

THE INTERNATIONAL CENTRE FOR THE SETTLEMENT OF  
INVESTMENT DISPUTES

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:  
In the Matter of Arbitration :  
Between: :  
:  
LUPAKA GOLD CORP., :  
:  
Claimant, : Case No. ARB/20/46  
and :  
:  
THE REPUBLIC OF PERÚ, :  
:  
Respondent. :  
:  
- - - - -x Volume 4

HEARING ON THE MERITS

Thursday, March 30, 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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MR. OSCAR M. GARIBALDI, Co-Arbitrator

DR. GAVAN GRIFFITH KC, Co-Arbitrator

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P R O C E E D I N G S

PRESIDENT CROOK: All right. Let's go on the record and open this fourth session in the hearing of Lupaka Gold Corp. v. Republic of Perú.

We begin with a ruling by the Tribunal. The Tribunal has given a great deal of thought to Claimant's application, and has determined as follows:

The Tribunal finds that the Claimant's application for an order striking the Dufour report from the record is sufficiently timely to preserve the Claimant's objection for the purposes of the ICSID Rules, but is not in time with respect to the remedy the Claimant now seeks.

This is a succession of numbered paragraphs, Paragraph 2, in particular, the Tribunal finds that the Claimant's identification of its concerns in its letter of February 20, 2023, was in time to preserve its objection to the expert opinion of Ms. Dufour.

The Tribunal observes that her report was reviewed by the Tribunal and distributed to the Claimants less than a month earlier, on or around January 26, 2023.

1           3, in the Claimant's letter of February  
2 20th, however, the only relief sought was that the  
3 Tribunal authorize three-hour opening statements. The  
4 Tribunal authorized such three-hour openings.

5           4, on the first day of the hearing,  
6 Claimant's counsel proposed that Ms. Dufour's  
7 statement also be stricken from the record. In  
8 response to the Tribunal's direction on the second day  
9 of the hearing, the Claimant identified, with greater  
10 precision, the elements of the specific remedy it  
11 sought.

12           5, the Tribunal has a duty to conduct the  
13 proceedings in a manner conforming to due process, as  
14 reflected in the legal systems of many nations; this  
15 includes the principle that a party may not be  
16 required to respond to new allegations against its  
17 interests without prior notice or an opportunity to  
18 respond.

19           The Tribunal considers, therefore, that it  
20 has a duty in carrying out its responsibility for the  
21 proper conduct of this arbitration to address this  
22 situation in a way that gives proper weight to the



1 rights of each party.

2           6, the Tribunal considers that the portions  
3 of Ms. Dufour's report describing additional  
4 regulatory requirements, not previously identified,  
5 affecting the Claimant's ability to begin commercial  
6 production should have been introduced at an earlier  
7 stage in the proceedings so that the Claimant would  
8 have appropriate opportunity to respond to them in the  
9 established procedural framework. This finding is  
10 without prejudice to any further findings that the  
11 Tribunal may make with respect to any other issues  
12 identified pursuant to Paragraph 8.

13           7, therefore, the Tribunal rules as follows:

14           A, Ms. Dufour's report shall remain a part  
15 of the record in this case, subject to the following:

16           B, the Tribunal shall not take account of:

17           1, the portions of Ms. Dufour's report  
18 setting out regulatory requirements affecting the  
19 Claimant's ability to begin commercial production that  
20 were not referred to in Respondent's Counter-Memorial,  
21 defined as the Additional Requirements, as well as, 2,  
22 any associated documents and evidence not previously

1 on record related to the Additional Requirements.

2 8, the Claimant may, on application, have no  
3 more than 10 additional pages in a post-hearing  
4 submission to address any other portions of  
5 Ms. Dufour's report that it shows to be not in  
6 compliance with the Tribunal's Procedural Order Number  
7 1. In such additional pages, the Claimant may refer  
8 to and introduce statutes and regulations and other  
9 similar legal materials constituting elements of the  
10 law of Perú that are not previously on record, but not  
11 including commentaries or other similar analytical  
12 materials. No other new evidence is authorized.

13 That is the unanimous ruling of the Tribunal  
14 on this question.

15 All right. Are we ready to begin. Should  
16 we bring in Mr. Bravo?

17 (The witness entered the room.)

18 PRESIDENT CROOK: Good morning, sir.  
19 Welcome back. I hope you had a pleasant evening. You  
20 understand that you remain subject to the affirmation  
21 that you took yesterday.

22 THE WITNESS: Yes, I do.

1                   LUIS BRAVO, CLAIMANT WITNESS, RESUMED

2                   PRESIDENT CROOK: Okay. If there are no  
3 other matters to attend to, let us return, then, to  
4 the examination of the witness.

5                   I hear a resounding silence.

6                   MR. GRANÉ: I will begin, Mr. President.

7                   CONTINUED CROSS-EXAMINATION

8                   BY MR. GRANÉ:

9           Q.       Good morning, Mr. Bravo. Can you remind us  
10 what were the three villages that made up the Parán  
11 Community?

12          A.       The three villages, excuse me?

13          Q.       That made up the Parán Community?

14          A.       Three villages?

15          Q.       Mm-hmm.

16          A.       No.

17          Q.       The three main villages?

18          A.       No. As far as I know, the road leading to  
19 Parán.

20          Q.       So you were not aware that it included the  
21 three main villages, Huambo, Capia, and Parán?

22          A.       I hear those things, for sure.

1       Q.     Do you recall where they were located  
2 relative to the mine?

3       A.     No, I haven't been there.

4       Q.     You never visited the area?

5       A.     No, it was impossible because of the  
6 blockade.

7       Q.     You were not allowed to go to the villages?

8       A.     No. We were told it was dangerous for  
9 management to go to the villages.

10      Q.     So the entire community was sealed off?

11      A.     No, I didn't say that. I just said that it  
12 was--we were told by the police it was dangerous for  
13 us to go there. It was sealed.

14      Q.     ██████████ ever went to the villages?

15      A.     I'm sure he went, probably.

16      Q.     Okay. ██████████ was a part of your team?

17      A.     But not management. ██████████ went before.  
18 Remember, he stopped working with us, basically at the  
19 time of the conflict.

20      Q.     Mr. Estrada was also part of your team. We  
21 saw that yesterday?

22      A.     Yes.

1 Q. Did he go to the villages?

2 A. I don't recall right now, but probably yes.  
3 Part of his involvement in the community, that's part  
4 of his job and not management.

5 Q. Did you know that it was being an  
6 agricultural community, water access was a concern?

7 A. They expressed something like that, meaning  
8 the community expressed their concerns about it.

9 Q. Did you know that water scarcity was a  
10 concern?

11 A. Can you specify the word "scarcity." I'm  
12 sorry, my--

13 Q. They were concerned about the quantity of  
14 water that would be available for their crops.

15 Were you aware of that?

16 A. No. I never heard that concern.

17 Q. Did you review the Environmental Impact  
18 Assessment of 2009?

19 A. It's five volumes. I read it in general,  
20 but not in detail.

21 Q. So you did not know that half of the  
22 concerns of the--Parán had was related to water

1 scarcity; that was not something that came to your  
2 attention?

3 A. No. I haven't read that part.

4 Q. Okay. Can we put up, please, C-395 on the  
5 screen, and let's go to page 44, please. They're  
6 going to put it up on the screen because I believe  
7 that this is not in the binder.

8 So this is an update of the Environmental  
9 Impact Assessment of Invicta, as you can see,  
10 submitted on the record by Claimant.

11 Let's go to page 44. Do you see that here  
12 this table lists the main problems that were perceived  
13 by the inhabitants of that region, and it has  
14 Lacsanga, Santo Domingo, and Parán.

15 You see here that water shortages for Parán  
16 constituted 49 percent of the concerns.

17 Do you see that?

18 A. Yes.

19 Q. Okay. But you had not seen this before?

20 A. Not in detail. Again, that was approved,  
21 and normally, you don't--kind of repeat what's already  
22 approved.

1       Q.     I'm sorry. Can you repeat that because I  
2 couldn't understand your answer.

3       A.     That--no, I hadn't read it. No, I hadn't  
4 read those. I never went into that detail in that the  
5 EIA study.

6       Q.     Okay. But you had informed yourself, you  
7 said yesterday, before you took on this role, and you  
8 tried to find a resolution to the conflict.

9             You had informed yourself about what the  
10 situation was in the region, what were the concerns,  
11 what were the grievances of the community; yes?

12       A.     Again, yes, I understand the general  
13 concepts, but again, this is a six-volume document. I  
14 haven't read it in full for sure. I don't think that  
15 any manager would read it in that detail.

16       Q.     I would agree with you that a manager could  
17 not be expected to read six volumes, but surely, a  
18 manager could be expected to understand what were the  
19 main concerns of the community, and this is a report  
20 that was prepared by Invicta, and identifies that  
21 water shortages were a huge concern of the Parán  
22 Community, a lot more than Santo Domingo and Lacsanga.

