CROOK: Respondents? Okay.
6 Reporters? Okay.

7 LUIS BRAVO, CLAIMANT WITNESS, CALLED

8 PRESIDENT CROOK: All right. It falls to me
9 to welcome our witness. Good day, sir. Thank you for
10 giving us the benefit of your time.

11 You are listening to me in English?

12 THE WITNESS: Yes.

13 PRESIDENT CROOK: Do you want to proceed in
14 English or in Spanish?

15 THE WITNESS: I'm fine.

16 PRESIDENT CROOK: Okay.

17 (Clarification requested by the Realtime
18 Stenographer.)

19 THE WITNESS: Now it's on.

20 PRESIDENT CROOK: All right. So we will
21 proceed in English.

22 Sir, you have in front of you a form of

1 declaration.

2 Do you see that?

3 THE WITNESS: Yes.

4 PRESIDENT CROOK: Okay. Could you read that
5 out loud, please?

6 THE WITNESS: Sure.

7 Witness declaration. I solemnly declare
8 upon honor and conscience that I shall speak the
9 truth, the whole truth, and nothing but the truth.

10 PRESIDENT CROOK: Thank you, sir.

11 Throughout your testimony, that commitment
12 will continue to apply, and we appreciate that.

13 You are familiar with the procedure. You
14 will be asked, first, a short series of questions by
15 counsel for the Claimant. You will then be
16 cross-examined by the lawyer for the Respondent.

17 Are you familiar with that procedure?

18 THE WITNESS: Yes, I am, Your Honor.

19 PRESIDENT CROOK: Okay. If at any point you
20 find yourself uncomfortable, you need to take a break,
21 let us know, and we will seek to accommodate.

22 THE WITNESS: Perfect.

1 PRESIDENT CROOK: All right. Any other
2 matters, or can we turn directly to the direct
3 examination? All right. Over to Claimants.

4 MR. GALLEGGO: Thank you, Mr. President.

5 DIRECT EXAMINATION

6 BY MR. GALLEGGO:

7 Q. Mr. Bravo, you have submitted two witness
8 statements in this arbitration; correct?

9 A. Yes, correct.

10 Q. Could you confirm that you have them in
11 front of you?

12 A. Yes, I do have them.

13 Q. Now, you submitted your second witness
14 statement on the 23rd September 2022.

15 Could you tell us about your current
16 professional occupation, please?

17 A. Yeah.

18 Currently, I'm the director of corporate
19 affairs in a large mining group in Perú called the
20 Apumagu Group that holds seven mining units.

21 Q. What do you do within the--within that
22 position?

1 A. I'm in charge of the mining operation along
2 with safety, environmental and community
3 relationships, and legal.

4 Q. Now, in your second statement, you referred
5 to your experience with the reaction of the
6 authorities to social conflicts in Perú.

7 Is there anything relating to social
8 conflicts that you have lived through since the time
9 of your last statement in September 2022 that you'd
10 like to share with the Tribunal?

11 A. Sure.

12 Recently, a recent event--but social
13 conflicts in Perú in general are pretty often--pretty
14 common. And in this position that I'm holding right
15 now, we just have three recently, social conflicts.

16 The first one we first seen in January were--
17 -there has been political unrest lately, and in that
18 matter of that political unrest, two mining
19 communities went to a couple of our mine sites and
20 burned it down, the mine camps.

21 The police had to intervene immediately.
22 Actually, they found two of these rogue members went

1 to burn the site actually dead, and the police went up
2 there and do the survey. They arrest a couple of--at
3 least five of the--of these people that went and
4 burned down the mine site. So the police intervened
5 pretty rapidly.

6 Then in mid-February, we had another
7 situation where, in another location, another mine
8 site, it's called Arasi, it's a peasant community,
9 rural community called Jatucachi, which we had the
10 right-of-way for a power line submission, and they
11 burned several posts of the transmission line.

12 So we had to call the police. The police is
13 doing the investigation. They haven't arrested
14 anybody yet, but they're doing their best to identify
15 the people that actually burned down those posts.

16 More recently, like 15 days ago, we got
17 another call in UM Antina, which is in the Apurimac
18 region. There is a group of informal miners there
19 that they allowed us to get into the project. They
20 blocked the road, so we called the police again, and
21 the police actually intervened, and take notes, and
22 they are doing the investigation in order to restore

1 the way--the pathway to the mine.

2 Q. Mr. Nilton León states in his second
3 statement at Paragraph 61 that no one from the
4 company, from Invicta mining Corporation, raised the
5 matter of marijuana plantations, much less suggested
6 that those plantations belonged to the Parán Community
7 or that they explained that community's position
8 regarding the Invicta mining project.

9 Do you have any comments on that?

10 A. Yeah, I don't agree with that. We had that
11 discussion with Mr. León early in January 2019. And
12 this came from, also, a meeting that we had with the
13 police in Huacho, the local place in Huacho, where
14 they referred that they were pretty aware of the
15 marijuana plantations from Parán in that area. They
16 were aware that there is a drug corridor bringing all
17 the drug dealing from that area to the city downtown
18 in Huacho.

19 So we discussed about it several times. It
20 was part of the--it was trying--it was me getting new
21 in this, in this involvement, trying to understand why
22 the rural community was not able to reach an agreement

1 with the mining company.

2 So that was one of the reasons why--I was
3 that given by the police at that time, and was shared
4 with me, sir.

5 MR. GALLEG0: Thank you. No further
6 questions.

7 MR. GRANÉ: Thank you, Mr. President.

8 CROSS-EXAMINATION

9 BY MR. GRANÉ:

10 Q. Good afternoon, Mr. Bravo. My name is
11 Patricio Grané. I am counsel for the Republic of
12 Perú, and I will be asking you some questions this
13 afternoon.

14 You have confirmed that you have your two
15 witness statements on your table. I will be directing
16 your attention to those witness statements in the
17 course of my cross-examination, and my colleague,
18 Ms. Arboleda has just placed on your table two binders
19 with additional documents, all of which are on the
20 record.

21 I will be directing your attention also to
22 those documents.

1 I will be also showing--

2 PRESIDENT CROOK: Could I interrupt and ask
3 everyone to pull their microphones a little bit
4 closer. The volume is a bit low.

5 MR. GRANÉ: Thank you, Mr. President. I
6 hope that's better.

7 BY MR. GRANÉ:

8 Q. So I was saying that I will be
9 projecting--or rather, my colleagues will be
10 projecting on your screen some documents.

11 If there are no documents that in the bundle
12 that I will be directing your attention to, I will
13 show them on the screen, but we have hardcopies in the
14 room, and you're, of course, free to ask for those
15 copies to be presented to you.

16 Currently, we do not have someone sitting
17 behind you. Should you have difficulties locating
18 documents in the binders, we can have one of our
19 colleagues sit behind you and assist you. It's
20 something that we have done with the other witnesses.

21 I will also be directing your attention
22 mostly to documents that are both in English and

1 Spanish. As you have confirmed that you speak Spanish
2 and understand--I'm sorry, English and understand
3 English, I will be mostly taking you to the English
4 versions of those documents for the benefit of the
5 Tribunal, but many of those documents--not all, but
6 many of those documents have a Spanish translation
7 also on your binder, and you're free to turn to the
8 Spanish version, as well.

9 Now, as you know, there are court reporters.
10 I will try not to speak over you, and I ask that you
11 please not speak over me; otherwise, there will be no
12 translation of what we are saying.

13 I also invite you to listen carefully to the
14 questions that I ask, and that you answer the
15 questions that I am asking you.

16 I think that if we adhere to these rules, it
17 will be a pretty efficient process, and we will be
18 able to release you before too long.

19 Do you understand these rules, Mr. Bravo?

20 A. Absolutely.

21 Q. Last thing.

22 Perhaps, it would be good to have a slight

1 pause between question and answer, again, so that
2 PRESIDENT CROOK reporters can take down the answer.

3 I would like to start with some introductory
4 questions about your background and your credentials,
5 which you describe in Paragraph 729 of your witness
6 statement--I'm sorry, of your first witness statement.

7 And you also have on direct given us an
8 update of what is your current occupation.

9 In Paragraph 7 of that first witness
10 statement, you describe your educational background.
11 And you have a bachelor's degree in law; is that
12 correct?

13 A. Correct.

14 Q. Do you practice as a lawyer or otherwise
15 provide legal advice beyond your current position as
16 Director of Corporate Affairs of Grupo Apumayu, which
17 you just updated us a couple of minutes ago?

18 A. Yes.

19 Q. So on the side of your current employment,
20 you also provide legal advice as a practicing lawyer?

21 A. Not currently, but before joining this new
22 position, yes.

1 Q. And do you have a background in criminal
2 law?

3 A. No.

4 Q. What about Peruvian mining law?

5 A. Yes, for sure.

6 Q. And that is based on your experience in
7 mining corporations or as a private lawyer?

8 A. No, mining corporations.

9 As stated, I act as legal manager of a
10 Peruvian mining company.

11 Q. Okay. On Paragraph 9 of your first witness
12 statement, you say that since September of 2019, you,
13 and I quote, "have been involved in providing
14 consulting services relating to the mining industry,
15 including on legal matters."

16 Do you see that?

17 A. Yes.

18 Q. And since that time, September '19 until
19 your current employment, did you provide consulting
20 services for Lupaka, Invicta or any related company?

21 A. After--since September '19?

22 Q. Correct.

1 A. In general, yeah. Yes.

2 Q. When you say, "in general, yes," just to be
3 clear, since September 2019--or after September 2019,
4 you did provide consulting services for Lupaka,
5 Invicta or a related company?

6 A. Yes.

7 Q. Can you specify which of those companies you
8 provided consulting services to?

9 A. Or actually, it was not Invicta Perú,
10 but--because at that time, it was foreclosure, so
11 there was no longer Invicta.

12 So basically Lupaka Perú and Lupaka Canada.

13 Q. Can you specify the dates during which you
14 provided those consulting services to Lupaka Perú and
15 Lupaka Canada?

16 A. I cannot precisely, but it was pretty
17 currently.

18 Q. Okay. It's fair that you may not remember
19 the precise date of the month, but can you give us a
20 range from which month of which year until which month
21 of which year you're providing those consulting
22 services?

1 A. Well, I can say that since that date, it was
2 every two months, maybe five to ten hours per month,
3 or every two months, until today. Kind of a monthly
4 basis or every two months.

5 Q. Okay.

6 So since September 2019 until the present
7 day, you have been providing consulting services to
8 Lupaka; correct?

9 A. Yes.

10 Q. And you were paid for those services; is
11 that correct?

12 A. Yes.

13 Q. And those consulting services also included
14 in connection to the present arbitration?

15 A. Yes. I would say that.

16 Q. Okay, let's move on--and I may come back to
17 this point later on in my cross-examination, but for
18 now, let's move on, because I want to get a clear
19 understanding of your experience and your expertise
20 coming in to your role as general manager of Invicta
21 in January 2019.

22 Now, I have narrow questions on this issue.

1 In Paragraph 8 of your first witness
2 statement, you say that you worked... as in-house
3 counsel for various companies in Perú, including at
4 Century Mining, where you started as a legal manager;
5 is that correct?

6 A. Yes, it is.

7 Q. And as in-house counsel for that mining
8 company, you would have had some knowledge of the
9 regulatory framework that surrounds Peruvian mining
10 companies; is that correct?

11 A. Yes, it is correct.

12 Q. You say in the next paragraph that, while at
13 that company, Century Mining, you, and I quote,
14 "oversaw all operations, including managing community
15 relations and permitting issues with governmental
16 authorities."

17 Do you see that?

18 A. Yes, exactly, correct.

19 Q. So you refer to governmental authorities,
20 and my question is, which governmental authorities?

21 A. All the related to mining, especially the
22 Mining Ministry, the environmental supervision

1 authority, the OEFA, also Osinergmin, which supervised
2 mining safety, the water authority--all authorities
3 related--in connection, relation with the mining
4 operations.

5 Q. Very well.

6 Have you worked within any of those
7 institutions? Have you been a public official or
8 servant within those organizations?

9 A. No, I haven't.

10 Q. So you haven't worked for MINEM?

11 A. No.

12 Q. And you haven't worked for the Ministry of
13 the Interior?

14 A. Not at all.

15 Q. And you haven't worked for OEFA?

16 A. No.

17 Q. Now, let's turn to your relationship with
18 Claimant.

19 Please turn to MI-007, which is Tab 1 of
20 your binder.

21 So here, Mr. Bravo, is the first opportunity
22 that I have to direct you to a document on one of your

1 binders. And you'll see that there are two binders,
2 and there are numbered tabs in those binders. So Tab
3 1 would be in the first volume.

4 A. Which would be the numbers--

5 Q. Tab 1?

6 A. 1?

7 Q. Do you see it?

8 It should be marked--it should be marked
9 MI-007 at the top, and I will resist any urge to make
10 a joke about the reference to MI-007 and James Bond.

11 This is a letter from Claimant's former CEO,
12 Mr. Will Ansley, to Mr. Gordon Ellis, which is dated
13 19 October 2018.

14 Do you have that document in front of you?

15 A. Yes, I do.

16 Q. Okay. Now, under the heading, Julio and
17 Raul, which would be the second paragraph, it states,
18 "As a result of the recently discovered self-dealing
19 by Julio, I have terminated his employment in Lupaka,
20 but in a humane way, whereby he will resign effective
21 October 31st."

22 Do you see that?

1 A. Yes.

2 Q. Okay. And Julio, is that Mr. Julio
3 Castañeda, the Claimant's former country manager and
4 the former manager of Invicta?

5 A. I can say--I can't--I would think so.

6 Q. Okay. And we understand that Mr. Castañeda
7 stayed on and provided consulting services to Claimant
8 after he was terminated in October 2018.

9 And the question is: Did you have an
10 opportunity to attend any transition meetings between
11 Mr. Castañeda and the Invicta team that you were
12 taking over as general manager?

13 A. There is a breach in the time frame. I just
14 started in the company a month later, but actually, I
15 had a couple of meetings with Mr. Castañeda
16 while--probably was December 2018 or early January
17 2019.

18 Q. To become appraised of the general situation
19 of the company; is that correct?

20 A. That's correct.

21 Q. Okay. In the last line of that same
22 paragraph that we just saw, which is also being

1 highlighted on the screen, it says that, "We will need
2 to hire a country manager; however, for now, I can
3 sign on routine items."

4 Do you see that?

5 A. Yes.

6 Q. And the "I "in that statement refers to
7 Mr. Will Ansley, who authored this e-mail; is that
8 correct?

9 A. Yes, I--yeah, I can see over there.

10 Q. So at the end of October 2018, Claimant's
11 CEO and President stepped in to act in the position of
12 country manager to Perú and general manager of
13 Invicta; is that correct?

14 A. I won't say that he--he wasn't appointed as
15 general--as country manager of both entities.

16 Q. Fair enough.

17 I'm not saying a formal appointment, but he
18 performed the roles of those positions, given that he
19 didn't have a--well, you--the company didn't have a
20 formal general manager appointed at that time; is that
21 correct?

22 A. I can't say that because I wasn't there. I

1 wasn't present there.

2 Just when I stepped in, he was acting as CEO
3 of the company. He--we start negotiations to hire me
4 as company CEO.

5 Q. Were you aware of whether Mr. Ansley lived
6 in Perú at the time?

7 A. When I met him, he was not living in Perú.

8 Q. Okay. And what--on what date did you meet
9 him?

10 A. I don't recall the exact date, but it should
11 be somewhere around November 2018.

12 Q. Okay. Did you meet him in November '18 as
13 part of your interview process? Because you started
14 in January, so you were interviewing with the company
15 since November 2018, and you were finally hired at the
16 end of January 2019; is that correct?

17 A. My employment contract started in the first
18 of February 2019, but I started working as a
19 consultant with them since mid-January '19, 2019.

20 Q. Okay.

21 (Clarification requested by the Spanish
22 Realtime Stenographer.)

1 Q. Now, I wish--based on the answer that you
2 provided, I'm a bit now confused because in your
3 second--the second paragraph of your first witness
4 statement, you say that you acted as general manager
5 for Invicta between late January 2019 and 31st August
6 2019, but now I understand your answer to have
7 corrected that, because you did not start as general
8 manager in late January 2019, but actually in February
9 2019; is that correct?

10 A. I acted as general manager because when I
11 was precising is that my contract, my employment
12 contract started in the first of February.

13 Q. Okay. Thank you for that clarification, and
14 we will then correct the record on that point.

15 And just to recall, you were to be
16 Mr. Castañeda's replacement; correct?

17 A. You can say so. Yeah.

18 Q. And presumably, in that role, you did--you
19 conducted due diligence when you took over that role
20 of general manager; correct?

21 A. Yes, that's correct.

22 Q. In your also first witness statement, you

1 stated--and this is in Paragraph 2--that the removal
2 of the Access Road Protest was your, and I quote,
3 "exclusive focus."

4 Do you recall that?

5 A. Yes, I do.

6 Q. Would it be fair to say that in your attempt
7 to achieve that sole goal, you educated yourself about
8 the background to the dispute, the grievances of the
9 Parán Community, and prior correspondence between the
10 parties concerning that conflict?

11 Is that correct, a fair assumption?

12 A. In general terms, yes.

13 Q. And indeed, in Paragraph 13 of your first
14 witness statement, you say that, and I quote, "When
15 you became involved with the project, you reviewed the
16 prior correspondence to understand how best we could
17 proceed."

18 You ratify that statement?

19 A. Absolutely, yes.

20 Q. Okay.

21 Now, let's turn, please, to Tab 2 in that
22 binder that you have in front of you, which is C-264.

1 And this is a press release from Claimant date 28
2 January 2019.

3 Do you see that?

4 A. Yes, I do.

5 Q. Now, can you please turn to the second page
6 of that document, and the last sentence, and it's also
7 being placed on your screen so you can see it, of the
8 last paragraph--again, you have it on your screen to
9 guide you.

10 It says, "Mr. Bravo will be granted 500,000
11 incentive stock options for the purchase of up to
12 500,000 common shares."

13 Do you see that?

14 A. Yes.

15 Q. And I think if we go down with the stock
16 options being exercisable--it's the next page--at a
17 price of 10 cents of a dollar.

18 Do you see that?

19 A. Yes.

20 Q. Does that mean that you could buy the shares
21 for 10 cents each, even if the market value of those
22 shares might be higher?

1 A. I'm not fully aware of how the stock options
2 are exercised, but yeah, I will say that that's a fair
3 statement.

4 Q. Did you exercise that stock option?

5 A. Not at all.

6 Q. Okay. So you didn't acquire shares in the
7 company?

8 A. No, I don't have any shares.

9 Q. Okay, let's move on now to a different
10 topic, which is Invicta's community relations strategy
11 when you joined the company.

12 Now, you say at Paragraph 4 of your witness
13 statement that when you joined, Invicta had a
14 community relations team that was, and I quote from
15 Paragraph 4, "Dedicated to the relationship with the
16 local communities."

17 And you name in that same paragraph two
18 individuals, Jorge Arévalo and Marco Estrada.

19 Do you recall that?

20 A. Yes.

21 Q. Okay. Were both individuals internal
22 employees of Invicta?

1 A. No, none of them.

2 Q. None of them?

3 A. No.

4 Q. So they were external consultants at the
5 time that you joined?

6 A. Yes, they were.

7 Q. Okay. So you did not have an opportunity to
8 interview them or vet them. When you came in, they
9 were part of the team, and you just took them as part
10 of the consulting team of the company; is that
11 correct?

12 A. Yeah. I started working with them, yeah.

13 Q. Okay. Just to remind you, Mr. Bravo, about
14 the pause for the benefit of PRESIDENT CROOK
15 reporters.

16 A. Sorry. Yeah.

17 Q. And before you--not before.

18 As soon as you joined the company as general
19 manager--so you had these two individuals as external
20 consultants, but were you aware that the company
21 previously had had an external company that was
22 providing consulting services on community relation

1 issues?

2 A. Yes, I do.

3 Q. Well, I'll make it more straightforward.

4 Was that company Social Sustainable
5 Solutions, what we have been referring to in this
6 arbitration as SSS, or triple S?

7 A. Yes, it was.

8 Q. That company had been hired in 2016 to
9 assist the company in those community relations
10 engagements. Were you aware of that?

11 A. That's what I was told.

12 Q. Were you told that the company periodically
13 renewed the contract with this external consultant,
14 SSS?

15 A. I may think so. I wasn't told exactly how
16 many times had been renewed, the contract, but I guess
17 because it was--that's the time frame, and they've
18 been working for, like...

19 Q. But you knew that there were renewals?

20 A. Yes.

21 Q. Okay. Were you aware of the date of the
22 last renewal?

1 A. No.

2 Q. Would it surprise you if I told you that the
3 last time that it was--or it lapsed, the last
4 contract, in November of 2018, a couple of months
5 before you joined.

6 Would that sound about right?

7 A. That the renewal started in November--

8 Q. No--

9 A. --or it ended?

10 Q. --that it ended in November 2018?

11 A. Doesn't surprise me.

12 Q. Okay. Do you recall when the Access Road
13 Protest started? We have been referring to that in
14 the context of this arbitration. You address it in
15 your witness statement.

16 So I will refer to it as Access Road
17 Protest. If that is not clear to you, we can specify,
18 but for the sake of efficiency, you recognize that
19 term, yes?

20 A. Yes. If that means that the blockade to
21 access the mine site, yes.

22 Q. Do you recall when that started?

1 A. October 18, 2018.

2 Q. Mr. Bravo, let me--I should have said this
3 at the beginning as well. This is not a memory test.
4 If at any point, you need assistance recalling certain
5 events, we can assist you. Please don't feel that I
6 am testing your memory. Mine is very poor, so I
7 sympathize if yours is similar.

8 So Claimant dispensed of the services of
9 this external community relations team just one month
10 after the Access Road Protest; correct?

11 A. After the--the dates you provided me, yes.

12 Q. You say at Paragraph 4 of your first witness
13 statement that that left only, then, Mr. Estrada,
14 Mr. Arévalo to manage Invicta's community relations,
15 after that contract with SSS was not renewed; correct?

16 A. That's correct.

17 Q. Was Mr. Estrada from SSS?

18 A. I don't recall precisely, but I think, yes,
19 he was working with them. So we carried over his as a
20 consultant. We hired him as a consultant because he
21 has been working with SSS.

22 Q. Does that mean that he was working as a

1 consultant with Invicta but at the same time working
2 with SSS, or did he leave SSS to become a consultant
3 for the company that you managed?

4 A. I'm not sure, but probably he left SSS to be
5 hired because he was working with us kind of in a
6 permanent way. He was not an employee because he was
7 not on the payroll, but he was acting as an employee
8 of the company.

9 Q. Okay. But you don't recall him saying, I'm
10 sorry, Mr. Bravo, but I cannot assist you today
11 because I have other responsibilities with my
12 employer, SSS?

13 A. No, not at all.

14 Q. Okay. So at the time that the conflict
15 escalated, which was October 2018, as you have just
16 indicated, the people--the community relations team,
17 therefore, comprised only Mr. Estrada, Mr. Arévalo as
18 independent, external consultants; correct?

19 A. Yes.

20 Q. Your employer believed at the time that that
21 was a sufficient number of people to manage relations
22 with the Parán Community at this particular moment in

1 time of the relationship between the company and the
2 community?

3 A. At that point in time, before the October
4 '18 events, there was no need for a relationship. We
5 had the community relationship set up, formal
6 relations with the rural communities that we were
7 dealing with, Lacsanga and Santo Domingo.

8 So in order to maintain a community
9 relations teams just to deal with Parán doesn't seem
10 to make much sense at that time.

11 Q. Okay. So you believe that it didn't make
12 much sense at the time of the events, October '18--I'm
13 sorry, October 2018, to maintain community relations
14 with Parán.

15 So am I correct in concluding, therefore,
16 that you never recommended to your employer, let's
17 expand the community relations team, or we need
18 additional assistance with community relations;
19 correct?

20 A. After the events of October 18, 2018, for
21 sure, we decided that there was--that team should be
22 enough to handle the situation, because it was just

1 one specific conflict. In order to deal with
2 community relationship at all, and Mr. Estrada was
3 also in charge of dealing with Lacsanga and Santo
4 Domingo. So he was not only hired to deal with Parán.

5 So it was not--it was--it was not necessary
6 at that time to have a larger team. Because it was
7 much more a police issue than the community
8 relationship situation in our prefect.

9 Q. Thank you, Mr. Bravo.

10 Since you mentioned, in a way, you have
11 jumped ahead, and I welcome that.

12 You mentioned that Mr. Estrada and--well,
13 you only mentioned Mr. Estrada. You said that he was
14 also in charge of dealing with Lacsanga and Santo
15 Domingo in addition to Parán; correct?

16 A. That's correct.

17 Q. Was that also true for Mr. Arévalo?

18 A. Yes, yes. He--I mean, they were part of a
19 team dealing with all of the community problems that
20 we had--the community relationship in general
21 because...

22 Q. Okay. Let's turn now to a slightly

1 different issue.

2 When you joined the company, were you
3 appraised of the financial situation of the company at
4 that time?

5 A. Yes.

6 Q. Okay. So you would have been aware that, at
7 the time, the company was experiencing some cash flow
8 problems?

9 A. Yeah. I was aware of that.

10 Q. Were you aware that those cash flow problems
11 had not commenced in January 2019, when you joined,
12 but actually had commenced the previous year?

13 A. Mining companies in general, that stage of
14 their development, they struggle--they always struggle
15 with cash flow situations, a shortage.

16 Q. So the answer to my question is that in--the
17 cash flow problems would have started in 2018 or
18 perhaps even before 2018; is that correct?

19 A. I can't tell if it was before 2018. If they
20 were about to start operations, we got a lot of ore,
21 mineral to be able to sell, so it was just another
22 process of any of these projects.

1 Q. Okay. Let's try to see if, with some
2 documents, we can add a bit more precision, try to
3 pinpoint in time what was the cash flow situation of
4 the company.

5 Could you please turn to, once again,
6 MI-007, Tab 1. It's the same document that we had
7 seen previously. I'll give you an opportunity to get
8 there.

9 If you please look at the first paragraph,
10 this is an e-mail, once again. We already have
11 established that, but Will Ansley to Gordon Ellis,
12 dated 19 October 2018. It's an update report. It
13 says, "capital raise request."

14 Do you see that, it's at the top?

15 A. Yes.

16 Q. The first line, you see that it says, "An
17 update on several critical matters," and it says, "the
18 key message is that we are desperately low on
19 funding."

20 Do you see that?

21 A. Yes.

22 Q. Okay. So this is October 2018; correct?

1 A. Yes.

2 Q. Okay.

3 If you turn to the second page of this
4 e-mail, you will see the last paragraph of the mill
5 delays section. It's at the top of the second page.
6 It's the--it would be the first complete paragraph.
7 It starts with, "As a result."

8 Do you see that?

9 A. Yes.

10 Q. You see that it says, "As a result of
11 milling being significantly behind the mine
12 development, I have suspended all development
13 activities and sent the contractors away, reduced some
14 of our staff, including the mine manager."

15 And then it says, "Further cuts (into the
16 bone of our technical team) could be in order very
17 shortly."

18 Do you see that?

19 A. Yes.

20 Q. And milling, just for the sake of clarity,
21 milling refers to the milling operation that would be
22 necessary to process the ore that would have been

1 extracted from the mine; is that correct?

2 A. It's the processing, yeah. It's--milling is
3 part of the processing process.

4 Q. There was no milling operation at the mine
5 site at the time; correct?

6 A. No.

7 Q. And they--the company never developed an
8 on-site milling operation; is that correct?

9 A. Yes, it is correct.

10 Q. The intention was to contract that part of
11 the operation to another company, or companies; is
12 that correct?

13 A. That was a part of the original--some
14 companies hire a service for somebody, a toll miller
15 processing plant, and provide you milling services.

16 Q. Okay. You said "some companies," but I'm
17 asking you specifically about this company that you
18 managed?

19 A. Yeah. I mean, we hired milling services
20 from a third-party company.

21 Q. Staying on the issue of financing, when you
22 became general manager in January 2019--well, formally

1 now in February 2019, did you know how the Invicta
2 Mine was being financed?

3 A. No, I was not aware. That was part of the
4 CEO's responsibilities.

5 Q. Even though you don't know the details, did
6 you know how--what was the primary source of the
7 financing of the company that you were managing?

8 A. As far as I know, raising money in the stock
9 market.

10 Q. You had a CFO?

11 A. Not in Perú. There was a corporate CFO in
12 Canada.

13 Q. How did you become appraised of the
14 financial situation of the company that you were
15 managing?

16 A. Well, we had cash flow meetings. We had all
17 kinds of, you know, meetings where we're--we were--I
18 mean, we need to make cuts on the expenses, and this
19 was part of the situation--the financial situation the
20 company was going through.

21 Q. Okay. So when you were making those--what
22 must have been difficult decisions about cutting

1 staff, as we've seen, or cutting back on expenses, you
2 had meetings, and people would report to you, and they
3 would tell you what the financial situation of the
4 company was; correct?

5 A. Well, in essence, we got an accountant, and
6 the accountant had prepared the report--the expenses
7 report. We filed the expenses report to corporate,
8 and they provided the funds.

9 Q. Okay.

10 Corporate never told you where the funds
11 came from?

12 A. I don't recall having that conversation with
13 the CEO at that time.

14 Q. Are you familiar with the term "PPF
15 Agreement" that has been used in this arbitration?

16 A. PPF Agreement? Oh, yeah, sure. Yeah.

17 Q. Okay. So you would recall that that PPF
18 Agreement was executed with PLI Huaura in 2016?

19 A. Yeah, I was aware of that contract.

20 Q. Okay. Were you aware of the financial
21 obligations that the company had under the PPF
22 Agreement?

1 I'm not asking for the details, just
2 generally.

3 A. In reality, I was--I went in the details of
4 that agreement when--later on when we received some
5 notice that there would be a foreclosure on the
6 warranty provided by the company.

7 But at first when I was--started dealing
8 with handling the company, I was not aware of the
9 details with the contract at all. But I know there
10 was a financing agreement with PPF, and we had several
11 obligations with a financing group.

12 Q. Okay. You mentioned the foreclosure under
13 that agreement.

14 Do you recall roughly the date of that
15 foreclosure?

16 A. July/August, because it was a process. It
17 started with a notice letter. We contested, so it
18 was--again, it was--as far as I recall, it started in
19 July or August of 2019.

20 Q. Okay.

21 A foreclosure would have been preceded by a
22 default; correct? That's generally how a financing

1 agreement would work; correct?

2 A. Correct.

3 Q. Okay. Since you've referred to the
4 foreclosure, do you have, again, a rough sense or
5 recollection of what was the default--or the date of
6 the default that led to the foreclosure?

7 A. No. I don't have the precise date.

8 Q. Okay.

9 Let's turn, please, to Tab 2 in your binder.
10 It's C-264. Again, it's a document that we already
11 have seen, so I will not reintroduce it.

12 In the last paragraph of this page, about
13 six lines up--I'll give you time to get there--it
14 says, "According to the terms of the PLI
15 financing"--I'm sorry, yes.

16 "According to the terms of the PLI Financing
17 Agreement and Bridge Loan 2 Agreement, those
18 facilities are technically in default as of January
19 2019."

20 Do you see that?

21 A. Yeah.

22 Q. Does that refresh your recollection of the

1 date of the default?

2 A. Yes. Well, that's corporate. At that time,
3 I was not involved in the details of the corporate
4 discussions, but it is published--was published
5 further on the Stock Exchange, so I guess that's a
6 valid statement.

7 Q. Okay. Let's--based on what we have just
8 seen, let's transition to a related topic.

9 Before Claimant could meet its financial
10 obligations under this agreement, it needed to obtain
11 all of the permits needed for commercial exploitation;
12 correct?

13 A. That's correct.

14 Q. Okay. As a general manager, part of your
15 responsibilities was to ensure that the company had
16 all the necessary permits to enable a lawful,
17 commercial exploitation of the company; would that be
18 fair?

19 A. That's correct.

20 Q. Who else within the company was responsible
21 for that part of the operation, permitting?

22 A. At that time, just me.

1 Q. So, given that you were the sole person
2 within the company that was responsible for overseeing
3 the permitting issue, you would have been aware that
4 when you joined the company in--formally,
5 formally--February 2019, the company did not have all
6 the necessary permits; correct?

7 A. We were expecting an inspection to get the
8 operating--the final operating permit.

9 Q. So, I'm sorry, I'm looking at the
10 transcript.

11 So is the answer no, the company didn't have
12 all the necessary permits?

13 A. At the time I joined the company, no. We
14 were expecting the inspection.

15 Q. Okay.

16 Some of those permits that were pending at
17 the time that you joined also related, among other
18 things, to the mine's access to and use of water;
19 correct?

20 A. No. The only pending permit was the
21 operating permit, which was called at that time, the
22 COM, the Certificate of Mining Operation, and that

1 requires a final inspection to verify that we resolved
2 all the pending issues in the previous inspection, the
3 MEM, the Mining Ministry gave us.

4 That inspection was supposed to be taking
5 place the days before--in October 2018, while the
6 Parán blocked the access road, so it frustrated the
7 inspection.

8 Q. Okay. Since you--I had some questions
9 about, you know, the permit and water management, but
10 since you have mentioned a couple of times inspection,
11 let's perhaps discuss in a bit more detail the issue
12 of the inspection.

13 As part of the regulatory process, that
14 would enable a mining company to reach commercial
15 exploitation, certain mining components would
16 sometimes undergo inspections by Peruvian
17 environmental agencies; correct?

18 A. Yeah. I mean, they do inspections
19 on--during the operations, but not for getting the
20 permit. The OEFA, which is the permitting authority,
21 doesn't do inspections to give you operating permits.

22 Q. Does it do inspections to confirm that you

1 have the necessary operating permits?

2 A. After, yes.

3 Q. Does it--do these authorities conduct
4 inspections to make sure that you are complying with
5 permits that have been granted?

6 A. While I was acting as general manager, I
7 don't recall any OEFA inspection, because it was
8 impossible to go up there to the mine.

9 Q. Okay. Perhaps I may not have been clear.

10 I wasn't asking you specifically about
11 inspections--we'll get there--about inspections of the
12 company. I was just asking you: As part of
13 inspections, you have inspections to confirm that a
14 company has the permits. You said yes.

15 And my second question was: Do these
16 authorities conduct inspections to make sure that the
17 companies are complying with the permits that would
18 have been issued; yes?

19 A. For sure, yes.

20 Q. Okay.

21 PRESIDENT CROOK: Counsel, if I may
22 interrupt you here and go on Tribunal time for five

1 minutes, we face some scheduling difficulties, because
2 we have a remote examination of a witness this
3 afternoon, and I don't think we have much flexibility
4 with that. So we're really, the time after we come
5 back from lunch is not available to us.

6 Now, my sense is that you've got a
7 great--have done a--have got a number of questions you
8 might still like to ask.

9 I'll ask the Secretary to give us an
10 indication as soon as she's able, how much time
11 Claimants have used on their total examination, but
12 I'm just trying to figure out, how do you see us
13 squaring this circle, given that your examinations
14 have been fairly lengthy, but you also, I suspect,
15 have a good deal more you'd like to do. What do you
16 propose to do?

17 MR. GRANÉ: Thank you, Mr. President.

18 It's an important cross-examination and an
19 important witness, and we do expect to spend more time
20 with Mr. Bravo.

21 It has been efficient, and I thank Mr. Bravo
22 for that.

1 One possibility, Mr. Chairman, and we
2 haven't had an opportunity to discuss with our
3 colleagues, would be to at some point perhaps break,
4 sequester Mr. Bravo, have the remote cross-examination
5 of Mr. Retuerto, because of the timing issues, and
6 then return to Mr. Bravo.

7 I know that that is unorthodox and
8 unconventional, but to square the circle, I'm trying
9 to think of a creative solution.

10 PRESIDENT CROOK: No, that's a solution
11 that--I appreciate your appeal to creativity. It
12 strikes me as about the only thing we could do.

13 Could--let's assume that the remote
14 examination takes the scheduled allocation of time,
15 which would take us to around 4:30.

16 Now, that basically means we have a--is that
17 right, Secretary? I'm looking at my schedule here.

18 (Pause in the proceedings.)

19 (Off the record between the Secretary and
20 the President.)

21 PRESIDENT CROOK: All right. Well, we need
22 to sort out some facts here.

1 So at this point, let's do the following: I
2 think we need to--Mr. Bravo, we're trying to work out
3 a problem of how to deal with lunch, and deal, then,
4 with a remote examination, and we need to see how much
5 flexibility we have in the timing of that remote
6 examination.

7 I think that maybe is most efficiently done
8 off the record.

9 So what I would suggest is that we, at 1:00,
10 suspend the proceedings. Someone will show Mr. Bravo
11 where he can have a private lunch.

12 And I'm sorry, sir, but you will not be able
13 to discuss your testimony or these proceedings with
14 anyone until you're invited back in, and what we're
15 going to try to sort out is how to do that most
16 efficiently and with least inconvenience to you.

17 I hope that's acceptable, sir.

18 THE WITNESS: Sure. No problem.

19 PRESIDENT CROOK: Okay.

20 All right. With that said, let's suspend
21 the proceedings, and let me invite counsel for both
22 parties to come forward, and let's have an

1 off-the-record discussion of how we sort this out.

2 Okay?

3 Are the parties agreeable to that?

4 All right. I wish you a nice lunch.

5 We're breaking for our 40-minute lunch
6 period.

7 (Whereupon, there was a recess in the
8 proceedings, 12:59 p.m. - 1:48 p.m.)

9 SECRETARY: Mr. President, if I may, you had
10 asked me to give the parties the time left, so I have
11 given each one of the parties their time left, but I
12 am going to read it on the record as of right now.

13 Respondent has 5 hours and 41 minutes left
14 of their total time allocation, which was 15 hours and
15 20 minutes, and Claimant has 13 hours and 12 minutes
16 of their total time allocation, which was 17 hours and
17 20 minutes.

18 This will change, obviously, by the end of
19 the day, but that's where we are right now.

20 PRESIDENT CROOK: All right. Thank you.

21 Are there any other matters we need to
22 address before we--are there any other matters we need

1 to address before we begin the examination of the
2 witness?

3 MR. GALLEGO: No, sir.

4 PRESIDENT CROOK: Hearing none.

5 All right. Good day, sir. Can you hear me?

6 THE WITNESS: Yes. Good morning. I can
7 hear you.

8 ROMÁN RETUERTO, RESPONDENT WITNESS, CALLED
9 PRESIDENT CROOK: All right.

10 Can you can tell me what you see on the
11 screen before you. Do you see the--tell me what you
12 see on the screen before you.

13 THE WITNESS: I see three individuals.

14 PRESIDENT CROOK: Okay. What you see is the
15 arbitration panel. I am the one in the middle.

16 I need to describe for you a bit of the
17 procedure we will follow.

18 All right. You should have in the room with
19 you a document of form of oath or affirmation. Do you
20 have that?

21 THE WITNESS: I do, sir. Yes, I do see it.

22 PRESIDENT CROOK: Could you read those

1 words, sir.

2 THE WITNESS: I solemnly declare upon my
3 honor and conscience that I shall speak the truth, the
4 whole truth, and nothing but the truth.

5 PRESIDENT CROOK: All right. Thank you for
6 that.

7 Now, the procedure that will be followed is
8 that you will first be asked some questions by counsel
9 for the Respondent. You will then be cross-examined
10 by counsel, the lawyers for the other party.

11 Do you understand the procedure, sir?

12 THE WITNESS: Yes, I do.

13 PRESIDENT CROOK: All right. If at any
14 point, you feel that you must take a break, let us
15 know, and we will accommodate.