1           So that bit of information was not present  
2 in your mind at the time?

3           A.     And it was never brought by the Parán  
4 Community in the meeting that I had with them, and so  
5 that charge is from when I started working with the  
6 company.

7           Q.     Okay. We'll get to your communications with  
8 the community.

9                   Let's turn now to C-209, which is in Tab 37  
10 of your binder. This is Volume 2.

11                   (Clarification requested by the Spanish  
12 Realtime Stenographer.)

13                   BY MR. GRANÉ:

14           Q.     Do you have it in front of you?

15           A.     Yes.

16           Q.     Okay. This is a letter from you to the vice  
17 minister of mines of 29 March 2019. You state on page  
18 2, in Paragraph 3--on the screen, can we please go to  
19 page 2, Paragraph 3, at the top. Perhaps make it a  
20 bit smaller. Yes.

21                   You say here that, "Although the rural  
22 Community of Parán is included in the area of direct



1 influence, according to the terms of the EIA that we  
2 just saw, the rural community is not affected in any  
3 way by our activities, since all of our operations are  
4 carried out in Lacsanga." (As read.)

5 Do you see that?

6 A. Yes.

7 Q. There are two aspects of this that I will  
8 want to address here.

9 One is that you're saying that there's no  
10 impact. You say, it's not affected in any way by our  
11 activities. You said this despite what we saw  
12 yesterday. Remember the document that we saw that  
13 included the water contamination, R-74, and the table  
14 we identified the chemicals, and that was by OEFA.

15 Do you recall that?

16 A. I recall perfectly.

17 Q. Okay.

18 A. And I checked it again.

19 Q. Okay.

20 A. And that was referred to a specific point,  
21 water coming out of the mine, not water pouring or  
22 being poured into the rivers.

1 Q. Exactly.

2 A. So it wasn't that precise.

3 Q. Yeah, exactly. We are well aware of the  
4 impact that that has, and we have discussed that  
5 document. We can go back to that document and see the  
6 implications that it had for the effluent of the water  
7 in the area and then the corrective measures that were  
8 ordered.

9 So that's the first aspect. You're saying  
10 it's not impacted in any way. We saw that there were  
11 samples taken that indicated that there was water  
12 contamination related to the operation.

13 But the second aspect here is that you say  
14 that it's carried out on the lands of the neighboring  
15 rural Community of Lacsanga.

16 Now, in respect of that, you were aware of  
17 the territorial dispute between the communities?

18 A. There was a claim, but there was no dispute,  
19 actual. There was a claim from Parán about that piece  
20 of land, a specific piece of land, that we checked,  
21 and according to the public records, those--that land  
22 belongs to the Community of Lacsanga.

1           And there is no indication that we were not  
2 aware of--we checked that it was a formal dispute, and  
3 there is a specific government agency that takes care  
4 of community dispute--land disputes.

5           We checked there, and there was no dispute,  
6 formal dispute. For sure, we heard there was a claim  
7 about it, but nothing formally.

8           Q.     Since you mentioned claims in Lacsanga, did  
9 you coordinate with the Lacsanga in relation to legal  
10 claims?

11          A.     Did we coordinate that?

12          Q.     Yes.

13          A.     No. Coordinate, no.

14          Q.     You didn't coordinate with Lacsanga in  
15 respect of any legal claims that that community would  
16 make against Parán?

17          A.     They asked us--we have several conversations  
18 with them about it. They wanted us to support the  
19 claims. What we actually did was to advance money  
20 that was part of the agreement that we had signed with  
21 Lacsanga, in order for them to do whatever they have  
22 to do, to protect their property.

1 Q. Okay.

2 ARBITRATOR GARIBALDI: I have a question.

3 It goes back to a couple of questions back.

4 You mentioned that there is a government  
5 agency which is in charge of resolving disputes  
6 between communities. What is the name of that agency?

7 THE WITNESS: It's--it adjusts [sic] to the  
8 prime minister's office. I can't recall the exact  
9 name, but it's kind of--the direction for social land  
10 disputes, something like that. I can't recall the  
11 precise name, but there is a specific agency to take  
12 care of it, part of the Prime Minister's office.

13 ARBITRATOR GARIBALDI: Thank you. It would  
14 be interesting to me if I could be provided with the  
15 name of that office at some point. Doesn't have to be  
16 now. Thank you.

17 MR. GRANÉ: Thank you, Mr. Garibaldi. And  
18 indeed, this is a question that you asked on the first  
19 day, and it's a question that we were going to come  
20 back to.

21 I think that we need to distinguish between  
22 the agency that Mr. Bravo has referred, and the

1 question that you had asked about, which is the  
2 authority that would settle any disputes, any boundary  
3 disputes within--between communities.

4 That is an issue that is decided by the  
5 Peruvian courts. We have a reference that we could  
6 provide that relates to the Lacsanga and Santo Domingo  
7 boundary dispute that led to a case that was before  
8 the judicial courts, and which was settled.

9 And that is MD-90. And that document, even  
10 though it relates to the Santo Domingo/Lacsanga  
11 dispute that was settled, is evidence on the record  
12 that shows that these type of issues are decided by  
13 the courts.

14 So the agency that Mr. Bravo refers to is  
15 not the agency in charge of deciding who is right and  
16 who is wrong about the boundaries between the  
17 communities.

18 THE WITNESS: No. I'm sorry to interrupt,  
19 but that's not correct.

20 One thing is you can dispute that in court  
21 for sure.

22 MR. GRANÉ: Mr. Bravo.

1 THE WITNESS: I thought you were talking--

2 MR. GRANÉ: No, Mr. Bravo, the discussion we  
3 are having now is with the Tribunal. The Tribunal can  
4 pose that question.

5 THE WITNESS: But he asked me a question.

6 MR. GRANÉ: Mr. Bravo, I'm sorry.

7 ARBITRATOR GARIBALDI: I'm going to pose  
8 that question.

9 I need the information, okay. What is the  
10 answer to that question?

11 THE WITNESS: The answer to the question,  
12 you can dispute in court, in court the territorial  
13 dispute, but there is a specific agency that takes  
14 care before going to court, in order to avoid--for the  
15 community to go to court, there is a specific agency  
16 directly from the government, the Prime Minister's  
17 office that is in charge of solving the problem. And  
18 their decision is obviously subject to the court  
19 decision, but it was normally what the communities use  
20 to resolve their land disputes.

21 ARBITRATOR GARIBALDI: Okay. One more  
22 question about this, and that's all.

1           Is that government agency responsible for  
2 some sort of mediation between the communities?

3           THE WITNESS: Yes. That's part of the  
4 process, they do mediation, previous mediation, and  
5 then they take a decision.

6           ARBITRATOR GARIBALDI: Very good. Thank you  
7 very much.

8           MR. GRANÉ: Mr. President, we will come back  
9 to this issue, because the information that's being  
10 provided, is, I think, misleading.

11          PRESIDENT CROOK: Why don't we drive on, and  
12 you know, at the appropriate point, you will tell us.

13          MR. GRANÉ: Yes. Thank you very much.  
14 We'll make a submission on this point, because the  
15 witness is simply misrepresenting.

16          BY MR. GRANÉ:

17          Q.     So before this question, you were saying  
18 that you had not assisted the Lacsanga Community in  
19 terms of legal actions that were submitted by that  
20 community against Parán; is that correct?

21          A.     Assisted, no.

22          Q.     You had no involvement with Lacsanga legal

1 actions against Parán?

2 A. Again, we had discussions about it.

3 Q. Okay. I want to be clear about your answer  
4 because we will come back to this point.

5 A. That's what I'm trying to do.

6 Q. Let's go back to the EIA of 2009. And  
7 remember, we were talking about the territorial  
8 disputes, but also just generally about the conflict  
9 between the communities.

10 Let's go to the EIA again, and this is Tab  
11 18. It's your first volume. It's marked page 367.  
12 Obviously, this is the very long document, being  
13 thousands of pages, so we have not included the entire  
14 document here.

15 But you will see page 367 at the bottom  
16 right-hand corner. In particular, if we can go to  
17 Paragraph A.5 where it says Social Relations at the  
18 bottom of that page.

19 We will highlight, do you see that it says,  
20 that at that time, 2009, there were no serious social  
21 conflicts. But then it says, "A recurring theme to  
22 date that may be capable of generating greater



1 disagreement and conflicts is the border-related  
2 conflict between the communities of Parán, Lacsanga  
3 and Santo Domingo de Apache."

4 And it says, "This circumstance may be  
5 exacerbated by the implementation of the project as a  
6 source of benefits and jobs..."

7 Do you see that?

8 A. Yep.

9 Q. So this was the situation in 2009, EIA  
10 submitted by Invicta. It was indicated that things  
11 for the moment were okay, but there was this  
12 possibility that the project would generate greater  
13 conflict.