16 Is that agreeable, sir?

17 THE WITNESS: Yes.

18 PRESIDENT CROOK: All right. Then let us
19 proceed to counsel to introduce you, and your
20 statements.

21 MR. GRANÉ: Thank you, Mr. President.

22 DIRECT EXAMINATION

1 BY MR. GRANÉ:

2 Q. Good afternoon, Mr. Román Retuerto. My name
3 is Patricio Grané Labat. I will be asking you some
4 very brief introductory questions.

5 The first question, Mr. Román Retuerto, do
6 you have on the table a copy of your witness statement
7 in this arbitration dated January 12th, 2023?

8 A. Yes, I do have it.

9 Q. Do you recognize, Mr. Román Retuerto, the
10 contents of this statement, and do you ratify the
11 statement?

12 A. Yes, I do.

13 Q. Do you want to make any correction to that
14 witness statement?

15 A. No, none.

16 Q. As we do not have much time, Mr. Román
17 Retuerto, I will ask you a question, and please, try
18 to be as straightforward as possible.

19 The question is simply whether you could
20 describe, in a summarily fashion, what your position
21 entailed as well as your responsibilities as
22 Subprefect?

1 A. When we have that position, we have the duty
2 to report all of the events to the central government,
3 depending on the office that this is related to. So
4 that is depending on the ministry it is.

5 So it is our obligation to report the good
6 and the bad that happens within the district
7 perimeter.

8 Q. Thank you very much, Mr. Román Retuerto.

9 MR. GRANÉ: That's our direct.

10 CROSS-EXAMINATION

11 BY MR. VELARDE:

12 Q. Good morning. Mr. Retuerto, can you hear me
13 okay?

14 A. Yes.

15 Q. My name is Luis Miguel Velarde. I am one of
16 the attorneys for Lupaka, Claimant in this case.

17 I wanted to start by telling you that we are
18 sorry you cannot be here with us in Washington to be
19 able to ask you questions in person.

20 I understand that your visa was denied to
21 travel to the US. Do you know what happened?

22 A. No. Honestly, I do not know what happened.

1 Q. Do you, for example, have any criminal
2 records, any pending complaint that could have
3 impacted on the decision to grant you a visa?

4 A. No, I don't have any.

5 Q. Have you been the criminal subject of a
6 claim in the past?

7 A. No, never. I have never been.

8 Q. Didn't you ever have a complaint in
9 connection with the invasions within the project in
10 the second half of 2018?

11 A. No.

12 Q. Weren't you ever contacted by the police
13 forces in connection with an investigation that could
14 link you with those invasions?

15 A. Never.

16 Q. Very well.

17 Over the next couple of hours, I am going to
18 be asking you some questions in connection with your
19 witness statement and some other documents that are in
20 the case file.

21 We are going to talk in Spanish, as you may
22 have realized, but there will be interpretation into

1 English at the same time, in addition to a transcript;
2 that is, everything is being written.

3 So we will have to be properly coordinated
4 not to be speaking at the same time.

5 And also, for this to work, I am going to
6 ask you to follow some basic rules. I will be asking
7 you some very specific questions, and I ask you to
8 give me specific answers.

9 I am going to ask you to start by answering
10 yes or no, and then, of course, you can elaborate,
11 something that is pertinent to the question.

12 The second comment, the second rule I am
13 proposing for you to follow is that since my
14 colleagues have already mentioned, the time we have is
15 limited.

16 Counsel for Perú, with whom I understand you
17 have been in contact, will have the opportunity to ask
18 you questions as a follow-up to what I will be asking
19 you.

20 So if you would like to make any comment
21 about a specific point, you will be able to do so.

22 Do you agree?

1 A. Yes.

2 Q. I understand that to prepare the witness
3 statement, you read the relevant portions of the Reply
4 presented by Lupaka; is that correct?

5 A. Yes.

6 Q. And I understand that you also read in full
7 the second witness statement presented by [REDACTED]
8 in this case; correct?

9 A. Yes.

10 Q. In addition to counsel for Perú that have
11 been in contact with you, have you discussed with
12 anyone [REDACTED] witness statement?

13 A. Yes.

14 Q. Who have you discussed [REDACTED] witness
15 statement with?

16 A. I talked to the advisors on behalf of Perú.

17 Q. Anyone else?

18 A. No one else.

19 Q. In the initial question by my colleagues,
20 you were asked to refer to your position as District
21 Subprefect for the Leoncio Prado District.

22 You are also the representative of the

1 Ministry of the Interior; correct?

2 A. Yes, in that position.

3 Q. I thank you for that.

4 So that is from March 2017 to 2021. So
5 March 21st, 2017, to--I believe it is March 2022,
6 rather, you have been the representative of the
7 Ministry of the Interior for Leoncio Prado; correct?

8 A. Yes.

9 Q. You are a public official; correct?

10 A. Yes, I am.

11 Q. And as part of your job as Subprefect,
12 District Subprefect, as you just mentioned, one of
13 your roles is to be a point of communication for the
14 communities within your district and the government
15 authorities; correct?

16 A. Yes.

17 Q. And as part of your work, you also have to
18 report to the government any situation related to
19 social conflicts within your jurisdiction; that is to
20 say in Leoncio Prado; correct?

21 A. Yes.

22 Q. And I understand, of course, that the

1 information that you pass on to the government must be
2 true and accurate; is that right?

3 A. Yes, it is.

4 Q. And similarly, the statements that you make
5 to the press in discharging your functions, likewise,
6 must be true and accurate; is that right?

7 A. Yes.

8 Q. The statements that you make to the press
9 reach the communities in the area of your
10 jurisdiction; is that right?

11 A. Yes.

12 Q. Parán, Santo Domingo, and Lacsanga; right?

13 A. Yes.

14 Q. At Paragraph 11 of your statement--and we're
15 going to show it up on the screen, even though I
16 understand you have it. You refer to the letters that
17 you sent in January and May of 2018 to various
18 Peruvian authorities related to the Invicta project.

19 Do you recall that?

20 A. Yes.

21 Q. And then in Paragraph 13 of your statement,
22 you say that in those letters, you expressed your

1 concern because of the lack of a rapprochement and
2 collaboration between Invicta and the Parán Community,
3 this is at Paragraph 13, and you sought for the
4 authorities to intervene to foster a dialogue.

5 Do you recall that?

6 A. Of course, I do.

7 Q. Now, in those letters, you not only stated a
8 concern about the lack of a rapprochement with
9 Invicta, between Invicta and Parán, you also make
10 statements about possible environmental contamination
11 and exploitation of the mine by Invicta; correct?

12 A. Yes.

13 Q. And I propose that we take a look at those
14 letters, and I propose that we begin with the letter
15 that is in Exhibit R-76, and that is the letter that
16 you sent to the President of the Council of Ministers.
17 This is up on the big screen--or you will see it in a
18 moment on your screen.

19 PRESIDENT CROOK: Counsel, is that in the
20 volume here or not?

21 MR. VELARDE: No, Mr. President. We will be
22 conducting the examination with documents being shown

1 in the screen, if that's okay.

2 BY MR. VELARDE:

3 Q. Mr. Retuerto, the president of the Council
4 of Ministers, in order of hierarchy, let's say, is, I
5 would say, one of the main, if not the main public
6 institution of Perú; right?

7 A. Yes.

8 Q. In this letter of January 4th, 2018, you
9 told the President of the Council of Ministers--and
10 just about halfway through the first paragraph, you
11 tell her that there is information that at any moment
12 the company--I think you're referring to Invicta,
13 correct me if I'm wrong. There's information that at
14 any time, the company will begin the exploitation that
15 was anticipated to begin in the last months of last
16 year, according to information provided by the company
17 itself on social networks.

18 Do you see that part of your letter?

19 A. Yes, I do see it. If you could blow it up a
20 little bit more, it would be easier to see.

21 Q. Of course.

22 Now, you did not attach to that letter

1 evidence of what Invicta had said on social networks,
2 as you say, that at any time the exploitation of the
3 project may begin; right?

4 A. Yes, that's right.

5 Q. Nor did you attach to that letter any
6 evidence of the assertion that the exploitation was
7 set to begin in the last months of the previous year,
8 2017, as I understand it; right?

9 A. Yes.

10 Q. In this letter, you also mentioned the risk
11 of contamination of the water of the Parán Community;
12 correct?

13 A. Yes.

14 Q. And you say--and I'm going to read this, and
15 I'm now in the second part of the letter. The
16 paragraphs sort of run together, but you'll see the
17 second one begins with the words, "In the case of
18 exploitation."

19 If you go a bit further down, it says that
20 the Community of Parán will suffer the greatest
21 negative--100 percent negative environmental impact,
22 and I inform you that in that community, the Community

1 of Parán, as I understand it, there are no rivers or
2 streams. The waters are springs that are used for
3 agriculture and human consumption.

4 Do you see that?

5 A. Yes.

6 Q. This letter is dated January 4th, 2018. You
7 visited the site of the Invicta project with the
8 members of the governing committee of Santo Domingo
9 two months after having sent this letter, specifically
10 on 13 March 2018.

11 Do you recall that visit?

12 A. Yes.

13 Q. I'm going to show you the report that was
14 prepared following up on that visit, and that is in
15 Exhibit C-451.

16 So if we look at page 6 of the PDF in
17 Spanish, if we could go to page 6 there, you see the
18 title of the report is called "Visit of the leadership
19 of the community of Santo Domingo, and the Subprefect
20 of Leoncio Prado to the Invicta project."

21 Do you see that?

22 A. Yes.

1 Q. So if we go down a bit, just to refresh your
2 memory, let's turn to page 8, please.

3 There we begin to see some photographs, if
4 you could scroll down a bit further, please.

5 There you don't see it so clearly, but
6 you're the one seated to the back--at the back to the
7 right with the cap?

8 A. With the cap, no.

9 Q. Not with the cap?

10 Well, let's go on to the next one.

11 And when I say "cap," I'm referring to a
12 hat.

13 A. No. I have the briefcase, but the previous
14 one where you say it's me is the person who's in this
15 photo wearing the helmet.

16 Q. So in this photo--

17 A. There? Yes, I'm there.

18 Q. You're the one with the briefcase and the
19 cap that has something written on it up above--on top
20 of it; right?

21 A. Yes.

22 Q. If we turn to the next photo, is that you?

1 A. Of course, it is, yes.

2 Q. But the one who is writing?

3 A. Yes, the one who's writing.

4 Q. And if we go on to the next photo, do you
5 appear in this photo?

6 A. Yes.

7 Q. Very well.

8 So let's go back to the beginning of the
9 document. And on that first page, if we could scroll
10 down in both the Spanish and English language
11 versions, let's focus on the last paragraph of the
12 first page.

13 And I'm going to read that last paragraph.
14 It says: "Following the clarification, their
15 questions were answered." It's a reference to the
16 questions asked by the participants at that session.

17 And it says, "In the case of the works being
18 carried out on the project, they were informed that
19 the project is in the implementation stage as well as
20 improvement of the camp, accesses, and road leading to
21 the project. They were taken on a tour of the camp
22 facilities and shown the improvement work being

1 carried out."

2 Now, in just a moment, I'd like to focus on
3 that part.

4 Would you agree with me that Invicta--the
5 Invicta personnel, during this visit to the project
6 site, informed you and the other participants that the
7 project was still in the preparation and development
8 phrase; correct?

9 A. Yes.

10 Q. Invicta did not tell you in that visit that
11 at any time, exploitation of the project would begin;
12 right?

13 A. Of course they didn't say that, but they did
14 inform us that since the phenomenon of El Niño had
15 happened one year earlier, they were
16 preparing--repairing everything that had been carried
17 out by the disaster, so they told us we're repairing
18 roads and everything.

19 Q. They didn't tell you that the Invicta
20 project would begin exploitation at any time; correct?

21 A. That wasn't addressed. I don't know why.

22 What was addressed as between Invicta and

1 the communities, well, the purpose was to figure out
2 how to get along better with the communities in the
3 direct area of influence.

4 Q. My question is very specific, Mr. Retuerto.

5 During that visit, did the Invicta personnel
6 tell you--they did not tell you that--that is to say,
7 that the project would begin exploitation at any
8 moment?

9 A. No, no.

10 Q. Don't you think it's reasonable, having sent
11 a letter to the President of the Council of Ministers
12 on January 4th, which, as we agreed upon a moment ago,
13 is probably the principle or the highest-ranking
14 government authority in Perú, having informed them on
15 January 4th that the Invicta project would begin
16 exploitation at any time, didn't you think it
17 reasonable to send a new communication rectifying the
18 previous one?

19 A. No, because the reasonable thing was that
20 the publication was--had already happened, and there
21 was no approach to the Community of Parán.

22 At the meeting, they told the community, and

1 us, there is no rapprochement, and the communication
2 was there. So why would I have to say I rectify what
3 I have said?

4 Because there was information. They knew
5 that, and I couldn't--and the concern was there was no
6 rapprochement with the community, there was no
7 dialogue, there was nothing.

8 So it was expected, it was a difficult
9 moment that at the end of the day had to happen.

10 Q. In your answer, you speak of dialogue and a
11 series of other things. I asked you, because you told
12 the President of the Council of Ministers of Perú that
13 the project would begin exploitation at any time.

14 So if we set aside for a moment whether or
15 not there was dialogue, my question to you is: Did
16 you tell the President of the Council of Ministers
17 that, at any time, exploitation would begin?

18 We've seen that this letter is dated January
19 4th of 2018.

20 Did you participate--or rather, you did
21 participate with a visit with the Invicta team two
22 months later, 13 March 2018, where Invicta told you,

1 and you just confirmed this, that repair work was
2 underway as well as improvement of the roads and
3 general preparation of the mine.

4 So my question is: Didn't you think it was
5 necessary to send a communication to the President of
6 the Council of Ministers rectifying your prior
7 assertion that, at any time, exploitation would begin?

8 A. They never informed me that it was in
9 preparation. I mentioned that they were repairing the
10 harm caused by El Niño. And not preparing the camp,
11 but repairing the damage. That's what they informed
12 us of.

13 Q. Mr. Retuerto, in the excerpt that you have
14 up on the screen, the paragraph that you see on the
15 screen, it says, in the case of the work being done on
16 the project, they were informed that the project is
17 the implementation and improvement of the camp phase,
18 as well as improving accesses and road leading to the
19 project. No mention is made of the El Niño
20 phenomenon?

21 A. That's what they said there. When they said
22 we are repairing the harm that has been caused by El

1 Niño, we are repairing that.

2 Q. As we saw earlier, one of your functions is
3 to provide exact and true information to the
4 government; correct?

5 A. Of course.

6 Q. Even so, you did not rectify your
7 communication of 4 January 2018; right?

8 A. Because I am reporting--legally, it was my
9 obligation to inform, and I was reporting the concern
10 that there was not a coexistence. If there was not a
11 coexistence with the community, then how was it that
12 subsequently there would be exploitation without
13 having an agreement with the neighboring Community of
14 Parán, where it's being said there was going to be
15 zero percent environmental impact.

16 That's the concern. I informed that I
17 reported to the presidency. That's my--the concern
18 about which I informed her.

19 Q. Mr. Retuerto, not only did you fail to
20 rectify your communication of 4 January 2018, but a
21 few months later, you publicly stated in an interview
22 that Invicta had already begun exploitation of the

1 mine; is that so?

2 A. Yes, because I saw that they were extracting
3 ore. They extracted ore. That's what I have said.

4 And extracting ore, well, I'm not the right
5 person, but they're saying that they are extracting
6 material from the subsoil, and then accumulating it
7 outside.

8 Q. Let's turn to Exhibit 527 to see the
9 interview that you gave the press on this specific
10 issue.

11 Now, if we can look at the Spanish language
12 version?

13 ARBITRATOR GRIFFITH: Does the transcript
14 have the Exhibit Number that it is?

15 MR. VELARDE: Yes. This is Exhibit C-527.

16 BY MR. VELARDE:

17 Q. The title of the document says "Transcript
18 of the video interview with Subprefect of Leoncio
19 Prado, Mr. Soymán Román Retuerto, MININTER, 21
20 December 2018."

21 Do you see it? Do you see the title?

22 A. No, if you could blow it up a bit, please.

1 Q. Now you can see it?

2 A. Yes.

3 Q. Do you remember--or first let me ask you:

4 The newspaper, Diario Ecos, is that a major means of
5 communication in the district that you direct?

6 A. It is from the locality of Huacho, not from
7 the district.

8 Q. So it's a major media outlet in the locality
9 of Huacho; correct?

10 A. Yes.

11 Q. If we scroll down a bit to where it says
12 minute 1:10, I'm going to read it, then you can tell
13 me if you have any doubt. We can discuss it.

14 The journalist from Diario Ecos says,
15 "Lupaka is the new one. With that name, it is working
16 now."

17 And you say, "Of course, with that name.
18 But no, they say, not Invicta, but they don't want to
19 take on the liabilities."

20 And then the journalist asks, "Are they
21 exploring, or are they not exploring?"

22 And you answer, "No, that's a lie. They are

1 exploiting."

2 And the journalist says, "Are they already
3 exploiting?"

4 And your answer is, "Of course."

5 Now, let's go on to see what you say in this
6 paragraph, but your answer there is, "Of course."

7 That's the testimony you gave during that
8 interview; is that right?

9 A. Yes.

10 Q. So you elaborated on your response, and you
11 said that, "As Subprefect, I joined last year the
12 Invicta project in March." (As read.)

13 And now, we'll continue.

14 You say, in March. Now, here, are you
15 referring to March of 2018 or March of 2017? And I
16 ask because the interview is from 21 December 2018.

17 A. 2018.

18 Q. So here, you're referring to the visit to
19 the project site, the Invicta project site, that you
20 made with the governing committee of the committee of
21 Santo Domingo on 13 March 2018, the one we mentioned
22 just a few moments ago; right?

1 A. Yes.

2 Q. Where Invicta informed you that the project
3 was in the implementation phase, and phase also
4 improving the camp access and the road; is that right?

5 A. Yes, it is.

6 Q. Now, if we go further in this transcript,
7 you mention--and I'm talking about that same
8 paragraph. You say that immediately after this visit,
9 you asked for a report from the OEFA, because the OEFA
10 conducts an inspection every year.

11 And you say that for that, they--I
12 understand this to be the OEFA--had already made that
13 visit.

14 Do you see that?

15 A. Yes.

16 Q. Here, I understand that you're referring to
17 the inspection that was carried out by the OEFA in
18 late February 2018; correct?

19 A. Yes.

20 Q. I propose that we take a look at the
21 resolution that was issued by the OEFA on that
22 inspection, and it's at Exhibit R-61.

1 Let's turn to page 17 of the PDF in Spanish.
2 That's the first page in Spanish. It's there, so if
3 we could blow it up a bit.

4 Thank you. And then if we could go down a
5 bit.

6 If we see the subject line, it says "Result
7 of the regular environment supervision carried out
8 from 27 February to March 4th, 2018, of the Invicta
9 facility subject to oversight owned by the Invicta
10 Mining Corp."

11 Do you see that?

12 A. No, no. If you could blow it up, please.

13 Q. We could blow up where it says "Matter" or
14 "Subject."

15 Now, do you see it?

16 A. Yes.

17 Q. So that is the report that was issued as the
18 result of the regular environmental supervision
19 carried out on--from 27 February to 4 March 2018 of
20 the Invicta mining unit; correct?

21 A. Yes.

22 Q. So if we can scroll down a bit on the same

1 page, we see that there's a table that refers to the
2 inspectable unit, which is Invicta.

3 Then it says "stage" on the fourth line, and
4 the stage is given as "construction." And then
5 "status," it says, "active."

6 Do you see that?

7 A. Yes.

8 Q. And the third one is also saying
9 "exploitation."

10 A. Yes?

11 Q. That's the activity that the mining company,
12 Invicta, is devoted to?

13 A. But it's talking about the activity, when
14 they went in they saw what activity. Activity and
15 function.

16 Or maybe I'm making a mistake on this. I'm
17 not perhaps the trained person. It says
18 "activity/function," and then it says "exploitation."
19 So if I go and inspect, I find out what activity, the
20 activity is exploitation. That's what they're
21 reporting.

22 Q. So let's take a minute to look at this

1 resolution, and then I'll take to you a paragraph that
2 might clarify the situation a bit.

3 Let us go to Paragraph 17, please, which is
4 at page 22 of the PDF in Spanish. I'm sorry. It's
5 page 6. Paragraph 17 towards the end. It's page 1 in
6 the English language version. Page 6. If you could
7 go to page 6 of the document in English.

8 Now, if you'd like, if you could go down
9 further, we're almost at that paragraph.

10 Let us look at Paragraph 17 in Spanish, and
11 we're going to read it and then the interpreters will
12 interpret it.

13 In this paragraph, OEFA says that, in this
14 context, it should be taken into account that through
15 Directoral Resolucion Number 375/2012, the mining
16 holder was authorized to extend the start date of the
17 Invicta project, dated 11 December 2014, and this is
18 Directoral Resolucion 566/2014 of 11 December 2014.

19 THE INTERPRETER: The date before was the
20 maximum date of 28 December 2014.

21 The interpreter corrects himself.

22 "Invicta mining has now communicated to the

1 Ministry of Energy and Mines the start of the
2 exploitation of activities; therefore, the commitments
3 assumed are applicable to it for the development and
4 preparation stage of the Invicta project."

5 Do you see that paragraph, sir?

6 A. Yes, I do.

7 Q. So this report of OEFA confirms what the
8 Invicta team, that you know on that date, right, which
9 is 13 March 2018, when they went and visit the
10 project; right?

11 A. Well, what I'm talking about is the report,
12 and then after that, these matters that deal with the
13 ministry, OEFA, and the company. I'm talking about
14 what the OEFA personnel said. They talked about
15 exploitation activities. That's all.

16 Q. Mr. Retuerto, when you read the paragraph
17 that I just showed you, and in particular, the last
18 two lines that say that Invicta's commitments are
19 enforceable in connection with the preparation and
20 development stage of Invicta, you agree with me that
21 OEFA considers that Invicta, the project, is not at
22 the stage of exploitation; right?

1 A. Well, that has to do with what the competent
2 authorities think. That's all I can say. I cannot
3 say what should be or what shouldn't be.

4 What I did through this document is I passed
5 on my concern on the basis of what I found.

6 Q. You'd agree with me, Mr. Retuerto, that
7 informing the population that Invicta has already
8 started exploitation activities, when that is not the
9 case, as you were told by Invicta, and as was
10 confirmed to you by OEFA, this could worsen the social
11 conflict between Invicta and Parán; right?

12 A. Well, there were no negotiations with the
13 Parán Communities. Those were nonexistent, and that
14 is what has brought about this conflict.

15 Q. Let us go back to the letter that you sent
16 to the president of the Council of Ministers on 4
17 January, R-76.

18 We're going to look at this, this page
19 that's on the screen, you say halfway through the
20 letter--

21 A. Could you please highlight it, and please
22 make it bigger.

1 Q. Yes, of course.

2 Please look at where it says, "In the case
3 of exploitation." Please highlight that.

4 Do you see that? It says here, "in the case
5 of exploitation, that is extremely sensitive," and the
6 interesting part here for me is that "the company's
7 representatives are not in dialogue with the Parán
8 Community."

9 Do you see that?

10 A. Yes, I do.

11 Q. Did you know, sir, that on 10 December 2016,
12 there was an assembly in Parán, that is to say, about
13 a year before the letter that you sent to the Council
14 of Ministers? There, Invicta at that assembly
15 submitted to Parán a detailed agreement proposal.

16 A. I did not know that.

17 Q. Did you know that at that same assembly, 90
18 percent of the community members of Parán approved the
19 proposal submitted to them by Invicta?

20 A. No. I did not have knowledge of that.

21 Q. Did you know that in January 2017, the new
22 board of Parán asked Invicta to pay to it 300,000

1 soles, about \$88,000 as a condition to continue
2 negotiating the agreement?

3 A. No.

4 Q. Did you know that in December 2017, that is
5 to say, the month before the month you sent the letter
6 to the president of the Council of Ministers, Invicta
7 paid to Parán a portion of that amount, 300,000 soles?

8 A. No.

9 Q. Did you know that in--

10 A. Excuse me. Excuse me.

11 What is the date that you said that the
12 payment was made? What was the date?

13 Q. Did you know that on 18 December 2017, that
14 is to say, the month before you sent a letter, which
15 you sent in January--January 2018, Invicta paid Parán
16 100,000 soles?

17 A. I did not know that.

18 Q. Did you know that on 31st January 2018, that
19 is to say, the same month in which you sent your
20 letter to the president of the Council of Ministers,
21 Invicta paid Parán 200,000 soles?

22 A. No.

1 Q. You'd agree with me that the proposal made
2 by Invicta to Parán in December 2018--2016 that was
3 approved by most of the Parán Community, and the
4 payments made by Invicta to Parán, that I just
5 mentioned, show that the company was interested in
6 engaging in dialogue and reaching an agreement with
7 Parán?

8 A. No. Parán went to the mining community, and
9 said, you still are owing money to us, and you are not
10 paying this account. This account has been here for
11 years.

12 When they talked about going through our
13 territory with the road, they gave something, but then
14 they are, you know, trying to trick us for many, many
15 years.

16 Then the mining companies, they said, we're
17 going to pay everything to you in 15 days. I don't
18 know, I have had no communication as to when payment
19 was made or how it was made. I don't know. I don't
20 have information about what you are saying.

21 But I have known that the Community of Parán
22 has been, you know, tricked for all its life.

1 Q. You did not know that Invicta paid Parán
2 300,000 soles between December 2017 and January 2018;
3 correct?

4 A. Neither the company nor the community gave
5 me that information.

6 Q. Let us go to the letter that you sent on 8
7 May 2018, R-81. 81. Let's scroll down to look at the
8 signature page.

9 That's your signature, Mr. Retuerto; right?

10 A. Yes, that's right.

11 Q. Let's go back to the beginning of the
12 letter.

13 You sent this letter to the ombudsman's
14 office?

15 A. Yes.

16 Q. Mr. Walter Francisco Gutierrez on 8 May
17 2018; right?

18 A. Yes.

19 Q. If we look at the second paragraph of this
20 letter, it says here, that the community--or rather,
21 that by means of this document, you inform that on May
22 7 of this year, some water sources were inspected of

1 the Parán rural community in the jurisdiction of the
2 Leoncio Prado District.

3 This was done because of a complaint from
4 the community authorities to the local water community
5 of Huacho, and the inspection was carried out in
6 several sources of water, bodies of water, and in the
7 Quebrada de Yanapacsa, Fraile, and that these were
8 contaminated waters that are born from the head of the
9 mine.

10 Do you see that?

11 A. Yes.

12 Q. That inspection was conducted in the
13 presence of the local water authority?

14 A. Yes. It says that they were there. The
15 local water authority was addressing a complaint by
16 the Community of Parán.

17 So the water authority went to the Parán
18 Community, and that is where this transpired. And I
19 participated in this.

20 Q. Let's look at the fourth paragraph of this
21 letter.

22 You say here, on the fourth line, "And the

1 most sensitive thing of all is that the direct
2 influence communities to date do not have the
3 environmental monitoring committee."

4 Then further down, you say, "The company is
5 not abiding by the transparency law."

6 Do you see that?

7 A. Yes.

8 Q. Did you know that as of the date of your
9 letter, on 8 May 2018, the Community of Lacsanga
10 already had an environmental monitoring committee?

11 A. No. I did not know about that. That has to
12 do with a different office, not with our office of
13 Leoncio Prado.

14 Q. In your letter, you say that the direct
15 influence communities--and you say communities in the
16 plural--do not have that committee; right?

17 A. Yes, of course, because it's two. Direct
18 influence is two communities, Santo Domingo and Parán.
19 That's why I used the plural, not the singular.

20 Q. Did you know that Invicta proposed to Parán
21 in February 2018--rather, March 2018--and also in
22 March 2018, April 2018, and May 2018, to create an

1 environmental monitoring committee, but Parán rejected
2 this proposal?

3 A. No, I didn't know that.

4 Q. Can you show me a document showing that the
5 company invited Parán to this?

6 ARBITRATOR GRIFFITH: You didn't give the
7 translation. You just kept going as if he'd said
8 nothing.

9 MR. VELARDE: Sorry, Mr. Griffith, I was
10 just telling the witness that I will take him to the
11 document here in question.

12 ARBITRATOR GRIFFITH: We didn't get the
13 translation of what he said.

14 MR. VELARDE: Sorry. I spoke too fast.

15 PRESIDENT CROOK: If we could slow down a
16 little bit, because you're having a dialogue in
17 Spanish, but we need a little time for the
18 interpretation to come through.

19 MR. VELARDE: Sure.

20 BY MR. VELARDE:

21 Q. If we please go to C-111.

22 What I'm going to show you, sir, is a report

1 prepared by the community relations team of Invicta
2 that provides a historical account of the period going
3 from 2016 to 2018 in connection with the actions taken
4 by the team vis-a-vis the communities.

5 If we scroll down to almost the end of this
6 document, I think it's--we have to go down two pages.

7 In the second to the last paragraph--let's
8 blow this up a little bit--it says, "In the months of
9 February, March, April and May 2018, the Parán
10 Community was visited, and we met repeatedly with the
11 governing committee to propose the formation of an
12 environmental monitoring committee and work on social
13 responsibility issues under the EIA of Invicta's mine.
14 The community began to issue notarized eviction
15 letters, arguing that they're using their lands
16 without any agreement with the community and polluting
17 their lands."

18 That is what I was making reference to a
19 moment ago, sir.

20 Do you see it?

21 A. I do see it.

22 Q. What companies--what documents did the

1 company give?

2 A. Yes. They said that they invited the
3 Community of Parán--where are the documents?

4 Q. Do you have any reason to doubt the veracity
5 of this document, of this document that was prepared
6 contemporaneously?

7 A. No, I don't.

8 Q. Let us go back to this issue of the
9 potential pollution that you mentioned in your letter
10 of 8 May 2018.

11 Two months after, on 4 July 2018, the local
12 water authority conducted a new inspection of the
13 Invicta project, precisely in light of this pollution
14 concern that you mentioned that; right?

15 A. Excuse me, what was that?

16 Q. I was saying that on 4 July 2018, the local
17 water authority, ALA, conducted a new inspection of
18 the Invicta project precisely in light of this concern
19 of potential contamination or pollution.

20 Do you remember that?

21 A. No. I wasn't present there, and I wasn't
22 told about this, either.

1 Q. In your witness statement at Paragraph 17,
2 that we can show on the screen, and also at Footnote
3 11, you make reference to the technical report that
4 was issued by the local water authority precisely
5 following up on this inspection that I just mentioned
6 to you.

7 Did you not review that document?

8 A. Where in my statement?

9 Q. If we go to Footnote Number 11, we can blow
10 that up.

11 MR. GRANÉ: May I suggest that the witness
12 be shown the document that is being cited, and perhaps
13 that will refresh his memory.

14 PRESIDENT CROOK: Am I correct, we are
15 referring to his own statement; is that correct?

16 MR. VELARDE: Yes.

17 PRESIDENT CROOK: He does have his statement
18 available to him?

19 MR. GRANÉ: He does, Mr. President, but not
20 the annexes.

21 PRESIDENT CROOK: I see.

22 BY MR. VELARDE:

1 Q. Let us look at C-408.

2 (In English.)

3 This document is dated 13 July 2018.

4 (In Spanish.)

5 Scroll down. Thank you.

6 At 5.1, we see a reference to the inspection
7 made by the--made by--

8 A. Can I have some time to read it, please.

9 And can you blow it up, because I can't see it.

10 Q. We can try to perhaps blow it up a little
11 bit more.

12 A. Please--can you try to move it a little bit.
13 There's a photograph that does not allow me to see it.

14 Okay. That's better.

15 Q. You will see that at 5.1, reference is made
16 to this inspection, or supervision, it's called here.

17 And at 5.2, reference is made to this
18 inspection that took place. The word used in Spanish
19 is "diligencia." And it says, "At the time of the
20 inspection, it was observed in the mine at level 3430
21 Atenea vein, there were no workings, and there was no
22 evidence of waste water discharges from the interior

1 of the mine to the negative--due to negative slope of
2 the mine, where the water is coming from level 3400 of
3 the mine."

4 Do you see that?

5 A. Yes.

6 Q. At 6.3, where it says recommendations, it
7 says, "In light of the fact that, in the inspections
8 conducted in the Invicta project of the mine title
9 holder, Invicta Mining Corp., no evidence has been
10 found of a direct impairment of the water resources of
11 the Parán rural community and surrounding areas."

12 And then this paragraph goes on. You can
13 read the rest of it, if you want.

14 You'd agree with me, Mr. Retuerto, that
15 during this inspection, the local water authorities,
16 ALA, confirmed that there were no effluence from the
17 Invicta Mine that affect adversely the water sources
18 of Parán?

19 A. Well, I'm saying potential. I'm not stating
20 anything. You say that I'm asserting something. I'm
21 not asserting anything.

22 The authorities need to investigate.

1 Perhaps they can use a laboratory to analyze the
2 water, but I'm not asserting that the water is
3 polluted. It's just a concern that I am expressing,
4 and I have relayed that information. That's it.

5 Q. Yes, Mr. Retuerto, but you sent a letter in
6 May 2018 speaking about a potential contamination.

7 A. Well, it's potential. It's potential, sir.

8 Excuse me. If I see that there is a change
9 in color--if the ALA personnel themselves, they are
10 saying that there is a change in color, and they have
11 taken this to the lab to look at this, and as a result
12 of the lab tests, they are providing a result, that's
13 one thing.

14 But I'm saying potential. I'm not asserting
15 anything.

16 The same thing happened at the community.
17 There was a change in color. So the community asked
18 for the participation of the ALA to go see that.
19 Nobody is asserting that there was pollution here.

20 These are results that came out of the ALA.
21 Possibly the ALA got test results, whether this
22 happened or it didn't happen.

1 I am not the right person.

2 Well, you said--do you agree or you don't
3 agree, you asked. Well, I'm not asserting anything.
4 I'm talking about potential. There was a change in
5 color, so this is a concern that we wanted to pass on
6 to the authorities, and that's part of their role,
7 right? They are political authorities.

8 Q. So the government has to be provided with
9 information that is accurate and also truthful; right?

10 Right, Mr. Retuerto?

11 A. As I said, I am informing of a potential
12 situation. I'm not asserting anything.

13 These all--are results or--that came later
14 on. ALA and their laboratory, they are reports by
15 them.

16 At the beginning, they could have said yes
17 or no, but what they're doing here is providing
18 information about the results.

19 I passed on my concern that there was a
20 potentiality there. The rest, well, that's the work
21 of the authorities that are the specialists in that
22 matter.

1 Q. After the letter that you sent to the
2 ombudsman on 8 May 2018, speaking about a potential
3 contamination, did you not send another communication
4 clarifying that after the ALA inspection of July 2018,
5 a confirmation was given that no pollution existed;
6 right?

7 A. I didn't do it. Why, because at the same
8 time, I'm asking for a dialogue. As part of the
9 dialogue table, all of the information could be
10 shared.

11 At the same time, in the document, I have
12 two concerns: One about what is going on, but another
13 one, another concern is that I want the dialogue table
14 to be put together so that we can clear all of the
15 conflicts. There will be new conflicts, so the
16 community is unaware of the fact that there is
17 contamination or not.

18 But I am, again, asking for this dialogue
19 table to be set up, and then they will be able to
20 inform to all of the participants, the community, the
21 company, that there is no pollution.

22 But the most Solomonic solution is to have a

1 dialogue.

2 Q. Mr. Retuerto, I am going to ask you to
3 answer my questions.

4 After the letter of May 4th, 2018, didn't
5 you send a letter saying that there was a confirmed--a
6 confirmation and follow-up to the inspection by ANA
7 that there was no pollution?

8 A. No.

9 As I mentioned before, we needed to have the
10 dialogue--the--as I told you already, there was a
11 conflict, that led to a conflict, and the dialogue
12 table had to be set up.

13 Q. Mr. Retuerto--Mr. Román Retuerto, what is it
14 that led to the conflict; was it the pollution, the
15 alleged pollution, or what is it?

16 A. Clearly, the alleged pollution. It was
17 coming from the same Parán Community. So before I
18 send the document, the community itself, because there
19 was a change in the color of the water. They saw
20 that, and they asked for ANA's intervention to go and
21 check what was going on.

22 And that concern, once identified, I also

1 report on that, and I also ask to have a dialogue
2 table to avoid the conflict.

3 And they saw that problem. There was no
4 dialogue table, and then the conflict was imminent,
5 and we had the conflict.

6 PRESIDENT CROOK: Counsel, we are due for a
7 break sometime in the next five minutes or so. So can
8 you look for appropriate point, and let us know when
9 you would like to take that break? Sometime soon,
10 starting with now.

11 MR. VELARDE: As you wish, Mr. President. I
12 have--I have, I would say, less than five minutes.

13 PRESIDENT CROOK: Why don't we do that,
14 then.

15 MR. VELARDE: Thank you.

16 BY MR. VELARDE:

17 Q. Mr. Retuerto, in your statement at Paragraph
18 16, referred to the potential pollution or
19 contamination of the Parán waters from the Invicta
20 Mine effluence.

21 Do you see that?

22 A. 16. Yes.

1 Q. This is dated May 2018.

2 Didn't you think it was important for the
3 Tribunal to know that ALA carried out an inspection
4 less than three months after, when they concluded that
5 there was no contamination?

6 A. But I think I told you already--I think I
7 told you already that that was within the purview of
8 what I was demanding.

9 So the idea was the dialogue table. The
10 dialogue table is the one that was going to address
11 that, because the next month, there was another
12 conflict. There was going to be another conflict.
13 What were they going to do then?

14 Q. I'm asking you about your statement in this
15 arbitration at Paragraph 16. You are saying that in
16 May 2018, you communicated about a potential
17 contamination.

18 So I'm asking you whether, in this same
19 statement that you are preparing--or presented for
20 this arbitration, you didn't think it was important
21 referring to contamination to tell the Tribunal that
22 less than three months after, it was confirmed that

1 there was no contamination?

2 A. I am not stating--I am not confirming. I am
3 not telling you that there is contamination. I'm
4 saying potential. I would have corrected myself if I
5 said, okay, there is contamination. Now the result is
6 negative. I am going to rectify or apologize, but I'm
7 not confirming anything.

8 I'm telling you about a potential, potential
9 contamination.

10 So I'm not saying--and I also report to the
11 superiors, the--for them--for the agencies, for the
12 authorities to do their work, to do something about
13 it, because I am the Subprefect. I am not going to
14 order to have a laboratory sent, please send me the
15 results. I need them right now. This is not my area.
16 This is not my jurisdiction. My duty is just to
17 communicate the concern.

18 ARBITRATOR GRIFFITH: (Speaker overlapping
19 with interpretation.)

20 --did he do about that report three months
21 afterwards? Did he know about it or not?

22 BY MR. VELARDE:

1 Q. Did you know, Mr. Retuerto, of the
2 inspection by ALA in June 2018, and also the results?

3 A. No.

4 Q. It was June--July. July 2018.

5 We are now going to look at C-527.

6 PRESIDENT CROOK: Will this take very long?

7 MR. VELARDE: This is the last document I
8 will show.

9 PRESIDENT CROOK: Thank you.

10 BY MR. VELARDE:

11 Q. Mr. Retuerto, this is the same interview
12 that we just saw a couple of minutes ago with the Ecos
13 newspaper in December 2018.

14 If we look halfway down where it says what
15 the community members have been asking for, that is to
16 say halfway down--let me read this to you, because I
17 know that the size of the font is quite small.