14 And then in 2014, the company reduced the  
15 scope of the project. But you recalled that the  
16 reduction of that scope, did it take Parán outside of  
17 the direct area of influence of the project?

18 A. I don't recall it precisely, that.

19 Q. You don't know whether Parán was within the  
20 direct area of influence at the time of the conflict?

21 A. I'm not saying that. I'm just saying that  
22 in the document, I don't recall exactly what--if it

1 was taken out.

2 Q. Let's go to the document. It's C-40. This  
3 is in Tab 5. So still in the first volume. The first  
4 volume contains Tabs 1 through 30, and Vol 2, 31 to  
5 45.

6 So let's go to the first volume, Tab 5, and  
7 behind that tab, will you see the document C-40.

8 We can go to page 4. Do you have that  
9 document, Mr. Bravo?

10 A. Yeah. I'm trying to picture--sorry. I'm  
11 trying to picture what document is it?

12 Q. This is the approval of the 2015--April 2015  
13 first ITS.

14 A. Thank you.

15 PRESIDENT CROOK: Counsel, would it be  
16 possible to get someone from your team to assist  
17 Mr. Bravo in pulling up these documents?

18 MR. GRANÉ: Yes.

19 PRESIDENT CROOK: Save a little time.

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

21 Q. Tab 5, Exhibit C-40.

22 PRESIDENT CROOK: Mr. Bravo, we're sending

1 in a helper.

2 THE WITNESS: Thank you. Much more than  
3 finding the document is understanding what kind of  
4 document I'm seeing because there's several kinds of  
5 documents.

6 PRESIDENT CROOK: You only get help on the  
7 first.

8 THE WITNESS: Thank you, Your Honor.

9 Still, as you can imagine, I have seen the  
10 documents in Spanish, and obviously, that's my  
11 language so for me, much more easy to see in Spanish.  
12 Getting the translation, understanding several  
13 documents is the complicated part.

14 Okay. I see it. I'm aware. The document  
15 is in front of me.

16 PRESIDENT CROOK: Mr. Bravo, going forward,  
17 often there is both English and Spanish. The Spanish  
18 typically appears behind the blue, if you find that  
19 easier to navigate, feel free to do that.

20 THE WITNESS: Thank you.

21 BY MR. GRANÉ:

22 Q. Right now, you may recall that yesterday I

1 said that perhaps we would have someone assist you,  
2 and now my colleague, Andres Álvarez, will be behind  
3 you to assist you with the documents.

4 A. Thank you.

5 Q. Page 4, again, this is the ITS. Perhaps,  
6 Mr. Bravo, I should make a parenthesis. We are trying  
7 to go quickly. As I said yesterday, we can slow it  
8 down. I'm assuming that because you were the general  
9 manager, many of these things, at least the basic  
10 documents, would be something that you would  
11 recognize, but if at any point there is a document  
12 that I assumed you knew at the time, you can tell me I  
13 don't know that document; is that fair. Do you agree  
14 with that?

15 A. Sure. Thank you.

16 Q. So first ITS, April 2015. On page 4, it  
17 states that, "The mining components would be located  
18 within the area of direct and indirect environmental  
19 influence, approved," and it says, "without any  
20 modification."

21 Do you see that?

22 A. Yes.

1       Q.     So and we just saw that the original EIA,  
2 2009, indicated that all three communities were within  
3 the direct area of influence.

4             Do you recall that?

5       A.     Yes. We agree on that.

6       Q.     With this scope reduction, Parán remains  
7 within the direct area of influence; correct?

8       A.     That's correct.

9       Q.     So that has been cleared up.

10            Let's go back briefly to permitting. I want  
11 to show you Ministerial Resolution 120, 2014. This is  
12 not in the binder, but it is on the record, and we'll  
13 put it up on the screen. It's MD-11. This is a  
14 regulation that pertains to the ITS process.

15            MR. GALLEG0: If the witness could also be  
16 shown the text in Spanish.

17            THE WITNESS: Spanish, please.

18            BY MR. GRANÉ:

19       Q.     We will put--I'll put it up on the screen,  
20 Mr. Bravo. Okay.

21            So now you have the Spanish and the English.  
22 Perhaps let me start by asking, are you familiar with

1 this resolution?

2 A. Not in particular.

3 Q. But you did say yesterday that you have  
4 experience, generally, in permitting for mining  
5 companies, yes?

6 A. In general, yeah.

7 Q. Okay. Let's go to--this is--so Ministerial  
8 Resolution, February of 2014. It sets down  
9 regulations pertaining to the process of ITS.

10 So let's go to Objective A on page 2,  
11 please.

12 As you can see there, it refers to the  
13 update of technical criteria. That establishes--that  
14 is established in the framework.

15 Obviously, all of this refers to  
16 environmental impacts that are classified as negative,  
17 but not significant. That's the ITS; correct?

18 A. Mm-hmm.

19 Q. If you can go down, now, to Paragraph B. So  
20 that same page. It says that for this type of change  
21 that does not have a significant impact, it says, that  
22 "the following conditions must be met in order to

1 request modifications for extensions or technical  
2 improvements."

3 Do you see that?

4 A. Yes.

5 Q. Okay. Then the third bullet says that "to  
6 comply with that requirement, they must not be  
7 situated on or impact bodies of water," and it goes on  
8 to identify bodies of water, wetlands, et cetera, "or  
9 water sources or any other fragile ecosystem."

10 Do you see that?

11 A. Yes. Sure.

12 Q. So an ITS would not be available for changes  
13 that would impact water sources; correct?

14 A. That kind of water sources, yes.

15 Q. Do you know what were the sources that the  
16 mining project was intending to use as part of its  
17 activity?

18 A. At the EIA, it was reported in the Huamboya  
19 town, a well. A well that was going to be built in  
20 the Huamboya town, and also recirculate the underground  
21 water coming out from the portal of the mine.

22 Q. You said the EIA.

1           Let's fast forward, and talk about the third  
2 ITS. Do you know what were the water sources that  
3 were intended to be used?

4           A.     No. I'm not aware of that detail in the  
5 ITS.

6           Q.     Who was--remind me, who was handling those  
7 details for the company at the time?

8           A.     At the time of the ITS, 2015, the first, the  
9 second, or the third one?

10          Q.     The third one, but remember that we said  
11 that the third ITS was pending when you came in, so  
12 let's focus on the third ITS.

13                 Who was in charge of the third ITS when you  
14 were general manager?

15          A.     There was nobody in charge at that time.

16          Q.     Okay.

17          A.     We--

18          Q.     Given that--

19          A.     Sorry, to complement the answer: I'm pretty  
20 sure there's a company named--I read in one of these  
21 binders, the DLM company that helped us file the ITS  
22 at the time. It's a consultant company. You have to



1 hire--registered consultant to help you prepare the  
2 ITS, and file it accordingly.

3 Q. Okay. But you don't remember any documents  
4 from this company referring to the water sources that  
5 the company intended to use as part of its third ITS  
6 modification?

7 A. No. I haven't heard there has been any  
8 modification on that.

9 Q. I'm sorry. Can you repeat that answer?

10 A. I haven't heard that there has been any  
11 modification of the original water sources.  
12 Particular, I recall paying the water rights from the  
13 same well up to 2017.

14 Q. You are aware that there was this water  
15 management system, and that this water management  
16 system was within the scope of the third ITS?

17 A. They are two different things. The water  
18 system was supposed to be changed by the ITS, and the  
19 permitting. We got a permit because we--we got a  
20 permit from the ANA, which authorizes to use water  
21 from the well in Huambo.

22 Q. Yes.

1           So permitting and water management system.

2           My question to you just now was about the  
3 water management system.

4           A.     On the ITS?

5           Q.     On the third ITS, yes.

6           Are you aware of how the third ITS referred  
7 to the third--to this water management system?

8           A.     Not in detail.

9           Q.     So you don't know what the water sources  
10 related to the water management system within the  
11 third ITS, you don't know how they were handled?

12          A.     Again, water sources are different things.  
13 Treatment--water treatment is a different story.

14          Water treatment, we have to treat the water  
15 coming out of the mine. Water source is what we  
16 pull--we bring into the mine.

17          Q.     Okay. Those two, in your recollection, were  
18 not connected?

19          A.     No.

20          Q.     Okay.

21          Let's move on to Mallay plant.

22          A.     Okay. Mallay. Sorry. Yeah.

1 Q. How do you pronounce it?

2 A. Mallay.

3 Q. Mallay. I'll see if I can make the switch.

4 A. No problem.

5 Q. Were you aware that Claimant had tried to  
6 acquire the Mallay plant from Buenaventura in late  
7 2018, so shortly before you joined?

8 A. Yes.

9 Q. Were you aware that that transaction was  
10 delayed because Buenaventura refused to sign the  
11 contract with Invicta before it had secured an  
12 agreement with the Mallay community?