18 A. Yes.

19 Q. The journalist is asking you, "What is it
20 that the community members have been asking for?"

21 And you answer, "The community members write
22 that Invicta is at the top of the community, of its

1 territory, of its population, of its agriculture,
2 where the mining company's camp is, and also where the
3 adit is located."

4 And the journalist asked you on December
5 21st, 2018, "And is this producing any contamination?"

6 And you answer, "Of course. Of course, it
7 is."

8 Do you see it?

9 A. I do.

10 Q. Would you agree with me that stating
11 publicly that there is contamination when that is not
12 the case, as we just saw, is something contrary to
13 your right--to your duty to offer truthful information
14 to the government, and complete information?

15 A. Well, it is a point of view. That had to
16 happen, because legally, the concern that the
17 community had was that they were going to get
18 contaminated, polluted.

19 Q. But you would agree with me, after looking
20 at ALA's resolution, that in July 2018, there was a
21 confirmation that there was no contamination?

22 A. Yes. But technically, those are the

1 authorities that said that, but we do not know. When
2 we share our point of view, we are not the trained
3 members from the community. We are just--if we look
4 at a change in water, if we see something that is not
5 fine, we say immediately, gentlemen, you are
6 contaminating. Why did we have this problem? Because
7 they said--they are contaminating, and then this is a
8 concern. We saw the changes in the fluids. It is
9 worse not to have information.

10 We didn't have information from the company
11 towards the community to say, you know what, we are
12 monitoring. We have the quarterly results. I don't
13 know how often they did it, whether it was done or
14 not, but they never proved--they never proved that.
15 They never showed that to us.

16 Q. So you do not know whether this was done or
17 not, but at the same writing in your statement--not in
18 your statement, but in the communications that we just
19 saw, we--you told the government authorities, you
20 stated that Invicta was not carrying out environmental
21 monitoring activities in the communities; correct?

22 A. Clearly, they were not doing that. That is

1 the truth.

2 PRESIDENT CROOK: All right. Thank you,
3 Counsel.

4 Mr. Retuerto, we will now take a short break
5 of about 10 minutes.

6 During that time, you're free to get up, go
7 have a cup of coffee, but you should not discuss your
8 testimony or the questions that have been asked with
9 anyone.

10 Is that clear?

11 THE WITNESS: Yes.

12 PRESIDENT CROOK: That's agreeable to you,
13 sir?

14 THE WITNESS: Yes, certainly.

15 PRESIDENT CROOK: Well, we will resume in 10
16 minutes, then. Thank you.

17 SECRETARY: Mr. President, before we break,
18 do we want the witness to be sent to a waiting room,
19 or do we want him to remain connected?

20 We normally would send them to a breakout
21 room online, but he can also remain connected in
22 silence on the screen.

1 PRESIDENT CROOK: Well, I don't know what
2 arrangements have been made.

3 SECRETARY: It's either way. I'm asking so
4 that everybody knows what's going to happen.

5 MR. GALLEGO: We're fine with either
6 solution, Mr. President.

7 PRESIDENT CROOK: All right. Everyone is
8 agreeable that he may leave the room, go have a cup of
9 coffee, but he should not speak with anyone.

10 All right. We'll see you, then, in 10
11 minutes, please.

12 SECRETARY: I'm sorry, Mr. President.

13 Do the technicians--maybe you want to send
14 Mr. Román Retuerto to a Zoom breakout room, and bring
15 him back in 10 minutes sharp. Thank you.

16 PRESIDENT CROOK: All right. Anything else?
17 No?

18 All right. We'll see you all in 10 minutes.

19 (Whereupon, there was a recess in the
20 proceedings, 3:16 p.m. - 3:28 p.m.)

21 PRESIDENT CROOK: Let's see if we can bring
22 back the witness.

1 SECRETARY: Peter, can you bring back
2 Mr. Román Retuerto. Thank you.

3 PRESIDENT CROOK: All right, sir. Welcome
4 back. You might be amused to know that on the screen
5 next to you that appears before us, there appear to be
6 two large marine mammals looking at us, and I think
7 they are looking friendly, but we're not entirely
8 sure.

9 All right. Are you ready to resume, sir?

10 THE WITNESS: Yes.

11 PRESIDENT CROOK: Okay. Let us resume,
12 then.

13 MR. VELARDE: Thank you, Mr. President.

14 BY MR. VELARDE:

15 Q. Hello once again, Mr. Retuerto. The
16 communities in the area under your jurisdiction, sir,
17 are made up of annexes and population centers, or
18 towns; correct?

19 Huamboya is an annex or hamlet of the Village
20 of Parán; correct?

21 A. Yes.

22 Q. And it is also part of the District of

1 Leoncio Prado, that is to say where you are the
2 Subprefect; correct?

3 A. Yes.

4 Q. Are you aware of the issue having to do with
5 marijuana crops and the sale of marijuana in your
6 jurisdiction?

7 A. Of course, I am.

8 Q. Huambo is one of the areas where the
9 growing and sale of marijuana is most widespread; is
10 that correct?

11 A. No. It might be viewed like that, but I
12 don't have personal knowledge. That may or may not be
13 the case. It's normal, or common, that this is a
14 practice, but I cannot affirm that.

15 Q. So your testimony is that the Huambo zone
16 is not one of the areas where the growing and sale of
17 marijuana is widespread; is that your testimony?

18 A. No, no.

19 Q. Did you know that--

20 ARBITRATOR GARIBALDI: No, no, answer to
21 what?

22 MR. VELARDE: Thank you, Mr. Garibaldi.

1 BY MR. VELARDE:

2 Q. Let me put the question to you once again,
3 Mr. Retuerto.

4 So your testimony is that the Huamboya area,
5 in that area, the growing and marketing of marijuana
6 is not a widespread practice; is that your testimony?

7 A. Of course, it's not a widespread practice.

8 Q. Did you know that in the last 8 to 10 years,
9 the police have carried out various operations in
10 Huamboya and in other areas of the Community of Parán
11 to seize and set ablaze thousands of marijuana plants
12 or areas where marijuana is grown?

13 A. No, I did not know that.

14 Q. Even though the--even though Huamboya is part
15 of your jurisdiction as Subprefect?

16 A. Yes.

17 Q. Did you know that in August of 2014, the
18 police discovered and eradicated some 3,000--

19 ARBITRATOR GRIFFITH: (Speaker overlapping
20 with interpretation.) I mean, you're reserving this.

21 (Clarification requested by the Realtime
22 Stenographer.)

1 ARBITRATOR GRIFFITH: I'll say it again.

2 Counsel, you seem to be giving evidence from
3 the bar tag. If we've got a document that establishes
4 it, that's one thing. For you to say it as a fact to
5 the witness is another. We have no evidence before us
6 as to this.

7 MR. VELARDE: (In English.)

8 I was precisely asking the question, and
9 depending on his answer, I was going to show a
10 document.

11 ARBITRATOR GRIFFITH: Shouldn't it be the
12 other way around?

13 PRESIDENT CROOK: Why don't we proceed to
14 the document.

15 MR. VELARDE: Yes.

16 BY MR. VELARDE:

17 Q. (In Spanish.)

18 Let us turn to Exhibit C-104. If we can
19 turn to page 2 there, that's fine, and if we could
20 show it in the English language version, as well,
21 please.

22 And there, Mr. Retuerto, it says in the

1 first paragraph that the National Police discovered
2 and eradicated some 3,040 marijuana plants in the
3 Huambo Alto Population Center in the District of
4 Leoncio Prado.

5 Do you see that?

6 A. The date?

7 Q. If we could go up to show the date.

8 Can we see the date?

9 13 August 2014.

10 Are you aware of this operation?

11 A. No, I don't have personal knowledge of it.
12 I was not the authority. I was not the Subprefect at
13 the time, and I don't have knowledge of that.

14 Q. As from when are you the Subprefect of
15 Leoncio Prado?

16 A. 2017.

17 Q. Which month?

18 A. March.

19 Q. Very well.

20 Then I propose that we look at a publication
21 from May of 2017, if we could go to Exhibit C-105,
22 please.

1 Here--can you read that or should we blow it
2 up a little bit more, please?

3 A. Yes.

4 Q. In this publication from Diario Ecos of 9
5 May 2017, it is indicated that they seized about
6 10,000 marijuana seedlings in Huambo, Leoncio Prado.

7 Are you aware of this?

8 A. I did not participate in what's here, but I
9 became aware of the publication, and I went to see
10 where it was and how it was.

11 And I found out that it was in--within the
12 District of Leoncio Prado, and the District of Ihuari,
13 but they said in the publication it was in Leoncio
14 Prado.

15 So I went to the place, and I saw that it
16 wasn't in Leoncio Prado. It was right by the
17 boundary, but it was in the District of Ihuari.

18 And I immediately contacted the colonel who
19 participated in the incineration. We sought him out.
20 We took out a map, and he said, I'm sorry, but it had
21 already been published that it was in Leoncio Prado,
22 but it wasn't in Leoncio Prado. It was in the

1 jurisdiction of the District of Ihuarí.

2 Q. But the publication that we're looking at
3 makes reference--

4 A. Of course, of course. Yes, you see the
5 reference, but that's why I went to the colonel,
6 because the information says it's in Leoncio Prado.
7 So I thought it was in Leoncio Prado, or they said
8 they thought it was in Leoncio Prado, but it had
9 already been published, and--but it became clear it
10 wasn't in the District of Leoncio Prado, it was in the
11 District of Ihuarí.

12 Q. Just as a matter of order, Mr. Retuerto,
13 let's try to avoid speaking at the same time;
14 otherwise, the transcript isn't going to reflect what
15 we're saying.

16 And also, all others who are here, who are
17 listening to the interpreted version aren't going to
18 be able to understand what we're saying.

19 Do you agree with me that the document that
20 you have in front of you makes reference to a seizure
21 of 10,000 marijuana seedlings in Huambo, Leoncio
22 Prado; correct?

1 A. That's what it says, but I've already said
2 that, in legal terms, being specifically it's not in
3 the District of Leoncio Prado. They had already
4 published it. The colonel told me, yeah, they
5 published it in those terms, and I affirm that it was
6 not in the District of Leoncio Prado.

7 You can say, well, it was, because it's--the
8 publication says so, but it wasn't. It's by the
9 boundary.

10 So it's a few--it's 5 meters, 10 meters into
11 the District of Ihuari. That's what happened there.
12 It's very close by. But they published it as Leoncio
13 Prado because that's what the colonel had said.

14 And he said that's what I said, but I now
15 rectify what I said before you, not in the District of
16 Leoncio Prado, but in the District of Ihuari, but it
17 was published as if it were in the District of Leoncio
18 Prado.

19 Q. So I understand that you were aware of this
20 operation; correct?

21 A. I wasn't aware of the operation. I came to
22 learn of it once the operation had already happened.

1 When I--once it happened, I learned of it,
2 once it was already published, but I wasn't aware of
3 the operation.

4 Q. As of the date of your witness statement in
5 this arbitration, which is from 2022, if I'm not
6 mistaken, you were aware of this operation; correct?

7 A. That I came to learn of it--I came to learn
8 of what had happened, to be aware of it,
9 meaning--means that one knows that it's happening. I
10 came to learn of the publication. That's different.

11 Q. If we can now turn to Exhibit C-108.

12 We now have what I'm showing you here is a
13 publication from April of 2018, where, as you can see
14 in the Spanish language version, the title indicates
15 "5,000 marijuana plants valued at a million-and-a-half
16 soles are burned."

17 And just below it says, "Seizure took place
18 in Llacas, Leoncio Prado District."

19 Do you see that?

20 A. Yes, I do.

21 Q. The Llacas Ravine is part of the Community
22 of Parán; is that right?

1 A. It is not. It is not part of the community.
2 It's part of the Community of Acotama.

3 Q. Very well. Then I'm going to ask if the
4 text could be blown up some, in both versions. So I'm
5 going to read--I think the letter is a bit small.
6 Maybe we can blow it up a little bit more.

7 If you could go down, it says--and I'll read
8 it, Mr. Retuerto--it says, "The mountainous area in
9 the Huaura province still remains a drug paradise in
10 the Norte Chico region. The PNP Intelligence Unit,"
11 that's the police, "and personnel from the Huacho
12 Anti-Drug Department carried out a mega-operation, and
13 dealt a new and severe blow to drug trafficking,
14 intervening in the Llacas Ravine, in the rural
15 Community of Parán, District of Leoncio Prado."

16 Do you see that?

17 A. Yes.

18 Q. So the Llacas Ravine is part of the
19 Community of Parán; right?

20 A. No, it is not. If you look at a geographic
21 map, you will see that it's not in Parán, it's in a
22 place called Llacre.

1 Q. Were you aware of this police operation?

2 A. I learned of it, but that's not in the
3 District of Leoncio Prado. That zone is not located
4 in the Community of Parán. It's located in the
5 Community of Acotama.

6 Q. You told us that you were aware of this
7 operation. Did you know that the police was
8 investigating members of the Narvasta family in
9 relation to this seizure and burning of marijuana
10 plants?

11 A. No. I was not. Since it wasn't within the
12 jurisdiction of Leoncio Prado, I didn't take much
13 interest in it. But it's in the place known as
14 Llacres, and I know that place, and it's not in
15 Leoncio Prado. That's misinformation.

16 PRESIDENT CROOK: Counsel, let me interrupt
17 you for just a second, from an administrative comment.

18 Are the parties prepared that we can release
19 Mr. Bravo or should we continue to hold him for the
20 rest of the afternoon?

21 MR. GALLEGOS: For us, we could certainly
22 release him, but it depends a little bit on how long

1 the cross-examination is going to carry on. If you
2 just give me 10 seconds.

3 PRESIDENT CROOK: All right. Well, the man
4 is being held in a secluded room at the moment, so it
5 would be nice if we could let him out.

6 MR. GALLEG0: It looks like we're going to
7 be using the rest of the time allotted for this
8 witness.

9 PRESIDENT CROOK: All right. Thank you for
10 that. Then we will tell Mr. Bravo that he is free,
11 with the customary admonition not to discuss his
12 testimony with anyone, and that we will see him again
13 tomorrow morning.

14 Is that agreed?

15 MR. GALLEG0: That's agreed. Thank you,
16 Mr. President.

17 PRESIDENT CROOK: So it seems.

18 All right. Thank you very much. Sorry for
19 the interruption. Back to your questioning.

20 MR. VELARDE: Thank you, Mr. President.

21 BY MR. VELARDE:

22 Q. Yes. If we can go up a bit in the Spanish

1 language to the box, and I will now read, Mr.
2 Retuerto, "As on other occasions in this
3 mega-operation, there were no detainees either.
4 However, it is being investigated whether these plots
5 belong to the Narvasta clan, a well-known family in
6 the area, whose members have been under investigation
7 for months by DEPANDRO Huacho."

8 THE INTERPRETER: The interpreter did not
9 hear anything discernable. Sorry.

10 ARBITRATOR GRIFFITH: Was there translation.

11 THE INTERPRETER: Interpreter repeats, I
12 think I heard "no," but it was not any complete
13 enunciation.

14 PRESIDENT CROOK: The transcript is not
15 clear, so Counsel, if you have a question, why don't
16 you put the question to the witness, and let's see if
17 we can get a clear answer.

18 MR. VELARDE: Can we show the documents,
19 please. They're not up on the screen anymore.

20 ARBITRATOR GRIFFITH: Counsel, you've got
21 the transcript. Why don't you just read out the
22 question.

1 BY MR. VELARDE:

2 Q. Were you aware, Mr. Retuerto, of the fact
3 that the Narvasta family or the Narvasta clan, as
4 described here, was being investigated for
5 marijuana-related issues?

6 A. No. I've not known of that.

7 Q. The last name Narvasta is a predominant last
8 name in the Huamboya area; is that not the case?

9 A. In almost all of the communities.

10 Q. Several members of the Narvasta family held
11 leadership positions in the Community of Parán; is
12 that not so?

13 A. Yes.

14 Q. Based on the news articles that we just saw,
15 would you agree with me that the growing and sale of
16 marijuana is a serious problem in Parán; is that not
17 so?

18 A. No.

19 Q. Let's turn to Exhibit C-529.

20 What I'm going to show you, Mr. Retuerto, is
21 an interview that you gave to the newspaper, Diario
22 Ecos, 8 July 2019.

1 Do you see it?

2 A. Yes.

3 Q. I'm going to read, the journalist from Ecos
4 says, down at the lower part of the screen, says,
5 "Having overcome this situation"--they're talking
6 about a different situation--"having overcome this
7 situation, what other challenges are still pending?
8 We have seen many marijuana crops in higher zones as
9 well."

10 And you answer, "Of course. We are. We are
11 working on it with the police, in operation with them.
12 It is finishing, and possibly this is going to end.
13 It is not going to go any further."

14 The journalist then says, "They even divert
15 water from fields where crops are grown, too."

16 And you answer, "Of course. Of course, they
17 are. They are using the water from the part--they are
18 hidden areas where you can't verify or see very well.
19 So they are using the water that is meant to irrigate
20 another product, and not marijuana."

21 Then they ask--and here I'll end--"Sure, but
22 when justice comes, there are 10,000 to 20,000

1 seedlings," and you answer, "That's right, it's quite
2 a lot, but we are coordinating with the police."

3 I ask you: Having read from the interview
4 that you gave, would you agree with me that the
5 growing and marketing of marijuana is a serious
6 problem in the Community of Parán; is that not so?

7 A. The thing is that as authorities, we are on
8 top of it. As authority, I have been on top of the
9 fact that it may exist. It may happen. But that
10 doesn't mean that they're cultivating.

11 As authority, we are aware of what's
12 happening. We are coordinating with the police. We
13 have to do this. We have a work plan that we present
14 annually. So, I ask the police that we be patrolling
15 and setting dates to find out whether there are or are
16 not, whether they exist or do not exist or what kind
17 of problems are there in each community.

18 So that is what I say, that I need to be on
19 top of the problem of marijuana, which may exist or
20 may not exist. Nor do I defend, well, there may be
21 one, but I'm not going to involve the whole town, all
22 of the people in it.

1 Q. Mr. Retuerto, you just spoke about the
2 actions. My question is: Do you agree that this is a
3 serious problem, the problem of marijuana in the
4 Community of Parán; yes or no?

5 A. It is a matter of concern, but I am saying
6 quite clearly, that is a concern for one as an
7 authority. It is a concern. That is up to me.

8 So we work in coordination with the police,
9 because it's with them that we need to have this
10 operation, with the police. So we need to be
11 attentive to this.

12 It's known that growing is a crime, and so,
13 automatically, we need to be aware of what's going on,
14 but I'm not saying that the whole community, as you
15 say, that the whole community is devoted to this crop,
16 no. It is a plant. If it's a plant, and they need to
17 irrigate it, they need to irrigate it, and there might
18 be one person who is using it, or drawing water to
19 irrigate it, but it is a matter of concern, as an
20 authority, with the police, we need to be on top of
21 the situation. That is so.

22 Q. If it's a matter of concern, as you say, Mr.

1 Retuerto, did you report this concern about this issue
2 to the government authorities?

3 A. Of course. With the police, we have been on
4 top of it, and operations have been carried out with
5 the police, and patrols have been carried out in the
6 entire--in all of the communities of the District of
7 Leoncio Prado.

8 Q. And operations have continued to be carried
9 out. Did you inform the president of the Council of
10 Ministers of this issue or the Office of Human Rights
11 Ombudsperson or the other entities, did you send them
12 a formal letter?

13 A. One cannot do so in that respect because
14 it's not constant. Now, I--they have involved the
15 District of Leoncio Prado, but I have reported that
16 it's a mistake in the publication for them to
17 implicate the District of Leoncio Prado. The
18 territory has not been--if you look at Leoncio Prado
19 and Parán, whether there's a place called Llacas.

20 Now, they tell me the last name of Narvasta,
21 that is found in Parán, and in all of the communities,
22 you find the last name Narvasta, in Santo Domingo, on

1 the other side of Acotama, in Huananguí.

2 In every place one finds the last name
3 Narvasta, so we cannot say that the Narvastas are from
4 Parán and they are the ones cultivating. We
5 cannot--it's a slander against those persons to simply
6 make these sweeping generalizations.

7 Q. So to confirm, you did not communicate with
8 the Presidency of Council of Ministers, the Office of
9 the Human Rights Ombudsperson, the Ministry of Energy
10 and Mines in your communications about the issue of
11 the growing and marketing of marijuana; yes or no?

12 A. I have not done so. Why? Because it is not
13 a concern. It's just that I have had to coordinate
14 with the police in the area because it's up to--it's
15 with them that we are to coordinate.

16 So I can't go to just any ministry and say,
17 come and do something, because that--there would be no
18 principle of authority to be able to issue such a
19 report. It's not a crime to say one is found; and so,
20 therefore, the place is like this.

21 It's not been in Leoncio Prado. The
22 publication said so, but it's a mistake. When they

1 speak of that--those lands, they are not lands that
2 are in the District of Leoncio Prado.

3 Q. Regarding contamination, we also have the
4 local water authority. Nonetheless, you reported the
5 possible contamination to the Human Rights Ombudsman
6 person, the President of the Council of Ministers, and
7 the Ministry of Energy and Mines in the letters that
8 we saw.

9 Is that not so?

10 A. Of course. But I'm--but note, I'm saying a
11 possible contamination. I'm not affirming anything.
12 Possible contamination.

13 Q. You mentioned coordination with the police
14 in relation to the marijuana question.

15 Did you inform CPO Soria of Sayán about
16 this?

17 A. No. We were coordinating, but not directly
18 that marijuana--no, because as I've already explained,
19 when we went in in January--we came in in January,
20 presented a work plan, and the work plan includes
21 carrying out operations. What does that refer to,
22 what are we going to do, what kind of work are we

1 going to do, when the operations are carried out,
2 going out into the communities. Where do we go and
3 who do we talk with in each community, who is the
4 person who must receive us in each community.

5 In these cases, it's the Lieutenant
6 Governors.

7 Q. Let us now talk about having weapons in your
8 jurisdiction, bearing arms, if you will.

9 Did you know that the members of the Parán
10 Community had weapons?

11 A. Of course, because the government itself
12 gave them the weapons via the self-defense committees
13 that were made up in each community. And the
14 government itself provided the weapons.

15 Later on, it was decided that the
16 self-defense committees were going to disappear, were
17 going to be canceled, and the Ministry of Internal
18 Affairs and the Armed Forces came up, and they picked
19 up the weapons.

20 Q. As a Subprefect, you're in charge of
21 coordinating things with the Rondas Campesinas?

22 A. Yes, yes. That's right. They're now called

1 Rondas Campesinas. They're no longer self-defense
2 committees. So as such, they cannot--can no longer
3 bear arms.

4 Q. Your testimony is, then, that Parán does not
5 have any weapons?

6 A. It does not, because the weapons were picked
7 up by the government.

8 ARBITRATOR GRIFFITH: Were the weapons
9 shotguns or rifles?

10 THE WITNESS: Shotguns.

11 BY MR. VELARDE:

12 Q. Did you know, sir, that in 2018, during the
13 Parán invasion of Invicta, the members of the
14 community were misusing the weapons that they had?

15 A. No, no.

16 Q. You did not know that the members of the
17 Parán Community had used their weapons during the
18 takeover of the Invicta project on 19 June 2018, and
19 shot against members of Lacsanga?

20 A. No.

21 Q. You did not know that Invicta brought police
22 complaints against the Parán aggressors because of the

1 situation?

2 A. No.

3 Q. You did not know that after the takeover of
4 October 2018, the members of the Rondas Campesinas of
5 Parán were using their weapons to instill fear in the
6 members of Lacsanga so that they wouldn't come close
7 to the area, the area where it would be the Invicta
8 camp?

9 A. No, I did not know that, because, well, it's
10 another district, right? Lacsanga is another
11 district.

12 So if they're members of another district,
13 they're not going to come and complain before me, and
14 Lacsanga is not part of the Leoncio Prado District.

15 ARBITRATOR GARIBALDI: You have testified
16 that the members of the Rondas Campesinas, these rural
17 patrols in Parán, did not have weapons because the
18 government, the Armed Forces, had already picked them
19 up.

20 How do you know that?

21 THE WITNESS: Because when I came in, there
22 were no longer self-defense committees. The

1 regulations had changed.

2 In our communities, what we had to do was to
3 coordinate with the Rondas Campesinas, which could no
4 longer have weapons. They were not authorized to have
5 weapons.

6 So when we had these rural patrols and I
7 went up to Lima and I went to the military base, I
8 asked that all of the weapons be picked up in
9 connection with the self-defense committees, because
10 those self-defense committees are no longer in
11 existence. The regulations governing them are no
12 longer in existence. They took their time to come
13 out.

14 And this did not only happen to Parán.
15 There were other communities that had the weapons, and
16 all of the weapons were picked up by them.

17 ARBITRATOR GARIBALDI: Again, how do you
18 have personal knowledge that all of the weapons had
19 been picked up by members of the government?

20 THE WITNESS: According to the report I
21 prepared, they let me know, and I don't have exact
22 date, that they had come out and that they had picked

1 up the weapons from the communities that had the
2 weapons, because they belonged to the self-defense
3 committees, and the self-defense committees are no
4 longer in existence, and we only have now the rural
5 patrols, the Rondas Campesinas.

6 So they can no longer bear arms, and they
7 have never had arms, and--but that changed, and they
8 came and picked up all the weapons in all the
9 communities that had them.

10 ARBITRATOR GARIBALDI: Okay. There were
11 self-defense committees that were--okay.

12 There were self-defense committees that were
13 canceled and that were replaced by the rural patrols,
14 the Rondas Campesinas.

15 THE WITNESS: Yes, of course.

16 ARBITRATOR GARIBALDI: The rural patrols are
17 not authorized to bear arms.

18 THE WITNESS: That's right.

19 ARBITRATOR GARIBALDI: So you deduce from
20 that that the rural patrols do not have weapons; is
21 that correct?

22 THE WITNESS: Yes, that's right.

1 ARBITRATOR GARIBALDI: Okay, thank you.

2 BY MR. VELARDE:

3 Q. Let us now move on, Mr. Bravo--excuse me,
4 Mr. Retuerto.

5 If you look at your witness statement--let's
6 look at it. And we look at Paragraph 3, you say here
7 at the end that, "This statement is based on my
8 personal knowledge of the fact that I have in
9 connection with the matters that I have identified in
10 the afore-appearing paragraphs."

11 Right?

12 A. Yes.

13 Q. Here, you're talking about the position of
14 President of Santo Domingo as a Subprefect of Leoncio
15 Prado. These are two positions that I mentioned in
16 Paragraph 2; right?

17 A. Yes.

18 Q. You were the president of Santo Domingo on
19 January 1st, 2009, until 2012, 31 December 2012;
20 correct?

21 A. Yes.

22 Q. And you were Subprefect from 17 March 2017

1 to 10 March 2022; is that right?

2 A. Yes.

3 Q. That is to say, you did not have any of
4 these positions in 2013, '14, '15, '16, until March
5 2017; correct?

6 A. Yes.

7 Q. During this period, you were another member
8 of the Santo Domingo Community; is that correct?

9 A. Yes. I was a community member, of course.

10 Q. Paragraph 28 of your statement, here you say
11 at the end of the second sentence, "With the arrival
12 of Lupaka as the new owner of Invicta, the Parán
13 Community expected to reach a similar agreement to the
14 one the company had reached with the communities of
15 Lacsanga and Santo Domingo."

16 Do you see that?

17 A. Yes.

18 Q. What agreement with Lacsanga are you making
19 reference to here?

20 A. I'm talking about having the agreement.

21 Q. Yes.

22 My question is, what agreement,

1 specifically, are you making reference to? Because
2 you talk here about, "reach a similar agreement to the
3 one the company had reached with the communities of
4 Lacsanga and Santo Domingo."

5 What agreement are you making reference to,
6 the one that was signed on which date?

7 A. Well, let's see.

8 The agreements that we had, the agreements
9 that were signed with Lacsanga and Santo Domingo,
10 well, those agreements were never signed with the
11 Community of Parán.

12 Q. You're saying once Lupaka came in; right?

13 So I think once Lupaka arrived, I think
14 you're talking about the Invicta project in 2012.

15 So at that time, Parán had the expectation
16 of reaching a similar agreement than that that had
17 been reached with Lacsanga and Santo Domingo?

18 A. Yes, that's right.

19 We wanted coexistence, we wanted harmony,
20 but that never came. We've spoken about the
21 consequence of all this. The community was the one
22 that suffered the environmental impact the most, and

1 the agreement never came. That was a concern for the
2 company, and I cannot speak to that.

3 But that is a concern that the company has
4 to have. Why is it that they didn't want to talk to
5 them, and that was the concern. The concern that they
6 had, they never got to this with the Community of
7 Parán.

8 Q. In October--

9 PRESIDENT CROOK: Excuse me, Counsel.

10 Mr. Retuerto--Mr. Witness, sorry, you are
11 responding to questions immediately, and the result is
12 some confusion in the translation.

13 So what we're going to ask you to do,
14 please, is, when a question is asked of you, could you
15 wait for a second or two before you begin your answer?
16 That will make the whole process much clearer.

17 Would you be prepared to do that, sir?

18 THE WITNESS: Yes.

19 PRESIDENT CROOK: We would be grateful, and
20 it would improve the process. So thank you.

21 MR. GALLEGO: Just a small point of order,
22 because we are running under quite a tight schedule,

1 we think there's about 25 minutes left of this
2 cross-examination. And depending on how much redirect
3 there may be, Bravo may be able to come back. He's
4 available. He's not far.

5 So we just, you know, announce it, and it
6 just depends on the Respondent, how much redirect
7 there is.

8 (Off the record between the President and
9 the Secretary.)

10 PRESIDENT CROOK: We will try to make sure
11 that he is, indeed, available. And fine, then let us
12 proceed.

13 Just looking at the timing, do we have a
14 sense of how long the redirect might be, or can we
15 tell at this point?

16 MR. GRANÉ: So far, based on what we've
17 heard, we do not anticipate a long redirect; however,
18 I will need to see if a part of our team can also be
19 recalled, because based on what counsel has said, we
20 have released our part of the team that was assisting.

21 PRESIDENT CROOK: All right. Well,
22 let's--we'll drive on. We'll do the best we can. If

1 we can get Mr. Bravo back for a few minutes, that's
2 what we'll do.

3 All right.

4 BY MR. VELARDE:

5 Q. Mr. Retuerto, sir, to your knowledge, as at
6 October 2012, when Lupaka acquired Invicta, Invicta
7 had signed an agreement with Lacsanga; yes or no?

8 A. Are you asking me?

9 Q. I am.

10 A. Possibly, they said that they did. It's--I
11 don't have personal knowledge of that, but that's the
12 information that they had. That was the information.

13 Q. Who is "they"?

14 Did you hear my question? Who is "they"?

15 A. The Lacsanga Community members.

16 Q. The Lacsanga Community informed you that as
17 at October 2012--

18 A. They informed, but I don't know exactly.

19 Q. But you were informed of this?

20 A. Lacsanga informed of this.

21 Q. In Paragraph 28 of your statement, let's
22 continue on it. If you look below, the yellow

1 section, you say, "The Parán Community perceived that,
2 far from trying to reach an agreement, the company was
3 ignoring the community's concerns and needs."

4 Do you see that?

5 A. Yes.

6 Q. What period of time are you referring to
7 here; since Lupaka acquired the project at the end of
8 2012 onwards?

9 A. I'm talking about the whole period of time
10 for Lupaka.

11 Q. Here at 28, it says that that perception was
12 confirmed when the company signed an agreement with
13 Lacsanga in July 2017.

14 Do you see that?

15 A. What is the question?

16 Q. It was asking whether you can see here,
17 where it says in your statement that that perception
18 was confirmed, the perception from the Community of
19 Parán, was confirmed when the company, Invicta, signed
20 an agreement to build an access road to the project
21 throughout the--through, rather, the territory of
22 Lacsanga.

1 A. Yes. I see that.

2 Q. I understand that at 28, you were making
3 reference to the perception that was communicated to
4 you by the Community of Parán; right?

5 A. No.

6 The people from Lacsanga informed that an
7 access road was being built in Lacsanga to get to the
8 company.

9 Q. Here in this paragraph, you were talking
10 about the perception of the Community of Parán. You
11 said that this community perceived that the company
12 had ignored its concerns, and that perception was
13 confirmed when the company signed an agreement with
14 Lacsanga.

15 A. That's different.

16 First, it says that the community had no
17 agreements with the mining company, but then a
18 clarification is made in the sense that the Community
19 of Lacsanga gave land so that a road could be built,
20 and the mining company never worked to reach an
21 agreement with Parán, and that is a concern that they
22 had, and that was clear in their minds.

1 Q. But like you said before, you were not aware
2 that Invicta had made a detailed proposal for an
3 agreement with Parán, that 300,000 soles had been paid
4 to it, and that most of the community members had
5 accepted the proposal of agreement put forth by
6 Invicta; right?

7 A. We have talked about this. I thought it was
8 clear that the mining company has paid a debt, a prior
9 debt.

10 The community said, well, you're taking
11 advantage of us. This dates back to many, many years.
12 The Community of Parán was providing the land for the
13 road, and the mining company had to come up to date.

14 This was a pressure exerted by the
15 community. It had nothing to do with a recent
16 agreement.

17 Q. Sir, you do not have direct knowledge of the
18 actions taken by Invicta to establish relations with
19 Parán and reach an agreement; yes or no?

20 A. I do not know. That's why I'm saying that,
21 at that meeting that I had, the authorities and the
22 committee members told the mining company, you are

1 taking advantage of us. You've taken advantage of us
2 for a long, long time.

3 I think on average, 12, 13 years went by,
4 and the mining company had that debt when the
5 community gave up their land for the company to build
6 the access road, and that debt dated to those years.
7 And the community said years and years are going by,
8 and you're never paying off your debt.

9 And then the company said, okay, in 15 days,
10 we're going to pay you. And then I don't know when
11 they paid, but they said that this was the
12 long-standing debt. They paid under pressure,
13 pressure exerted by the community.

14 ARBITRATOR GARIBALDI: So your impression is
15 that 300,000 soles were paid in exchange for access to
16 the mine via the Parán access road.

17 THE WITNESS: Yes, of course.

18 ARBITRATOR GARIBALDI: That's your
19 impression, right, sir?

20 THE WITNESS: Yes, of course.

21 ARBITRATOR GARIBALDI: Thank you.

22 BY MR. VELARDE:

1 Q. Sir, you did not participate in the
2 discussions or negotiations that Invicta had with
3 Parán; right?

4 A. No. I never participated in that.

5 ARBITRATOR GARIBALDI: As a follow-up to my
6 previous question, what is your understanding based on
7 that the 300,000 soles were in exchange for access to
8 the mine via the Parán access road; did you see any
9 agreement in that regard?

10 THE WITNESS: No. I'm saying clearly that
11 there is a President of the Community of Parán, and
12 community members of Parán mentioned this, and they
13 said, you are owing us money. There was an agreement
14 that was entered into for the construction of the road
15 on the land, and no payment was made to date, and you
16 are deceiving us, they were told.

17 ARBITRATOR GARIBALDI: It is correct to say,
18 then, that your opinion is based on what the Parán
19 authorities told you?

20 THE WITNESS: Of course.

21 ARBITRATOR GARIBALDI: Thank you.

22 BY MR. VELARDE:

1 Q. Mr. Retuerto, I have one last thing I wanted
2 to talk to you about.

3 I wanted to talk about the invasion of the
4 Invicta project by Parán on 19 June 2018.

5 Do you remember this invasion?

6 A. Invasion?

7 Q. Yes.

8 A. I think we have changed subjects.

9 The community never invaded.

10 Q. What did the community do?

11 A. The Parán Community went up and held a
12 protest before the company.

13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 A. Okay.

18 Q. Yes or no, Mr. Retuerto? Yes or no? We
19 need to--for you to say yes or no for the record.

20 A. No.

21 [REDACTED]
22 [REDACTED]

1

2

3

Do you see that?

4

A. Yes.

5

6

7

8

9

A. I did not participate. When you participate, you're there. You act. I never participated. I was never there.

10

11

12

A. No, I did not have knowledge of that.

13

14

Q. The police did not come in contact--into contact with you to ask you questions?

15

A. No.

16

17

18

19

Q. You would agree with me that as part of your investigations, and since you were mentioned as one of the participants in the invasion, the police should have contacted you; right?

20

21

A. But I didn't participate. At that time--well,

22

That never happened, so why is it that the

1 police should come to me and call on me?

2 Q. Did you know that on 14 August 2018, a few
3 months after the invasion, Mr. Julio Castañeda sent a
4 letter to Osinergmin, informing it of your
5 participation of the events of 19 June 2018?

6 A. No. Can you show me the letter?

7 Q. Yes, of course. C-130. Paragraph 1. This
8 is a letter signed by Mr. Castañeda, as I said, sent
9 to Osinergmin.

10 A. That's not a letter. I don't see a letter
11 there.

12 Q. Let's scroll down, please. It is dated 14
13 August 2018. It's a letter. If we scroll up, there's
14 no signature on the letter. Reference is made to
15 Mr. Castañeda as a legal representative, and it bears
16 the letterhead of Invicta.

17 Did you know about this? It's sent to
18 Osinergmin. Were you aware of this?

19 A. No, I wasn't aware of this. I wanted to see
20 the letter, but I do not see a letter. There is no
21 letter here.

22 Q. This letter dates back to August, so the

1 appropriate authorities and the police never contacted
2 you in spite of the fact that you were mentioned as
3 one of the participants in the invasion of June 2018;
4 right?

5 A. Well, perhaps the authorities, the police,
6 were aware of the fact that I never participated, I
7 wasn't present, and that is why they did not send a
8 letter to me. I have no knowledge of a letter.

9 ARBITRATOR GARIBALDI: Generally, when an
10 individual, and more so when we're talking about a
11 public official, is accused of a crime, whatever that
12 crime may be, the first step is for the authorities to
13 ask that individual that's been accused if they
14 participated in the crime or not.

15 You were never contacted; right?

16 THE WITNESS: Never.

17 ARBITRATOR GARIBALDI: Okay. Never.

18 Now, in connection with the officials of the
19 Ministry of Internal affairs, nobody from the Ministry
20 of Internal affairs asked you whether it was true that
21 you had participated in that protest, let's just call
22 it; yes or no?

1 THE WITNESS: No. Nothing. Nothing.
2 Nothing at all. They never included me in any of
3 that.

4 When you have a document, and the District
5 Subprefect--and it says that the District Subprefect
6 has done certain things, if the province Prefect gains
7 knowledge of this, then they send a memo to us so that
8 we can speak our truth, but I never received anything.

9 ARBITRATOR GARIBALDI: So you were never
10 investigated because of the complaint about your
11 alleged participation in those events; correct?

12 THE WITNESS: No. I was never investigated.

13 BY MR. VELARDE:

14 Q. In your statement, Mr. Retuerto, at
15 Paragraph 20--let's look at it.

16 You explained--can you see it, Mr. Retuerto?

17 A. Yes. What is the content?

18 Q. You explained at that paragraph that on the
19 day of the invasion, you tried to go up to the Invicta
20 camp, but when you were 500 meters away, Parán
21 Community members prevented you from going up;
22 correct?

1 A. Yes.

2 Q. And you explained, and this is at the
3 beginning of the next page, or maybe a little bit
4 above that, you said that this was the case because by
5 then, the Parán Community considered you someone that
6 they did not like, persona non-grata, because of your
7 relationship with the Santo Domingo Community?

8 A. Yes.

9 Q. Then you said, by then, in the second--or in
10 the first line in English, when did the Parán
11 Community start considering you non-grata?

12 A. Well, I did not receive information in
13 writing. I only heard because several community
14 members told me that they considered me that way, but
15 I was already a persona non-grata.