13 A. Can you rephrase that because I think there  
14 are two different concepts there.

15 Q. Well, I don't believe so, but let's try  
16 again.

17 Invicta was trying to acquire the Mallay  
18 plant; correct?

19 A. Correct.

20 Q. It was trying to acquire it from  
21 Buenaventura; correct?

22 A. Yes.

1       Q.     And Buenaventura says, I will not sign the  
2 contract to complete this transaction until I secure  
3 an agreement with the Mallay Community; correct?

4       A.     That's correct.

5       Q.     You were aware of that, yes?

6       A.     Yes.

7       Q.     Do you recall what would have been the  
8 earliest date by which you could have acquired the  
9 Mallay plant, given what Buenaventura was telling you  
10 at the time?

11      A.     The--sorry.

12      Q.     So we established that Mallay plant could  
13 not be acquired until a condition was met?

14      A.     Mm-hmm.

15      Q.     That condition was community acceptance;  
16 yes?

17      A.     Community acceptance or--Buenaventura wanted  
18 to change it in order for them to be able to transfer  
19 their plant, the whole facilities to a third party.

20      Q.     Okay. We had just established that in the  
21 previous question, but we can go back.

22      A.     Mm-hmm.

1       Q.     Wanted to secure agreement by the Mallay  
2 Community; yes?

3       A.     That's correct.

4       Q.     So my question is: Were you aware what was  
5 the earliest date by which that agreement, which is a  
6 condition to the transaction, could have been  
7 achieved?

8       A.     The earliest date?

9       Q.     Date, yes.

10      A.     No. I mean--they were trying to do that for  
11 a long time--well, this--several months. They were  
12 expecting, as far as I recall, a community meeting.  
13 It was an assembly in the community for them to be  
14 able to present the project, which in fact was  
15 to--again, it was not to allow to transfer the  
16 property to us. It was in general. They wanted the  
17 community to accept amendments to the agreement in  
18 order for them to be able to transfer to third  
19 parties.

20      Q.     Do you know if Buenaventura reached or  
21 acquired or obtained that agreement for the Mallay  
22 Community?

1       A.     Yes. They got the agreement. But as far as  
2 I recall, maybe March or April 2019.

3       Q.     You are correct, Mr. Bravo. It was indeed  
4 in March 2019. For the record, it is C-287.

5             And given that you have recalled the date,  
6 we don't need to look at the document, but we could.  
7 But you just saved us time. So let's move on.

8             So by March 2019, that's the earliest date  
9 by which you could have acquired the Mallay plant,  
10 because that is when the condition by Buenaventura had  
11 been met.

12            So let's--staying on the issue of the  
13 processing--or the mills, do you recall what were the  
14 other processing mills or plants that Invicta had  
15 considered?

16       A.     I don't recall exactly the name, but I know  
17 there were a couple of them that we were sending the  
18 metallurgic tests, we were sending the ore to--

19             (Clarification requested by the Realtime  
20 Stenographer.)

21       Q.     You don't recall, then, those plants?

22       A.     No. Not exactly.

1       Q.     Do you recall the number of the plants that  
2 were being considered by Invicta?

3       A.     They were two. In the north of Perú, there  
4 are a few plants. In the opposite, in the south,  
5 there are several plants. So they were only--there  
6 were only a few. As far as I recall, we were dealing  
7 with two of them. Previously to my engagement with  
8 the company, they were taking the ore to these plants,  
9 and we were not happy with the results we were given,  
10 and so we were looking for alternative.

11      Q.     Thank you.

12             Since you mentioned that you were not happy  
13 with the results, that allows us to then go into just  
14 a few questions that I have on that.

15             Do you recall why you were not happy with  
16 the results?

17      A.     In Perú, it's an industry. It's an industry  
18 where the plants take advantage of their position,  
19 depending on where they are located.

20             So basically, we were not happy with the  
21 tonnage they reported. We were not happy with the  
22 recovery they reported, and for sure, we were not

1 happy with the rates that we were getting from those  
2 processing plants.

3 Q. So it's fair to say that you had given up on  
4 those other plants as an option, and that's why you  
5 had turned to the Mallay plant; correct?

6 A. I wouldn't say given up. I would say they  
7 were still an option until we closed the deal with  
8 Mallay. It was not an easy deal.

9 Q. Okay.

10 We'll come back to this point, what--do you  
11 remember--in your consideration of these other--when  
12 you were considering these other plants, do you  
13 remember what you were sending to them to test them  
14 out?

15 A. What we were sending?

16 Q. Yes. You were sending?

17 A. Ore.

18 Q. Something to them.

19 A. Ore. Basically ore.

20 Q. Do you remember roughly the quantities that  
21 you were sending?

22 A. No. No.



1           When I joined the company, the last load of  
2 ore that was sent was sent in September or August  
3 2018, so I don't recall how much, what was happening  
4 there. I mean, the tonnage--it was testing. We were  
5 not--we were not able to send--we weren't operating.

6           Q.     Do you have recollection of how much ore had  
7 been extracted from the mine when you joined?

8           A.     No, not in detail. I know for a fact that  
9 there were 7,000 tons of ore sitting in the portals,  
10 and--but that's a recollection I have. That's the  
11 number that I have in mind.

12          Q.     So at least 7,000 tons; that's what you  
13 recall?

14          A.     No, 7,000 were sitting in the portal at the  
15 time of the invasion.

16          Q.     At least?

17          A.     No--well, there was 7,000 roughly, but how  
18 much was taken before, I don't know, probably that ore  
19 was low-grade ore, so we were--it was not processed.

20          Q.     Okay. But just to be clear, you recall  
21 7,000, so it's fair to say that at least 7,000 tons  
22 had been extracted?

1       A.     Extracted, for sure. I thought you were  
2 asking how many tons had been sent to processing.

3       Q.     Okay.

4       A.     That number, I can't--I don't have it.

5       Q.     Okay. Just briefly on the plants, you say  
6 that you do not recall which were the plants that you  
7 were considering, and negotiating with, or there--or  
8 even how many. You were not negotiating with those  
9 plants. You were not in charge of the negotiations  
10 with those plants at the time?

11      A.     There was no negotiation possible. There  
12 was no ore. Why do we--we wouldn't care to negotiate  
13 with somebody, we don't have the ore because of the  
14 blockade.

15             So it doesn't make any sense at that time.

16      Q.     I see.

17      A.     We had the discussions, and we were not  
18 happy with the plants that we were sending the ore to.

19             We were having the--this opportunity to  
20 acquire the Mallay plant, and we were exploring other  
21 options as well.

22      Q.     So from January when you joined, and again,

1 yesterday, you made a clarification that it was  
2 formally February.

3 But in your witness statement, you said late  
4 January, so let's stick with that date.

5 So from late January 2019 onward, until you  
6 left in August of 2019, you say that there were no  
7 discussions with the processing plants?

8 A. No. No discussions. About the ore we sent  
9 them--well, there was--there was a discussion with  
10 some of these plants because apparently somebody steal  
11 some ore, and we were chasing what happened with that  
12 ore, because it doesn't match the tonnage we sent with  
13 the tonnage they claimed they received.

14 So I was involved in those discussions with  
15 that plant, that I can't recall the name right now,  
16 trying to understand what happened with the missing  
17 ore, the missing tonnage.

18 Q. I see.

19 So one of the plants that you were  
20 considering to partner with to process the ore had the  
21 problem that they were stealing the ore that you had  
22 sent, is that--

1       A.     I won't say that. I didn't say they were  
2 stealing the ore. I said that there was a discussion  
3 about the difference in the tonnage.

4             Apparently there's--something happened on  
5 the way or they didn't get it correctly. There was  
6 no--there was much more than misunderstanding that  
7 there was not a formal claim against them.

8       Q.     Okay. Do you recall what was the number,  
9 the volume that was at issue? I'm trying to  
10 understand the significance of the misunderstanding.

11       A.     No. Probably a load that's maybe 20--20, 30  
12 tons.

13       Q.     Did that disagreement, was that disagreement  
14 clarified before you left?

15       A.     No. We were not in a position to keep  
16 fighting about that or, you know, pursuing that claim.

17       Q.     Okay.

18       A.     There was no indication--the blockade--I  
19 mean, the--forced us to reduce expense, and we were  
20 not in a position to do much more than--other than  
21 trying to lift the blockade, and trying to work with  
22 the authorities to get the mine back.

1 Q. Okay.

2 Given that your recollection on the issue of  
3 the processing plants, and the names and the numbers,  
4 and you were not involved in the negotiations, and  
5 nothing really was happening since you joined with the  
6 processing plants for the reasons that you've  
7 explained, let's move on to a different topic.

8 I would like to talk about the 26 February  
9 2019 Agreement.

10 A. Okay.

11 Q. Yes.

12 Let's put up the agreement. It's C-200.  
13 It's behind Tab 29, so your first volume.

14 Were you present, Mr. Bravo, at the time  
15 that this was concluded?

16 A. Yes.

17 Q. Okay. And you signed this agreement; yes?

18 A. Yes.

19 Q. You did it on behalf of Invicta; correct?

20 A. Correct.

21 Q. Just to--perhaps before we delve into the  
22 content of the agreement, just one point in terms of

1 background. At the end of January when you were first  
2 hired as Invicta's general manager, you had been  
3 coordinating with the police for an operational plan  
4 to remove the protest from the site; correct?