16 Q. Here you say that you were considered
17 persona non-grata because of your previous position as
18 president of the Santo Domingo Community.

19 So I understand that you have been
20 considered a non-grata, persona non-grata since back
21 those days when you were the president of Santo
22 Domingo de Apache?

1 A. No. You are saying--I am saying here that I
2 was considered persona non-grata--I don't know, for
3 10, 15 days, they would go to the camp, and then they
4 would consider me non-grata, because I had
5 conversations with Parán, but they started to consider
6 me persona non-grata because of the agreement between
7 the Santo Domingo Community and the mining company,
8 since I was chairing the community. I was the
9 president of the community.

10 Q. But that agreement with the Santo Domingo
11 Community and Invicta goes back to 2010. So have you
12 been considered persona non-grata since 2010?

13 A. I am saying that this is not starting in
14 2010. I'm saying that this must have been 10 or 15
15 days before they went to the camp. Only then I
16 started to be considered persona non-grata.

17 Q. Did you report to the government authorities
18 that Parán was considering you persona non-grata?

19 A. No, this is not something of interest to the
20 government because they need to know that this is not
21 something personal. What argument am I going to use?
22 I am being told that I wasn't told.

1 So I need to put something in writing, but I
2 only heard that. That was hearsay. So it was just a
3 personal thing. So I am being clear here as a person,
4 but I was not there as an authority to be considered
5 persona non-grata.

6 Q. Didn't you think that to be considered
7 persona non-grata by Parán could interfere with your
8 roles, such as to be a communication channel between
9 Parán and the government, and therefore, it was
10 necessary to communicate this to the authorities?

11 A. No.

12 Q. Didn't you consider--or didn't you think
13 that being a persona non-grata impaired your ability
14 to act in the Parán conflict, and therefore, you had
15 to report this to the authorities?

16 A. No. It wasn't necessary.

17 Q. If Parán considers you persona non-grata, it
18 would be very difficult for you to comply with your
19 role as a District Subprefect?

20 A. No. It wasn't limiting because my
21 information was provided in writing, and everything
22 was documented. I continued to perform my duties.

1 Q. If we look at Paragraph 19 of your
2 statement, there you refer to the communication that
3 you sent to the Ministry of Energy and Mines on the
4 intention of Parán in June 2018. Do you see that?

5 A. Yes.

6 Q. You're saying that Parán's president told
7 you that community members would go up the mountain to
8 go into the mining camp.

9 Do you see that?

10 A. Yes.

11 Q. When did Parán's president tell you about
12 this decision?

13 A. This must have been three to four days
14 before. It was just something he told me. It was
15 nothing in writing.

16 Q. So Parán's president told you this three to
17 four days prior to the invasion, before the invasion,
18 even though by then Parán was considering you persona
19 non-grata; is that what you are saying?

20 A. Yes. This was just an oral report. There
21 was no written document telling me this.

22 And based on that information, I was given a

1 document requesting to the Bureau of Energy and Mines,
2 the same office in--in Huacho to request their
3 intervention for a dialogue table so that the conflict
4 would not get any worse.

5 MR. VELARDE: I thank you, Mr. Retuerto.

6 PRESIDENT CROOK: All right. That concludes
7 the cross-examination. Are we ready to begin the
8 redirect? Over to you, sir.

9 MR. GRANÉ: Yes, we are, Mr. President.
10 Thank you very much.

11 REDIRECT EXAMINATION

12 BY MR. GRANÉ:

13 Q. Mr. Román Retuerto, I will be asking you
14 some questions related to the questions that you heard
15 from the other party's counsel, and I will be showing
16 you some documents on the screen.

17 I would like to start with document C-451.
18 This is the document of March 13, 2018, and you were
19 asked about this early in the cross-examination.
20 We'll just wait to have this on the screen so that you
21 can recall what we are talking about.

22 As you may confirm, you have it on the

1 screen; right? Can you see the document?

2 A. No. The document is not on the screen.

3 Let's give it a minute.

4 Q. You don't have anything on the screen?

5 A. There is no document. Here it says,

6 "Special Report."

7 Q. Yes. Thank you. I apologize. Yes. I was
8 referring to that. The document is the text that I
9 will be showing you, and that is to the right. There
10 is a document that is titled "Special Report," and
11 once again, this is C-451 of March 13, 2018.

12 You were asked several questions about this
13 document, and my question, Mr. Retuerto, is whether
14 you prepared the special report.

15 We can go through the pages to see if we
16 help you remember this. Do you recall this document?

17 A. Yes. That was the visit. That was the
18 internship, yes.

19 Q. Did you prepare this document?

20 A. Yes, I do recall it.

21 Q. But did you prepare this document? Did you
22 write it? Are you the author of this document?

1 A. No, I'm not.

2 Q. Do you know who prepared it?

3 A. No, I don't know who prepared it.

4 Q. Do you recall when you saw this document for
5 the first time?

6 A. I don't recall, because time went by.

7 Q. Very well.

8 Let us now look at C-408. You were also
9 asked several questions about this document. This is
10 the technical report by ANA, the water authority,
11 dated July 13, 2018.

12 This was prepared by the local Huaura water
13 manager, and it was sent to the water authority. And
14 you mentioned this document, and attorney for the
15 other party said that at Paragraph 17, Footnote 11,
16 you referred to this document, and you were asked to
17 refer to some paragraphs of this document. You were
18 shown 5.2 and 6.3.

19 I would like to look at 6.1.

20 And would you please read that paragraph.

21 A. Would you please zoom in.

22 Q. We will zoom in.

1 And you don't need to read it out loud, just
2 read it to yourself so that this refreshes your
3 recollection.

4 You will see that here it says that, as
5 recommendation of the National Water Authority,
6 Invicta will be served notice so that they can remove
7 the solid waste site of Invicta, because this is
8 adjacent to a ravine, that is to say, to a source of
9 water.

10 My question is: What does it mean when it's
11 talking about removing the solid waste removal site?

12 A. Yes. It means that beyond the access to the
13 mine, there is some residue that comes from the
14 excavation that they have done inside.

15 And that is within a few meters from the
16 ravine where the waters were inspected, and that is
17 the Ruraycocha Ravine.

18 Q. Could you please read the next paragraph,
19 and explain what you understand with 6.2 in connection
20 with this pile of solid waste.

21 A. Would you please clarify your question?

22 Q. Yes.

1 Would you please explain this notice that
2 was served to Invicta in connection with the solid
3 waste removal site. What is the company being told,
4 as you understand it?

5 A. They're being told that, as seen in the
6 material left outdoors without any sort of protection
7 during wintertime, that starts in January and up to
8 April, that material will be washed off by the water,
9 the rain, and that will go into the areas in Yanapacsa
10 and in the Parán Community.

11 And I will say that in the Parán community,
12 out of all of the ravines, the water is used for
13 agricultural purposes, and also for drinking purposes.

14 Because in Parán, the water sources are
15 within their terrains, so they're in the same areas.
16 So we are going to say that it is the water that they
17 drink. It is for human consumption, and also
18 agricultural uses.

19 So the degradation of that material will end
20 up being used by individuals, drunk by individuals.
21 So that's the cause of concern, and I understand that
22 the--they are recommending the removal of the solid

1 waste from that area.

2 Q. Thank you.

3 Let us look at the beginning of this
4 document. Let us look at the date.

5 Do you see the date, Mr. Román Retuerto? It
6 says July 13th, 2018.

7 Do you recall the interview that the
8 attorney for the other party referred to, the
9 interview you had with Ecos?

10 Do you recall that?

11 A. Yes.

12 Q. Do you recall the date of that interview?

13 A. I don't think I recall the date, but I do
14 recall that some time went by, but I do recall the
15 interview.

16 Q. For the record, that is C-527, the interview
17 of December 2018, and I wanted to ask you a question
18 now.

19 One of the latest documents that attorney
20 for the other party showed you is C-130. You were
21 asked a question about this document, and I would like
22 to look at the end of this document.

1 Do you see any signature in this document?

2 A. No, I do not see any signature.

3 Q. And could we just zoom out so that we can
4 look at the margins of the first and the second
5 page--the only page, rather.

6 Do you see any seal, any stamp?

7 A. No. There is no seal or signature. There
8 is not even any acknowledgement of receipt, nothing.

9 Q. In your experience as Subprefect, is it
10 normal for a document sent to a State agency not to
11 carry any seals acknowledging receipt, for example?

12 A. Of course. Whenever provides a document or
13 delivers a document, it doesn't matter whether it is
14 one page or ten pages, but--and there's not even a
15 signature, and someone that went there to deliver it
16 would say, but where is the acknowledgement of
17 receipt, I need a--and even the person receiving it
18 would have said, where is the signature, there is no
19 signature.

20 Q. Question: This agency that supervises
21 investment in energy and mining, Osinergmin, are you
22 familiar with it?

1 A. Yes.

2 Q. In general terms, what is its role?

3 A. It has an oversight function.

4 Q. Does this agency have as a role the
5 reception of any--or the lodging of any complaints or
6 claims? Does this agency receive, for example,
7 complaints against public officials?

8 A. Yes.

9 Q. What is the context? What is the subject
10 matter?

11 A. One can do it, but it is a draft that has
12 been presented. I don't see anything here--I don't
13 see any formalities in this document.

14 Q. But beyond--beyond the stamp and the
15 signature or the lack thereof, as to the jurisdiction
16 of this agency, Osinergmin, are they supposed to be
17 receiving complaints about civil servants?

18 A. Of course. Of course.

19 Q. And they do have the jurisdiction to accept
20 those complaints or to refer them, and what is the
21 subject matter?

22 A. Well, it is--they are referred based on the

1 context of the complaint or the subject matter.

2 PRESIDENT CROOK: Excuse me. Do you have an
3 objection here?

4 MR. GALLEG0: Yes. Those were leading
5 questions, Mr. President.

6 PRESIDENT CROOK: It is true that the
7 questions are leading, and do they have the
8 jurisdiction to accept those complaints or refer them.
9 I mean, you're asking him a question that has within
10 it the answer. So perhaps you could rephrase your
11 question so that they do not suggest the answer.

12 MR. GRANÉ: (In English.)

13 Thank you very much, Mr. President. I am
14 happy to withdraw the question, if there's an
15 objection. I was trying to speed things along, but I
16 understand, and I take the guidance from the Tribunal,
17 and I thank you.

18 PRESIDENT CROOK: Certainly, if you could
19 ask your question in the form of, what is the role of
20 this agency with respect to these complaints, full
21 stop.

22 ARBITRATOR GRIFFITH: Or maybe the first

1 question is, does he know what is the role of the
2 agency?

3 MR. GRANÉ: Thank you, Mr. Griffith, I was
4 precisely trying to get to that, but--

5 PRESIDENT CROOK: Let's drive on.

6 MR. GRANÉ: No, I'm happy, Mr. President, to
7 leave it here, again, in the interest of time.

8 I have no further questions on redirect.
9 Thank you.

10 PRESIDENT CROOK: Nothing further on
11 redirect.

12 Let me ask, do my colleagues have any
13 questions? No questions.

14 All right. I have no questions.

15 In that case, Mr. Retuerto, we are thankful
16 to you for your testimony. You are now excused, and
17 you may return home, and we--with our thanks for
18 having been here and given us the benefit of your
19 testimony.

20 Thank you, sir.

21 THE WITNESS: I thank you.

22 PRESIDENT CROOK: All right. We can turn

1 the cameras off on Mr. Retuerto and bring in the other
2 witness.

3 Has Mr. Bravo been found?

4 SECRETARY: He is, sir. He's outside. I
5 can go get him if you want.

6 PRESIDENT CROOK: This is comforting to
7 know.

8 (Whereupon, there was a recess in the
9 proceedings, 4:57 p.m. - 5:03 p.m.)

10 PRESIDENT CROOK: All right. Should we ask
11 Mr. Bravo to resume his seat.

12 Sir, if you'll join us.

13 Now, as an administrative matter, I'm
14 grateful we're able to get the benefit of Mr. Bravo's
15 testimony for a little longer, but we do face--for
16 reasons external to the proceeding here, we do face
17 sort of a hard termination time today. We're not
18 going to be able to stretch it out. So we will try to
19 make the best use of the time we have.

20 All right. Any administrative issues we
21 need to tend to?

22 All right, back to the examination of the

1 witness.

2 Mr. Bravo, you know, of course, that you
3 remain under your admonition to tell us the truth.
4 All right.

5 LUIS BRAVO, CLAIMANT WITNESS, RESUMED

6 MR. GRANÉ: Thank you, Mr. President.

7 For planning purposes, is it correct that
8 the hard stop will be 5:30 p.m.?

9 PRESIDENT CROOK: I think today you've got
10 until 5:40.

11 MR. GRANÉ: Excellent.

12 CONTINUED CROSS-EXAMINATION

13 BY MR. GRANÉ:

14 Q. I will try to be quite direct, Mr. Bravo.
15 If necessary even, perhaps we will take a step back,
16 and go more slowly and in more detail, but let's see
17 if we can be, you know, quite direct, and I think the
18 manner in which the earlier segment was conducted will
19 show that we can be very efficient.

20 And I thank you, Mr. Bravo, for answering
21 the questions in the direct manner in which you have.
22 I thank you for that.

1 So let's return to the issue of the Invicta
2 Mine's permits. That's where we left off before we
3 paused.

4 You have previously stated that the only
5 pending permitting issue at the Invicta Mine was the
6 MINEM inspection; is that correct?

7 A. That's not actually a permit, but it's part
8 of the process to get the permit. The permit is
9 what's called the COM, mining certificate of
10 operation.

11 Q. Thank you. Let's turn, please, to C-226,
12 which is at Tab 9. That's your first volume, Tab 9,
13 please. Okay, I think that everyone has their
14 binders.

15 So this, Mr. Bravo, is a report from DEAR,
16 and that's the agency that is responsible for
17 approving environmental certification in the Peruvian
18 mining sector.

19 This document is dated 12 November 2018, and
20 it addresses Claimant's request to supplement its
21 2009 EIA, the Environmental Impact Assessment; is that
22 correct?

1 A. Yes. It is correct, yes.

2 Q. If you go to Paragraph 3.1, on page 50 of
3 this document. I will give you time to get there.

4 A. Yeah.

5 Q. On page 50, in Paragraph 3.1, it says
6 Invicta has not presented adequate and consistent
7 technical information. Then it goes on to note that
8 the nonconformity of the third ITS, and we will
9 highlight that on the screen. Paragraph 3.1 under the
10 section of conclusions.

11 Do you see that? It's also highlighted on
12 your screen, if that will assist you.

13 A. Correct. Yeah.

14 Q. So therefore, as a result of this
15 conclusion, Invicta needed to secure additional
16 environmental certifications before proceeding to
17 exploitation; correct?

18 A. No. This is--what it says is we're going to
19 present adequate and consistent technical information,
20 not permitting.

21 So it is an ITS, which is it's kind of a
22 voluntary situation. It's not a permit requested or

1 needed to operate the mine.

2 Q. Let's look at Paragraph 3.2. The last line
3 says, "... grants the nonconformity to the third ITS."

4 Do you see that?

5 A. Sure.

6 Q. Then based on this, the third ITS submitted
7 by Invicta was not approved; correct?

8 A. That's what it says, yes.

9 Q. Okay. Still on the issue of environmental
10 permitting, could you please turn to Paragraph 25 of
11 your first witness statement.

12 So in Paragraph 25, about halfway down that
13 paragraph, you state that, "In a meeting between
14 Invicta and the Parán Community on 29 January 2019,
15 you explained"--and this is the last
16 sentence--"Explained in detail that there could not
17 have been nor had there been any damage, and that
18 there was no risk of water pollution."

19 Do you see that?

20 A. Yes.

21 Q. But the OEFA, which we have established
22 earlier is the environmental agency, mentioned that

1 there had been presence of toxic chemicals in the
2 water surrounding the Invicta Mine in a resolution
3 that was issued in September 2018.

4 Were you aware of that when you joined the
5 company as general manager?

6 A. No. I can't recall that precise document
7 from OEFA.

8 Q. Of course. It's been a long time. So we
9 will put up the document.

10 This is what I meant, that we can go fast,
11 but if you don't recall something, then we will need
12 to slow down.

13 So let's put up document R-74, which is
14 behind Tab 6 of your binder, still the first volume.

15 A. Tab--excuse me?

16 Q. Tab 6. This is, for the record, R-74. You
17 have the English behind the Spanish, and the English,
18 you will see--well, the stamps are not reproduced, but
19 there is a placeholder for the stamp, and the date is
20 27 September 2018.

21 Can we please turn to Paragraph 17 of this
22 resolution. You see there in this paragraph which you

1 also have on screen, that according to the supervisory
2 report by the Peruvian regulator or agency, the
3 results obtained from the sampling carried out at
4 control point MEF-01--and this is all, of course, in
5 the Invicta Mine--are shown in this test report, and
6 there's the summary, control point sampling.

7 Do you see the table, Mr. Bravo?

8 A. Yes.

9 Q. You see that there are a series of three
10 chemicals that are identified, and then the sampling
11 that was taken. Then on the right-hand column, there
12 are the results of that sampling, and there is an
13 indication of the percentage over which the
14 permissible levels have been exceeded.

15 Do you see that?

16 A. Yes.

17 Q. Okay.

18 It shows that 3,925.6 percent over the
19 maximum permissible limit of total cadmium, 811.2
20 percent over the maximum permissible limit of copper,
21 and 1122.6 percent over the permissible limit of total
22 zinc.

1 If we can go further down in this document
2 to Paragraph 46, it makes observations about the
3 effect that some of these chemicals have in the
4 environment.

5 Do you see Paragraph 46?

6 A. Yes.

7 Q. Do you see that it says that the excess of
8 those permissible limits may cause the vegetation and
9 fauna in contact with this flow to be affected by
10 their high concentrations and also initiated their
11 presence in the "traffic chain." Not a felicitous
12 translation, but there it is.

13 A. Yes, precise, yes.

14 Q. Paragraph 47 says cadmium is also one of the
15 major toxic agents associated with environmental and
16 industrial pollution as it has the four
17 characteristics. It goes on to identify them, adverse
18 effects on man and the environment, and it travels
19 long distances in the wind and in the water currents.

20 As part of this resolution, OEFA, having
21 found this access in the toxicity levels, these
22 chemicals, OEFA required that Invicta take corrective

1 measures, and submit the request for environmental
2 certification of the Invicta's water management
3 system.

4 This is on page 18, same document. On
5 page--let me see. I don't see the page on screen.
6 It's--I'm sorry, it's page 18 of the--the problem with
7 these documents is that sometimes they have different
8 pagination, but at the end--the bottom of your pages,
9 you will see the page, and it says, "page 18 of 19."
10 It starts with the table.

11 Do you see that?

12 A. Yes.

13 Q. Okay. Can you read the column on the
14 right-hand corner that's being highlighted on your
15 screen?

16 A. Sure.

17 "Likewise, you must submit the registration
18 of the admission of the assessment file of the
19 treatment and/or recirculation system from the water
20 from the pithead of Level 3400, from where the MEF-01
21 effluent is generated."

22 Q. Okay. My question, based on this conclusion

1 and recommendation, is: Did Claimant submit that
2 request for certification pursuant to this conclusion?

3 A. Not sure, to be absolutely honest. But the
4 thing that was trying to point out is that this is
5 just a first stage resolution decision. Normally, you
6 appeal from these decisions if you were--I'm not aware
7 of the final decision, I haven't seen it from the
8 tribunal, so this is normally the procedure that
9 carries on.

10 Q. Do you know if this was appealed?

11 A. Yes. It was appealed, yeah.

12 Q. Okay. Do you know what the final resolution
13 may have been?

14 A. I can't recall--it was--if it was resolved
15 or--resolved, it was resolved after we were not in
16 possession of the mine.

17 Q. Do you recall ever having seen a resolution
18 that says that you have complied with this, with this
19 recommendation?

20 A. No, but again, it was appealed, and it was
21 part of the process.

22 Q. So you never obtained that certification

1 that is being recommended here?

2 A. I don't--I would have to review the Spanish
3 version because that's not exactly what it says. What
4 I understand from the Spanish version, you have to
5 submit--it says the registration of the admission of
6 the assessment file of the treatment.

7 So you need to file--what you need to file
8 in this case is a way to solve the problem, let's put
9 it that way, in any of the authorized forms, according
10 to regulation.

11 So I haven't been able to check if we filed
12 it properly, or if it was actually filed.

13 Q. From your recollection, was the problem
14 resolved? I will use the phrasing that you used in
15 your previous answer.

16 A. Yes. Yes.

17 I recall that we installed water treatment
18 plant to basically treat the water coming out of the
19 mine in that specific level.

20 Q. We'll get to the water treatment plant that
21 you installed.

22 Was that water treatment plant certified?

1 A. What do you mean by "certified"?

2 Q. Was it approved by the relevant agency?

3 A. It was part of the ITS. Not the one that
4 you mentioned, but it was part of the ITS that was
5 going to be filed.

6 Q. Of the three ITSes that have been discussed
7 in this arbitration, when you say "not part of this
8 ITS," which ITS are you referring to?

9 A. Not--no, sorry, I can't recall precisely
10 what it was.

11 Q. Fair enough.

12 Was the third ITS approved?

13 A. As per what you just mentioned, no.

14 Q. Okay. So the third ITS was not approved.

15 Let's go to C-226, which is behind Tab 9.

16 In particular, I would like you to turn to
17 page 67 of 95--I'm sorry, 66 of 95. And in
18 particular, row 16. It's very small print, I know.
19 My eyesight is poor. Hopefully yours is better.

20 Here, it is referring to one of the
21 components of the mine, and it's Item 9.1.2. It says,
22 "Description of the mine effluent water system." And

1 it refers to an ITS.

2 And then you see that there's an observation
3 column, which is the--yeah, the observation survey,
4 the third column.

5 You see that towards the end of that box, it
6 says, "Both pools will be--are located in the bocamina
7 level, 3,400 meters above sea level."

8 Likewise, it specifies, and it carries over
9 to the next page. In Item 9.3.2.2, that these ponds
10 do not have environmental certification; however, it
11 did not specify the location of these ponds in the UTM
12 coordinates.

13 Do you see that?

14 A. I see that. Can you refer what's--what is
15 this over? I haven't been able to locate it in the
16 binder.

17 Q. Okay. Oh, you haven't located it in the
18 binder?

19 A. No. I thought it was Number 9.

20 Q. Tab 9. It's, for the record, C-226. It is
21 the evaluation of the third ITS, which we had just
22 been discussing a few minutes ago.

1 A. Okay.

2 Q. It is from November 12, 2018.

3 This is--being November 12, 2018, of course,
4 it is before your time.

5 Perhaps let me take a step back and ask you,
6 you have ever seen this document before? Had it been
7 brought to your attention as general manager?

8 A. Nope, I haven't seen it before, to be
9 honest.

10 Q. Okay. I do not wish to, then--

11 A. We got a consultant deal with--

12 Q. Of course.

13 And actually, now that you mention that, who
14 was the consultant on these issues?

15 A. It was Geo--let's go to it here.

16 Q. I'm not asking you a specific document. I'm
17 asking you, who was the consultant on permitting
18 issues when you were general manager?

19 A. When we started--I mean, when I started at
20 the company, where our focus is solely on the
21 blockade.

22 All the things about the environmental

1 permitting were kind of stopped, and we were just
2 focusing everything, because it wasn't making any
3 sense to move on with permitting if we didn't have
4 access to the mine.

5 So in all fairness, I don't recall exactly.
6 I never dealt with the environmental consultant. We
7 were not really concerned about that, that situation
8 at that time.

9 Q. But we spoke earlier, and you recognize, and
10 so has Claimant in this arbitration, that when you
11 took over as general manager, the company did not have
12 all of the necessary permits.

13 Do you recall that?

14 A. Yes.

15 Q. Okay.

16 When you joined as the general manager, you
17 said that you were focused on solving the conflict
18 with the Parán Community, but then the permitting side
19 was not being moved forward by the company?

20 A. It was, indeed, as far as we could, but most
21 of these environmental permitting and all kinds of
22 permitting requests requires visit to the mine, mine

1 visits, consultants, you know, taking water samples,
2 and all of those kinds of stuff, and it was impossible
3 at that time.

4 So we were not in a position to move forward
5 in that direction.

6 Q. Okay.

7 A. We're aware that--we were expecting to have
8 these inspections for the operating permit, and most
9 of these documents, especially the ITS, normally, were
10 appealed. We were not in agreement with some of the
11 statements here.

12 And the water treatment plant, I was told it
13 was installed, so that was part of--the only big
14 missing point for this operating certificate.

15 Q. When you joined as general manager, someone
16 gave you a briefing on what was the situation with the
17 permitting; is that fair?

18 A. Yes. And for sure, I asked for all the
19 pending processes, including the PIS and all this
20 permitting.

21 We reviewed them and they were all ongoing,
22 and so, there was not much for us to do there.

1 Q. Okay, so let me go back to my original
2 question I asked you, who was in charge of that
3 permitting issue? You just said that someone gave you
4 a briefing. Who gave you the briefing on permitting?

5 A. I guess it was Will Ansley at that time.

6 Q. Will Ansley, the CEO?

7 A. The CEO, yeah.

8 Q. He's the one who reported to you, as general
9 manager, of what was the situation with permitting?

10 A. We discussed all those issues with him,
11 yeah.

12 Q. And did the CEO give you a breakdown of the
13 stage of the permitting process, including all the
14 relevant permits that were pending and their stage at
15 that moment and what came next, what needed to be done
16 with each of those permits?

17 A. The answer is yes, but from--those are two
18 different things.

19 One is the permitting that we needed to
20 operate, needed to comply with the regulations, and
21 the others are the--like, like the OEFA resolution you
22 showed me, and this idea thing with some modifications

1 to previous components.

2 So we were talking about permitting, that's
3 what we were focusing at that time. Our expectation
4 was to have the inspection onsite, and in order to get
5 the authorization, the proper authorization to operate
6 the mine.

7 All these issues were, at that point in
8 time, either appealed or being taken care.

9 Q. Okay, let's take those two parts because you
10 mentioned--you said let's separate them.

11 Sanctioning and permitting.

12 What's the situation with sanctioning or
13 addressing the sanctions that had been brought to your
14 attention by the regulators; was that being moved
15 forward?

16 A. It was--we filed the appeal. That's what I
17 was told, but--and that takes time. I mean, there's
18 not much you can do.

19 Q. Okay. How much time does it take to resolve
20 those appeals, in your experience?

21 A. Sometimes two, three, four years, depending.

22 Normally, the appeal committee or the

1 tribunal at OEFA takes in between an average 6 to 18
2 months to resolve.

3 Q. Okay. And your recollection is that there
4 may have been an appeal, but it hadn't been resolved?

5 A. I can't confirm the appeal, but I'm pretty
6 sure it was in the report. That's what I had in mind.
7 There was no pending issues to resolve, but I can't
8 recall if it was resolved or--it wasn't resolved while
9 we were in charge.

10 Q. It was not resolved while you were in
11 charge.

12 A. No.

13 Q. And that appeal that was not resolved, you
14 said that could take years?

15 A. Yes.

16 Q. Okay.

17 ARBITRATOR GARIBALDI: The question is:
18 Suppose the Parán situation had been solved, and yet,
19 you had this pending appeal, what was the company
20 planning to do, drop the appeal and do something else?

21 THE WITNESS: Well, you can solve the
22 problem while appealing, if that's the case, if you

1 consider that this--it's a fair observation at that
2 point, so--

3 ARBITRATOR GARIBALDI: So you--by appealing,
4 you solve the problem, at least for a time.

5 Do I understand--I'd like to understand this
6 better, because it impacts the whole timetable.

7 THE WITNESS: Mm-hmm.

8 Well, the appeal doesn't solve the problem.
9 The appeal gives you time to either--either you are
10 not in agreement with the observation they gave you,
11 or, in some cases, for you to solve the problem.

12 ARBITRATOR GARIBALDI: Yeah, but you don't
13 have time. As a company, you don't have time. Time
14 is a luxury.

15 THE WITNESS: Yeah, but at that time--again,
16 we were expecting--I mean, in order to operate, we
17 needed the mining certificates, the operation of the
18 mining certificate.

19 In order to get there, the only pending
20 observation was the water treatment plant. So the
21 water treatment plant was built, was there. So on the
22 inspection, the inspector will see the water treatment

1 plant and will see it operating, and that will be the
2 need for getting the permit and being able to operate.

3 ARBITRATOR GARIBALDI: But didn't have the
4 company have a Plan B?

5 THE WITNESS: For?

6 ARBITRATOR GARIBALDI: For this, that--do
7 something else, drop the appeal and do something else.

8 THE WITNESS: Well--

9 ARBITRATOR GARIBALDI: I don't know if that
10 is feasible or not, I'm just asking.

11 THE WITNESS: Well, the real thing that the
12 observation was the water treatment plant. Now, we
13 built--we did the water treatment plant, so it was in
14 place.

15 So really, there were no observation there.

16 ARBITRATOR GARIBALDI: I think that--sorry.

17 I think there was some testimony before, if
18 I recall correctly, that--and maybe by yourself. It
19 didn't mean--it didn't make any sense to tear down
20 the--these basins and build them again, but removing
21 the other equipment was something simple.

22 THE WITNESS: For the--

1 ARBITRATOR GARIBALDI: Now, that can mean
2 removed and put back again, so...

3 THE WITNESS: For the water treatment plant
4 you mention, you say?

5 ARBITRATOR GARIBALDI: Yes.

6 THE WITNESS: I mean, you can do that, but
7 it's not what normally happens. I mean, you can
8 expect a fine, but...

9 ARBITRATOR GARIBALDI: Okay. Okay. That's
10 what I understand. You can expect a fine, but then
11 you can operate anyway.

12 THE WITNESS: That's a part of it, yes.

13 ARBITRATOR GARIBALDI: Okay. Can you
14 elaborate that a little, because that is important.
15 That has to do with the timetable.

16 THE WITNESS: For sure.

17 Again, when we got the first inspection, we
18 had several observations. I can't recall the precise
19 date, but it was before October 2018.

20 So--and again, this is before my time, but
21 this is what I recall.

22 And so, the company made all of the efforts

1 to solve all the observations that the ministry gave
2 in their first inspection, and one of the very most
3 important ones was the water treatment plant.

4 So we built the water treatment plant, which
5 basically is a couple of holes in some equipment to
6 minimize the--to be able to treat the water, and we
7 were ready for the inspection.

8 The alternative would be to amend all of the
9 original permitting, and that's why we filed the ITS.
10 And the ITS, you know, runs its own process to get
11 approved.

12 So that's what normally you do.

13 And finally, if you are not able to include
14 in the ITS on some environment assessment, then you
15 probably get a fine and expect to get it done somehow.

16 There's a--later in 2020, I guess, there
17 original regulations called the PADs, which were
18 supposed to be in order to regularize some pending
19 components, and it happens from time to time. Mining
20 is an ongoing business, so you have to keep solving
21 problems, and sometimes you can't wait for the
22 permitting.

1 So that's why the government issues several
2 regulations in order to try and solve those ongoing
3 problems, no.

4 ARBITRATOR GARIBALDI: Thank you. Thank
5 you.

6 PRESIDENT CROOK: Just a brief follow-up.

7 I'm wrestling with--there's been some
8 suggestion that one could not get environmental
9 certification of an existing facility, that the
10 environmental authorities would not certify something
11 that was already functioning.

12 In your experience, is that an accurate
13 description of how things work?

14 THE WITNESS: Yes, it is.

15 The DIA's Environmental Impact Assessments
16 are for new components. You cannot include in an EIA
17 a component already existed--that already exists.

18 But that's what I'm trying to point out.
19 There are several regulations that issued by the
20 government in order to try and regularize components
21 that have been built without any environmental
22 assessment.

1 So that happens every day in mining. So
2 yeah, the answer is, yeah, we don't--we--you have
3 to--normally, you build small things. I won't say
4 you're not going to build a new mine or a new portal.
5 A small component like a small water treatment plant
6 is something that needs to be solved.

7 There is some principle in the Peruvian
8 environmental law that says that you need to solve the
9 problem, the environmental issue that was prior
10 to--not prior, but, I mean, in spite of the regulation
11 or the permitting, no.

12 It's not exactly what it says, but this is a
13 principle environmental mining.

14 PRESIDENT CROOK: Thank you.

15 MR. GRANÉ: Thank you, Mr. Chairman.

16 BY MR. GRANÉ:

17 Q. Let's perhaps look at this in more detail.
18 It seems that this is an area that does merit some
19 clarification, and perhaps for us to slow down. We've
20 tried to be efficient, but since we seem to be focused
21 on this, let's slow down a bit.

22 Let's look, please, at MD-04, which is

1 behind Tab 7. This goes to the question that
2 Mr. President has raised.

3 Behind Tab 7 is MD-04, which is a supreme
4 decree, Supreme Decree 40-214-EM, which is titled
5 "Regulations on environmental protect and management
6 for exploitation, processing, general labor, transport
7 and mining storage activities."

8 Are you at that document?

9 A. Yes.

10 Q. Okay. Please turn to Article 17 of this
11 regulation.

12 ARBITRATOR GRIFFITH: Can we have a page?

13 MR. GRANÉ: I will give you a page,
14 Mr. Griffith, in a second. Page 11 of 76.

15 BY MR. GRANÉ:

16 Q. And I would like to start with the first
17 paragraph.

18 Do you see that first paragraph? Do you
19 wish to read it out loud, Mr. Bravo?

20 A. "Prior to the commencement of mining
21 activity, including the construction stage, the holder
22 must have the corresponding environmental

1 certification or an amendment thereto, as well as the
2 license, authorization, and permits established by the
3 current legislation."

4 Q. Okay. So it says clearly that before you
5 commence the mining activity, you must have the
6 environmental certification or an amendment thereto,
7 as well as the licenses, authorizations, and permits
8 established by the legislation.

9 Let's go now to the third paragraph of this
10 provision, which deals with the consequences of not
11 having this. And towards the end, you will see that
12 it says, "the procedure shall be declared
13 inadmissible," let's--we will highlight that for your
14 and the Tribunal's--there it is.

15 "The procedure shall be declared
16 inadmissible by OEFA and Osinergmin, and shall be
17 informed for the purposes falling within their
18 competence."

19 Do you see that?

20 A. Yes.

21 Q. So in other words, if a mining component,
22 such as a water treatment system, is constructed,

1 built, without environmental approval, it will be
2 declared inadmissible.

3 Do you agree with that conclusion?

4 A. Well, here the EIA was approved.

5 Q. I'm not asking about the EIA. I'm trying to
6 first gain some clarity from you--or your
7 understanding of the provision that we've just seen.

8 So if a mining component, such as a water
9 treatment system, is built without environmental
10 approval, it will be declared inadmissible; correct?

11 A. The component.

12 Q. Okay. And the water treatment system is a
13 component?

14 A. Yes, it was.

15 Q. Okay.

16 Let's turn back to R-74. Once again, this
17 is behind Tab 6. Specifically, please turn to page
18 18.

19 And I'm conscious of the fact that we are
20 three minutes away from the hard stop, so we may not
21 be able to finish this line of questioning. We'll see
22 how we go.

1 So you see once again, page 18--

2 A. Yes.

3 Q. Okay. And at the top of the page, that last
4 row, Paragraph 50, it outlines the corrective measures
5 that OEFA required from Invicta after it had found
6 these high levels of cadmium, copper, zinc in the
7 water around the project.

8 Do you recall that we discussed that?

9 A. Yes, but there are two different things,
10 but... this is not permitting, again.

11 Q. Mr. Bravo, we can go around in circles.
12 We're trying to get to the--an understanding about
13 what were the applicable provisions, starting there,
14 and then see what happened.

15 Now, I recognize that these are documents
16 that predate your role as general manager, and that's
17 why I was asking you what you knew at the time.

18 Now, we can go in detail about these
19 documents to try to establish the situation. I
20 understand that, from what you have testified, that
21 your understanding was based on what the CEO of the
22 company, Ansley, was telling you.

1 And perhaps let me ask you that: Did you
2 review any of these documents at the time that you
3 became general manager?

4 A. No, not in detail.

5 Q. Okay. Have you reviewed these documents
6 since?

7 A. Since?

8 Q. You said not in detail, you didn't review
9 them.

10 Since you became general manager, you left
11 the company, have you reviewed these documents, for
12 instance, for the purposes of your declarations--

13 A. No.

14 Q. --your witness statements? You haven't?

15 A. Sorry, no.

16 Q. Okay.

17 MR. GRANÉ: I'm conscious of time,
18 Mr. Chairman.

19 If you give me one second, I'll see if we
20 can stop here, because it is a line of questioning
21 that may take some time to establish the facts, given
22 that Mr. Bravo has not had an opportunity to review

1 these documents. If you just bear with me.

2 PRESIDENT CROOK: While counsel is doing
3 that, it seems, Mr. Bravo, that it will be necessary
4 for you to be available to testify again tomorrow. I
5 hope that is physically possible for you.

6 THE WITNESS: Yes, it is.

7 PRESIDENT CROOK: All right. This evening,
8 you will not be confined to quarters, but you will
9 need to avoid any discussion or conversation with any
10 members of the team or any discussion of your
11 testimony.

12 Is that agreeable to you, sir?

13 THE WITNESS: Yes, for sure.

14 PRESIDENT CROOK: Okay. Back to counsel.

15 MR. GRANÉ: Mr. Chairman, given that we are
16 going to have the benefit of Mr. Bravo again tomorrow,
17 and that he will be sequestered, I am content to pause
18 now and pick up again tomorrow.

19 PRESIDENT CROOK: Before we adjourn, are you
20 able to estimate how long your remaining examination
21 will take?

22 MR. GRANÉ: Subject to what Ms. Torres

1 reports on the time available, I would say that we may
2 have an hour-and-a-half with Mr. Bravo tomorrow.

3 PRESIDENT CROOK: Okay.

4 Let me ask the secretary if she can, to tell
5 us where we stand.

6 SECRETARY: I'll report at the--once we
7 finish, and I stop the clocks and I'm able to do math,
8 because my mother is the calculus professor. I'm not
9 good at math, so I cannot do the math that quickly.

10 PRESIDENT CROOK: All right. Well, the
11 secretary will provide us with her customary
12 assessment overnight of where we stand.

13 All right. Respondent anticipates another
14 hour-and-a-half. We will then have redirect for
15 however long redirect takes, and I think it's not fair
16 to ask them to assess that now because we are sort of
17 mid-stream.

18 But the necessary implication is that the
19 rest of tomorrow's witnesses are going to have to be
20 bumped down the timeline, so they all ought to be
21 advised of that, and make their plans accordingly.

22 Any other administrative matters that we

1 need to deal with?

2 The Tribunal has--is working away on the
3 pending question of the expert's report. We
4 will--excuse me. We will strive to give you a ruling
5 on that in the--at some point in the morning, but
6 hopefully at the beginning of the morning, but as
7 early as we possibly can.

8 All right. Any other matters we need to
9 tend to?

10 MR. GALLEGO: No, sir.

11 PRESIDENT CROOK: If not, we wish you all a
12 pleasant evening, and Mr. Bravo, we wish you a
13 pleasant solitary evening.

14 THE WITNESS: Thank you.

15 (Whereupon, at 5:43 p.m. the Hearing on the
16 Merits was adjourned until 9:30 a.m. the following
17 day.)

POST-HEARING REVISIONS
CERTIFICATE OF REPORTER

I, Marjorie Peters, FAPR, RMR-CRR, Court Reporter, do hereby attest that the foregoing English-speaking proceedings, after agreed-upon revisions submitted to me by the Parties, were revised and re-submitted to the Parties per their instructions.

I further certify that I am neither counsel for, related to, nor employed by any of the Parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

MARJORIE PETERS

MARJORIE PETERS