5 A. At that time I joined the company, there  
6 were discussions between the CR team and some  
7 management with the police, yes.

8 Q. Yes. Okay.

9 So this was before this agreement; yes?

10 A. For sure, yes.

11 Q. Okay.

12 At the time you believe that there had to be  
13 an immediate removal of the protesters; correct?  
14 That's what you were coordinating with the police for;  
15 correct?

16 A. Yes. That's what I believe was the  
17 best--the best course of action.

18 Q. Okay. At the time also you believed there  
19 should be no dialogue because of the situation;  
20 correct?

21 A. I didn't say that.

22 I'm fully and thoroughly in favor of

1 dialogue, but it has to be faithful, and in the same  
2 terms. So I won't say that I'm not aware--I'm not in  
3 favor of dialogue, for sure. That's what I do for a  
4 living.

5 Q. Okay. So at the time that you became  
6 general manager, you believe that despite the  
7 circumstances, dialogue should continue, or at least  
8 be attempted; is that fair?

9 A. In parallel with the police operation, yes.

10 Q. So let's, perhaps, explore that a bit.  
11 When you say, "in parallel," at that time  
12 were you--were you willing to sit down with the  
13 community to engage in dialogue before the operational  
14 plan that you wanted was executed.

15 A. Actually, we did. We sat down with them,  
16 with Parán in January 29. We tried to negotiate  
17 things, but it was pretty obvious for me that they  
18 were not in the intention to come to an agreement.

19 Q. But you as the general manager believed in a  
20 policy of dialogue even while the blockade was in  
21 place?

22 A. The politics were set up by corporate, and

1 the--

2 Q. I'm asking for your opinion as the general  
3 manager.

4 A. I'm going to get there.

5 The--there's no possible dialogue if you had  
6 a boot in your face.

7 So you need to try to make the police--they  
8 were committing a crime at that time. Blocking roads  
9 in Perú is a crime.

10 We were trying the police to act accordingly  
11 to their duties, which does not mean we cannot sit  
12 down and talk about something else, about other  
13 things, or about the same situation.

14 So I do believe in dialogue, for sure, but  
15 somehow, sometimes what happens in Perú on a daily  
16 basis, when the crime is committed, the police has to  
17 intervene.

18 Q. When you say "about other things" I'm not  
19 understanding, Mr. Bravo, what was your position as  
20 general manager.

21 You were willing to sit down to talk while  
22 the blockade was ongoing about other things, you said.



1 What other things?

2 A. Community relationships, benefits for the  
3 community, their concerns about what you mentioned  
4 before, address their concerns, or at least hear to  
5 the concerns, as we did on January 29.

6 Q. Okay.

7 So those concerns would have been the  
8 concerns that the community had that had led to the  
9 blockade; were you willing to talk about that?

10 A. Yeah. I guess so.

11 Q. Okay. So can we now go back to February  
12 26th, or you know, the days surrounding this  
13 agreement, and let's see--so Claimant had committed,  
14 then, to establish this formal dialogue, and this  
15 agreement was the commencement of that formal  
16 dialogue; correct?

17 A. That's correct.

18 Q. Okay. Let's--in C-200, so this document,  
19 let's see on page 1, points 1 and 3. So the first  
20 point, formal establishment of a formal dialogue  
21 process, which is what you just indicated.

22 Part of that process was establishing the

1 agenda of the points that would be discussed in this  
2 formal dialogue; correct?

3 A. Mm-hmm.

4 Q. So you believed that this was the  
5 commencement of a dialogue that you hoped would lead  
6 to the resolution of the conflict; yes?

7 A. Subject for them lifting the blockade.  
8 That's what we agreed before. Before there was an  
9 understanding with the ministry.

10 Q. We will get there, Mr. Bravo. I'm trying to  
11 take this in stages to understand what were the things  
12 that were on the table, and what this process was  
13 entailed to do.

14 So you would agree that you were at that  
15 time saying we're going to sit down. We're going to  
16 have a formal dialogue. And we're going to, as part  
17 of the start of this process, establish the agenda of  
18 the points that would be discussed in this formal  
19 dialogue; yes?

20 A. That's correct. That's what the document  
21 says.

22 Q. Okay. At the time when this process started

1 on 26th of February, it's fair to say that Lupaka and  
2 Invicta saw this as a success; yes?

3 A. As we reported in my statement, yes.

4 Q. Okay. This is also what was being said by  
5 Lupaka in Canada; yes?

6 A. Yes.

7 Q. It's fair to say that you were very pleased  
8 to announce that through this, the formal--the illegal  
9 blockade had been resolved?

10 A. Removed, yeah.

11 Q. Okay.

12 A. That's part of the--it was a press release  
13 from corporate, and for sure, we were all satisfied  
14 that we reached an agreement, at first.

15 Q. Okay.

16 They expressed their thanks to the  
17 authorities for having made this possible; yes?

18 A. I don't recall the thank you, but maybe,  
19 yeah. But it was good people doing a hard job, I  
20 guess we thank you them.

21 Q. Okay. Let's put up R-171, and see if this  
22 refreshes your recollection. This is indeed the press

1 release, I believe that you may have been referring  
2 to, although there were others.

3 ARBITRATOR GRIFFITH: Can we have a tab  
4 number.

5 MR. GRANÉ: This is behind Tab 31,  
6 Mr. Chairman. So the first document behind Tab 1 in  
7 your second volume.

8 BY MR. GRANÉ:

9 Q. You see in that second paragraph of this  
10 first page, it's a two-page document, it's dated March  
11 4, 2019. So this was four days after--well, no. How  
12 many days. I can't--I always forget if it's a leap  
13 year that year. A few days after the 26th of February  
14 agreement.

15 In that second paragraph, the company is  
16 saying to the world, "We are very pleased to announce  
17 the positive conclusion of the illegal blockade and  
18 would like to thank our employees, the authorities,  
19 and our community partners that worked together to  
20 reach this successful result."

21 Yes?

22 A. Correct.

1       Q.     So this is consistent with what you were  
2 saying that you were pleased, this agreement concluded  
3 the illegal blockade. This is March 4, 2019, and you  
4 are thanking the authorities.

5             Also, in the second--I'm sorry, the third  
6 paragraph, so the paragraph that follows that one,  
7 it's saying that there are heavy rainfalls. It has  
8 limited access to the site. And the access roads to  
9 Invicta have sustained damages from both Lacsanga and  
10 Parán, and it says with partial access from the Parán  
11 route.

12            Do you see that?

13       A.     Mm-hmm.

14       Q.     You also see that it says that the Community  
15 of Parán has granted the company access to Invicta by  
16 the way of their access route. Yes?

17       A.     Correct.

18       Q.     So let's go to--back to the text of the  
19 agreement. But this agreement that exists between the  
20 parties about--and by parties, I mean Parán and  
21 Invicta. So we're still in the context of the  
22 agreement.

1           So there's a disagreement about the parties  
2 concerning what had been agreed, and whether it had  
3 been complied with; you recall that, yes?

4           A.     Sure.

5           Q.     The Parán Community believed that under the  
6 terms of the agreement, it had committed to provide  
7 access to the mine through the Parán road; correct?

8           A.     Yes.

9           Q.     Do you recall that--or rather, were you  
10 informed that before you became the general manager,  
11 Invicta had contemplated using this access road  
12 through Parán?

13          A.     Way before, yeah.

14          Q.     Way before. Okay.

15                 Do you recall that that was formally  
16 established in the EIA of 2009?

17          A.     I don't recall. Maybe, yes, yeah.

18          Q.     Okay. Let's just--to maybe assist your  
19 recollection, because this is the very voluminous  
20 document that you refer to, but of course, the issue  
21 of the access road is, I would say, significant, and  
22 something that, of the many pages of the document,

1 something that, perhaps, you would have paid more  
2 attention to.

3 But let's help in recollecting or refreshing  
4 your memory by putting up again that document, R-47,  
5 and we're going to put it up on the screen. I'm not  
6 sure, do we have that particular page printed out?  
7 Okay. So we're going to put it up on the screen  
8 because we didn't print the thousands of pages.

9 It's page 100 of that document. Again, EIA  
10 2009.

11 You see here that it is indicating what were  
12 the access to the project, to the mine at the time  
13 that this EIA was prepared. It goes all the way to  
14 Lima. So 320 kilometers from the site.

15 You see that the last--the last stretch of  
16 that road is from Huambo to the project Minero.  
17 That's the second to the last row in that table.

18 You did not recall, but Huambo is one of  
19 the villages in Parán.

20 So you see that now; yes?

21 A. Yes. That's the road.

22 Q. Okay. So it was contemplated in 2009 when

1 the EIA was submitted that the access to the project  
2 was going to be through Parán; yes?

3 A. I can't say it like that, but apparently  
4 that was the description of the port access. It  
5 doesn't say Parán there. Huamboya at that time--I  
6 don't recall because Parán was part of Santo Domingo,  
7 and they--afterwards, they separated from Santo  
8 Domingo. So I don't--can't recall if in 2009 they  
9 were still part of Santo Domingo or not. So--well, to  
10 answer, I will say yes, because it was part of the  
11 project, originally the intention was to have the  
12 access roads through Parán.

13 Q. Mr. Bravo, this could be a very long process  
14 if we have to discuss things like this.

15 Huamboya, at the time that this agreement was  
16 signed, was Huamboya part of Parán?

17 A. 2009, that's what I just said. I don't  
18 recall that. There was--

19 Q. When the agreement, the February--

20 (Clarification requested by the Realtime  
21 Stenographer.)

22 THE WITNESS: Sorry, my bad.



1 MR. GRANÉ: Apologies.

2 BY MR. GRANÉ:

3 Q. At the time of the February 2019 agreement  
4 was signed, was Huamboya part of Parán; yes or no?

5 A. Yes.

6 Q. Okay. And the 2019--I'm sorry, the 2009 EIA  
7 contemplated that the last stretch of the road to the  
8 mine would be from Huamboya to the mine; yes?

9 A. I had--I'm going to say yes in benefit of  
10 the time, yes.

11 ARBITRATOR GARIBALDI: Counsel, can you show  
12 us a little more of this page, please?

13 MR. GRANÉ: Yes. Absolutely.

14 Can we put up the English for the benefit of  
15 Mr. President and--that's fine. Mr. President, I am  
16 informed that there is no translation of this  
17 particular page.

18 PRESIDENT CROOK: That's fine, my minimal  
19 Spanish will be okay.

20 MR. GRANÉ: Mr. Griffith, we would be happy  
21 to provide a translation of this page for your  
22 benefit.

1           ARBITRATOR GRIFFITH: (Comment off  
2 microphone.)

3           ARBITRATOR GARIBALDI: Okay.

4           BY MR. GRANÉ:

5           Q.     So let's--in the interest of time, go  
6 to--moving forward, so expectation 2009,  
7 Huamboya/Invicta. That is at the time that the project  
8 was conceived. Let's go to--fast forward now to  
9 November 2018.

10           We're going to look at C-182, which is  
11 behind Tab 32, so the second volume. Andres, can  
12 you...

13           THE WITNESS: Thank you.

14           BY MR. GRANÉ:

15           Q.     This is a set of meeting minutes from 7  
16 November 2018 between the Parán Community and the  
17 OGGS. Perhaps, first question, have you seen this  
18 document before?

19           A.     Maybe in Spanish, but I don't recall  
20 the--the--yeah.

21           Q.     We can put up the Spanish. Again, in the  
22 interest of time, I'm trying to go as quickly as I

1 can. We can put up the Spanish, if you wish.

2           Actually, it's the same--in the hard copy,  
3 you have the Spanish behind the blue sheet.

4           A.     It's an nonsigned agreement; correct?

5           Q.     It's summary of meetings, first page. You  
6 see that in that first page in the second paragraph,  
7 it says that the community taking the initiative  
8 proposed three items for the agenda. You see those  
9 three items.

10                  And on the issue of the access to the mine,  
11 it says, the second bullet point, "Right of way and  
12 Invicta's other requirement (all the company's  
13 movements and activities would be through the  
14 Community of Parán.)"

15                  You see that?

16           A.     That's what it says, yes.

17           Q.     So in November 2018 before the February  
18 agreement, Parán still believed that the--that all  
19 access to the mine should be through the Parán  
20 territory, yes?

21           A.     That's what the document says, yes.

22           Q.     And that was the position that Parán took

1 into that negotiation that led to the February 2019  
2 agreement; correct?

3 A. No. That was not discussed in that meeting.

4 Q. So you say--are you suggesting that between  
5 November 2018 and February 2019, Parán changed its  
6 position?

7 A. I cannot suggest anything about Parán, but  
8 what I can say is what I--what I believed, and in that  
9 meeting, no access road was--exclusively an access  
10 road through Parán was raised.

11 Q. Let's go to the communications that you had  
12 with Mr. León, an official from OGGS concerning the  
13 community's desire to use the access road through  
14 Parán.

15 This is C-347, behind Tab 33. Again,  
16 second--yeah, staying in that second folder.

17 If you can go to page--the first page. This  
18 is a conversation between you and Mr. Nilton León from  
19 OGGS; yes?

20 A. Correct.

21 ARBITRATOR GARIBALDI: Where is it--yeah.  
22 Go ahead.

1 BY MR. GRANÉ:

2 Q. You see on the 26th of February, 5:10 p.m.,  
3 there's a message from Nilton León saying they want  
4 the access be through Parán. Do you see that?

5 A. Yes.

6 Q. Okay. And then in--I'm trying to see if  
7 it's in that same page.

8 ARBITRATOR GRIFFITH: Counsel, what is this  
9 document?

10 MR. GRANÉ: This is, Mr. Griffith, an  
11 exchange between Mr. Bravo, and Mr. Nilton León, an  
12 official from the OGGs, on the date that they  
13 negotiated, and agreed on the 26th of February 2019  
14 agreement.

15 ARBITRATOR GRIFFITH: Thank you.

16 BY MR. GRANÉ:

17 Q. A few lines further down, Mr. León says,  
18 "They want to change the points."

19 Do you see that?

20 A. Yes.

21 ARBITRATOR GARIBALDI: I'm sorry. I don't  
22 understand this. You're referring to 26/2/19, 5:10:06

1 p.m. Nilton León, tell-"they want that the access be  
2 through Parán".

3 Then next one, 26/02/19, 5:10:14 p.m. same  
4 Nilton León. "Tell them that it is not possible  
5 technically". Is Nilton León speaking or is it the  
6 company speaking? Makes no sense.

7 THE WITNESS: No.

8 MR. GRANÉ: We're trying to get to that,  
9 Mr. Garibaldi.

10 ARBITRATOR GARIBALDI: All right. Go ahead.

11 THE WITNESS: That's Nilton León.

12 BY MR. GRANÉ:

13 Q. I'm asking, when it says, they want to  
14 change the points. You received this message from  
15 Nilton León, what was he referring to?

16 A. To change the points. I don't recall--I  
17 perfectly recall the first two, the one that  
18 Mr. Garibaldi was pointing out. The last one, I just  
19 got it, but--obviously, I recall that, but we didn't  
20 went into the details of what do they want to change  
21 at that point in time.

22 Q. You didn't go into the details of what they

1 wanted to change at that point in time.

2           You were negotiating an agreement with the  
3 start of the formal process, and I'm trying to  
4 precisely understand what is it that you understood at  
5 the time was the position of the parties.

6           You're telling me that you don't understand  
7 what they were?

8           A.     No. I'm saying that I don't understand what  
9 Nilton León tried to tell me at that time. We are in  
10 the middle of the meeting. We are Whatsapping. I  
11 read the first part, that was the--that they want the  
12 access through Parán, and--but when he says that last  
13 part, "they want to change the point", at that point,  
14 there was nothing to change. The agreement was almost  
15 closed.

16           There's a little history behind this.

17           When we were called for this meeting, from  
18 Trigoso, the representative from the OGGS, the mining  
19 ministry, agreed or they told us, explained that it  
20 was better for them to meet with Parán alone before  
21 meeting with us. We then were trying to understand  
22 when we were going to meet with them. For them to

1 agree if they were going to lift the blockade. If  
2 they were not willing to lift the blockade, we would  
3 not participate in that meeting.

4           So Mr. Trigoso sent me a note saying they  
5 are willing to lift the blockade. So come on in.

6           So we stepped into the meeting, and  
7 basically, the agreement was already drafted at that  
8 time because we sent a previous draft from the  
9 previous meeting on January 29th, and--January  
10 26th--29th, sorry.

11           Then when we started drafting this final  
12 part of the agreement, they--we were concerned about  
13 them lifting the blockade. That was our main  
14 objective. That agreement has two parts.

15           The first part says they will lift the  
16 blockade, and establish a peace situation, and then  
17 the second paragraph, they said, they want to provide  
18 access through Parán.

19           In our understanding, based on what I  
20 received from Mr. León through WhatsApp is that they  
21 wanted us to also use the Parán road. For us, it was  
22 even better because the Parán road was shorter, but on



1 the other hand, we have built the Lacsanga road, which  
2 is the road in Lacsanga territory that we built in  
3 accordance with the Lacsanga, and with all of the  
4 proper authorities' authorizations.

5           So for us, it was pretty clear, and it was  
6 in our benefit to use both roads. So we were going to  
7 have access through the Lacsanga road, lifting the  
8 blockade, and also we would have access through Parán,  
9 with the road that could only be used for small  
10 vehicles.

11           So for us to transport people in vans and  
12 small vehicles, it was useful to use that road also.  
13 That's what we understood, and that's what was reading  
14 into the agreement. There are two different  
15 paragraphs there. Lifting the blockade, which is  
16 important for us, that was the main objective for that  
17 meeting. We were not going to participate in that  
18 meeting if the Parán Community did not agree to that  
19 part, lifting the blockade.

20           As the second part, that they include, when  
21 they say that we have to use the Parán road.

22           So we were in agreement, and that's what we

1 signed.

2 BY MR. GRANÉ:

3 Q. That's helpful to the transition because I'm  
4 trying to understand what was your position there,  
5 there are then communications between you and  
6 Mr. Arévalo immediately following the signature of  
7 this agreement, and I believe that you had started to  
8 explain what was the position of the company towards  
9 the lifting of the blockade, and the Parán road.

10 In particular, this is another WhatsApp  
11 communication this time between you and Mr. Arévalo,  
12 which is C-619, which is behind Tab 35 of that same  
13 binder. So can you please turn to that document?

14 PRESIDENT CROOK: Counsel, before we do  
15 that, may I be permitted a question.

16 MR. GRANÉ: Of course, Mr. President.

17 PRESIDENT CROOK: Mr. Bravo, this WhatsApp  
18 message at Tab 33, where was Mr. León? Was he  
19 present at the meeting site? Or was he in Lima?  
20 Where was he?

21 THE WITNESS: It was in a room like this,  
22 and they were sitting in front of the table beside in

1 the meeting. There was Parán Community on one side,  
2 and we were on the other side, and we were  
3 WhatsApping--

4 PRESIDENT CROOK: So he was sitting with the  
5 Parán Community or where was he physically sitting?

6 THE WITNESS: Again, this is a room like  
7 this. He was sitting like you are.

8 PRESIDENT CROOK: Okay.

9 THE WITNESS: For the officials. Parán was  
10 to the left, and we were to the right.

11 PRESIDENT CROOK: I see. All right. Thank  
12 you.

13 BY MR. GRANÉ:

14 Q. Now, before we--a question before we go to  
15 this exchange that you had with Mr. Arévalo  
16 immediately after the signature--at the time when you  
17 were negotiating this, insisting on the inclusion of  
18 language that said, you have to lift through Parán,  
19 but we also want to continue to use the access road  
20 through Lacsanga?

21 Because the agreement only mentions Parán,  
22 so I want to understand the explanation that you gave,

1 why is it not reflected in the agreement?

2 A. Because there was no need. The need--

3 Q. There was no--

4 A. No need. The need for us was to lift the  
5 blockade. The blockade was in the Lacsanga road.  
6 That was the main objective. And you referred to the  
7 same conversation with Mr. Trigoso, superior from  
8 Mr. León. When he comes to us in the meeting, he said  
9 they already agreed to lift the blockade. Lift the  
10 blockade in the Lacsanga road.

11 So it doesn't make any sense that we should  
12 address in that agreement, which is kind of difficult,  
13 you may understand, we're in the middle of a big  
14 discussion, adding or taking out some points were kind  
15 of difficult at that time, with any kind of event, so  
16 for us, there was no need. It said expressly lift the  
17 blockade. That's all what we need. That's all what  
18 we asked for.

19 Q. It says, lift the blockade through Parán,  
20 but it doesn't say lift the blockade through Lacsanga.  
21 You agree with that?

22 A. No, no. It just says lift the blockade. If

1 you put the agreement on the screen.

2 Q. Let's put the agreement on the screen.

3 (Clarification requested by the Realtime  
4 Stenographer.)

5 BY MR. GRANÉ:

6 Q. Paragraph 5 of the agreement--

7 ARBITRATOR GARIBALDI: What tab?

8 MR. GRANÉ: Tab 29. It's in the first  
9 volume.

10 BY MR. GRANÉ:

11 Q. So it says, the first sentence, "Suspend the  
12 coercive measures ratified by the Assembly of the 2  
13 March 2019. The rural Community of Parán guarantees  
14 the development of the activities of the mining  
15 company through the access road of the Parán Community  
16 as the signing of this minutes, guaranteeing social  
17 peace within the company." Yes?

18 A. That's what the agreement says, correct.

19 Q. You felt it was not necessary to indicate  
20 that the Lacsanga Access Road would also be made  
21 available?

22 A. No. Again, because the first part of the

1 same agreement says "The parties agrees that the rural  
2 Community of Parán will suspend all coercive  
3 measures," meaning lifting the blockade "as of this  
4 date." That's what the first breach of the agreement,  
5 "which would be ratified by the community assembly on  
6 March 2nd." Period.

7 Then there's another sentence that says that  
8 they would allow us, "guarantees the development of  
9 the activities of the mining company through the  
10 access road of the Parán Community".

11 Thank you. That's what it says.

12 Q. Let's see what were your actions following  
13 the signing of this agreement. Now we go to the  
14 communication that you had with Mr. Arévalo.

15 So turning to Tab 35, second volume. This  
16 is C-619. This is a conversation of 27 February, so  
17 the day after you had signed the agreement.

18 Do you recall this conversation that you had  
19 with your colleague?

20 A. Yes.

21 Q. Okay. And he says that he is coordinating  
22 with the Parán over the entrance to the camp. That's

1 the Invicta camp; correct?

2 We can highlight. This is in at 6:40

3 p.m.--I'm sorry, 6:40 a.m.?

4 A. On the 27th, the day after.

5 Q. Yes. You can scroll down. 6:40.

6 ARBITRATOR GARIBALDI: The 27th.

7 MR. GRANÉ: Yes, the day after.

8 ARBITRATOR GARIBALDI: I don't have it yet.

9 MR. GRANÉ: It's page--there are no page  
10 numbers, so you have to go by date and time.

11 So if you continue down until date 27, 6:40  
12 a.m.

13 ARBITRATOR GARIBALDI: I have 27, 9:44. 27,  
14 9:46.

15 PRESIDENT CROOK: I have the same problem.

16 MR. GRANÉ: Apologies. Let's see if there  
17 was an error in printing. In any event, we have it on  
18 the screen.

19 ARBITRATOR GARIBALDI: The following--

20 MR. GRANÉ: Yes, the following day.

21 ARBITRATOR GRIFFITH: We only have two  
22 entries.

1 MR. GRANÉ: Yes. 6:40 a.m.

2 PRESIDENT CROOK: Apologies for not being  
3 able to find this in what is actually a rather long  
4 document.

5 MR. GRANÉ: It's unfortunate, it doesn't  
6 have page numbers which is why we have to go by date  
7 and time.

8 PRESIDENT CROOK: All right. So we're on  
9 the--

10 ARBITRATOR GARIBALDI: I think we were  
11 looking at January.

12 BY MR. GRANÉ:

13 Q. Okay. Since we are all there, now, I  
14 believe, so at 6:40, you started this exchange with  
15 Mr. Arévalo, and you--Arévalo says, "I am coordinated  
16 with Marco."

17 Is that Marco Estrada?

18 A. Yes.

19 Q. Also part of your team?

20 A. Yes.

21 Q. You are discussing access to the Campamento.  
22 So the camp?



1       A.     The mining company. Mining camp.

2       Q.     He says, I already sent him the photo of the  
3   Acta, it says in Spanish. How has it been translated?

4       A.     The minutes.

5       Q.     The minutes.

6             Do you understand that reference to be to  
7   this 26 February 2019 Agreement?

8       A.     Yes. Sure.

9       Q.     Mr. Arévalo tells Mr. Estrada that you can  
10   go as of today through Parán; correct?

11      A.     I am not seeing that.

12      Q.     6:41 a.m., 33 seconds.

13      A.     So I told him that it was possible to  
14   transit from Parán to the--yeah.

15      Q.     So on the very next day of the signing of  
16   this agreement, your team is discussing access to the  
17   camp through Parán, pursuant to the agreement.

18      A.     Yes. Exactly. I believe through the  
19   Lacsanga road it was not possible at that time.

20      Q.     Let's go to a few days later, on March 2nd.  
21   This is page 21, the same document, but again, we're  
22   going to have to go by date and time. March 2nd,

1 starting at 5:28, and we're going to put it up on the  
2 screen so that perhaps that helps you in locating it  
3 on the hard copy.

4           So there we are. You see it on the screen.  
5 Hopefully, you found it in your hard copy.

6       A.     Yes.

7       Q.     Once again, this is a conversation between  
8 you and Mr. Arévalo; correct?

9       A.     Yes.

10      Q.     And Mr. Arévalo is telling you on that day,  
11 2nd March, that he has been told that it has been  
12 lifted. So he's referring to the blockade?

13      A.     Where?

14      Q.     5:28 p.m., 31 seconds.

15      A.     Yeah.

16      Q.     And then you respond, yes, Nilton, referring  
17 to Mr. León, has called me, and they lifted it, and we  
18 are coming in tomorrow.

19           Do you see that?

20      A.     What it says--this is as far as I can see,  
21 lifted, it says that they were already--at 5:28, this  
22 is in Spanish, I ask--he asked me, is there any news,

1 and I--says I have been told he got up, meaning  
2 Mr. Estrada. He went up--it doesn't mean they lifted  
3 the blockade. He was able to go to the mine. That's  
4 what he says.

5 Then I answered him, yes. My name is  
6 Nilton. Doesn't make any sense. My name is Felipe.

7 Q. It's a poor translation. Let's perhaps do  
8 the following. I have the Spanish original.

9 A. Let's go forward please.

10 ARBITRATOR GARIBALDI: Could you go to the  
11 Spanish original, please.

12 MR. GRANÉ: Yes.

13 For the benefit of the record, I can read  
14 the Spanish, and with the assistance of the  
15 interpreters, perhaps we get a better translation of  
16 this exchange or perhaps let me just confirm.

17 BY MR. GRANÉ:

18 Q. Your exchange with Mr. Arévalo was in  
19 Spanish; yes?

20 A. Absolutely.

21 Q. The original is in Spanish, and, we are  
22 dealing with a poor translation. Let's see if we can

1 get a better translation through Daniel and Silvia.

2 Do you have it up on the screen in Spanish  
3 now?

4 A. It's not in the binder, no?

5 Q. So now we have it in Spanish on the screen.

6 So 2nd March, 5:28 p.m., with 9 seconds,  
7 Arévalo asks you, Felipe--

8 PRESIDENT CROOK: Counsel, might I suggest  
9 you read it in Spanish. We'll listen to the  
10 interpretation, and then we won't take any more time  
11 on this.

12 MR. GRANÉ: Indeed.

13 BY MR. GRANÉ:

14 Q. (In Spanish.)

15 Luis Felipe--

16 (In English.)

17 Can I make corrections to typographical  
18 errors? Because "Igona" doesn't make any sense, so I  
19 will correct the typos, and I'm sure that opposing  
20 counsel will correct me if I go beyond the  
21 typographical error.

22 ARBITRATOR GRIFFITH: Who is this Nilton

1 person?

2 MR. GRANÉ: This is Nilton León from the  
3 OGGS, the same individual we had been referring to in  
4 the other exchange.

5 BY MR. GRANÉ:

6 Q. (In Spanish.)

7 Luis Felipe, did you get any news?

8 And--

9 (In English.)

10 I'm sorry, Mr. Arévalo continues a few  
11 seconds later.

12 (In Spanish, overlapping with  
13 interpretation.)

14 --since I have been told--

15 (Clarification requested by the Realtime  
16 Stenographer.)

17 THE INTERPRETER: It's the Spanish court  
18 reporter modifying, telling him to not--

19 MR. GRANÉ: (In English.)

20 Here we go.

21 (In Spanish.)

22 Arévalo. Luis Felipe, did you get any news?

1           Arévalo continues, at 5:28:31, for I have  
2 been told that it was lifted.

3           Then, 5:29:42, Luis Felipe, yep. Nilton  
4 called me that they lifted it. We'll go in tomorrow.

5           ARBITRATOR GARIBALDI: For the benefit of my  
6 colleagues of the Tribunal, "se levantó," "se  
7 levantaron" means it was lifted or they lifted, and of  
8 course, the reference here in context is to the  
9 blockade.

10           BY MR. GRANÉ:

11           Q.     5:29:55, Arévalo. Okay. 5:30:15, Arévalo,  
12 and so, tomorrow you will go up or they will go up  
13 through Parán?

14           5:30:41, Luis Felipe, yep. I've already  
15 coordinated with Marco and the others.

16           5:32:03, Arévalo, missed video call.

17           5:33:11, Arévalo, the question of the  
18 conditioning, 5:33:19, to use the Parán road.

19           5:33:27, Arévalo, how is that going to be  
20 done?

21           5:34:17, Arévalo, the Lacsanga road is in  
22 poor condition.

1           5:34:31 seconds, Arévalo, at least one week  
2 of work is needed?

3           (In English.)

4           And I think it switches to another  
5 discussion.

6           PRESIDENT CROOK: Sorry, counsel, I'm  
7 looking at the same document toward the back, and  
8 there seems to be a reference to something being only  
9 available on a moto. Is that the access to the site  
10 we're talking about?

11          MR. GRANÉ: That is our understanding,  
12 Mr. Chairman.

13          PRESIDENT CROOK: So even on the Parán road  
14 at that time, there was no vehicle access.

15          MR. GRANÉ: No. Apologies.

16          Our understanding is that the vehicle access  
17 through Parán was possible. It was the Lacsanga road  
18 that was not available.

19          PRESIDENT CROOK: Okay. Well, I don't want  
20 to take up your time. I thought there was some  
21 testimony that people had to then walk in, but we'll  
22 look at that later.

1           ARBITRATOR GARIBALDI: Can the witness  
2 clarify, in answer to the President's question?

3           THE WITNESS: Sure.

4           Thank you.

5           No, there was no access, vehicle access for  
6 either way. The Lacsanga road was blocked. It was  
7 still blocked, and it was sands and rocks, and the  
8 Parán road, there was missed lots, it was impossible  
9 to go by vehicle. Thus you had to go by motorcycle to  
10 a certain point, and then you had to walk the last  
11 three or four kilometers.

12          ARBITRATOR GRIFFITH: Did you say  
13 motorcycle?

14          THE WITNESS: Sorry?

15          ARBITRATOR GRIFFITH: Motorcycle access  
16 only.

17          THE WITNESS: Correct, motorcycle up to a  
18 certain point, and then you had to walk. There was no  
19 vehicle access at all.

20          BY MR. GRANÉ:

21          Q.     Okay. So let's see if we can go back to  
22 what was the result of that agreement on 26 February



1 2019 as reflected by--

2 PRESIDENT CROOK: Counsel, let me interrupt  
3 you. Would it be convenient for you if we took our  
4 break a few minutes early, and did our ten minute  
5 break at this point? Would that be all right?

6 MR. GRANÉ: Yes, Mr. President. Of course.

7 PRESIDENT CROOK: All right. Let's do that.  
8 Let's take our scheduled ten minute break at this  
9 time.

10 Mr. Bravo, of course, you remain in your  
11 isolated state.

12 (Whereupon, there was a recess in the  
13 proceedings, 11:01 a.m. - 11:12 a.m.)

14 PRESIDENT CROOK: All right. So we resume  
15 the examination of Mr. Bravo.

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

17 BY MR. GRANÉ:

18 Q. So this exchange that we've looked at, it  
19 confirms that the access to the mine had been provided  
20 by Parán pursuant to the agreement, and that this had  
21 been recognized also not only in the exchanges that  
22 you had with your team, but also publicly by the

1 company; yes?

2 A. Yes. Access.

3 Q. Okay.

4 Let's look at--so we looked at the press  
5 release of 4 March 2019 that confirmed that. Not  
6 going to go back to that. It's on the record.

7 But let's look at another document also  
8 dated March 4 that confirms this situation, that  
9 access had been granted, and the illegal demonstration  
10 had ended.

11 This is AC-6, which is found at Tab 36 of  
12 your binder.

13 And this is Lupaka's management discussion  
14 and analysis that was published in April 2019 to  
15 SEDAR, the Canadian securities registry.

16 But on page 3, there's many bullet points on  
17 this page. It starts with overall performance, and  
18 about halfway down, and we'll highlight it on your  
19 screen, there's a bullet point that refers to March  
20 4th, 2019, and it says here, the company is saying  
21 here to the Canadian authority, that the company  
22 announced the end of the illegal demonstration at

1 Invicta, and that access to the Invicta site had been  
2 restored.

3           So this is what is being said at the time,  
4 but it was your position, Mr. Bravo, and by your, I  
5 mean on behalf of Invicta, that there had been no  
6 compliance with the 26 February 2019 Agreement.

7           Is that your testimony?

8       A.    No compliance.

9       Q.    No compliance?

10      A.    Sorry? No complaints or--

11      Q.    Compliance.

12      A.    Meaning at that time we were  
13 struggling--or--yes, struggling, because the blockade  
14 remained at that time.

15      Q.    So that's--I'm sorry to interrupt. That's  
16 what I'm trying to get at. You said that the blockade  
17 remained at that time.

18           So, my question is: You believed at the  
19 time that the blockade remained, and therefore, that  
20 Parán had not complied with the agreement.

21           Is that your testimony?

22      A.    On March 4, yes.

1       Q.     Okay.  Despite what the company was saying  
2 to the authorities?

3       A.     It says that--well, yes.

4       Q.     Okay.  Let's move to C---well, in the  
5 interest of time, let's move to the other side--the  
6 other component of the 26th of February agreement.  So  
7 we have been speaking about the access road.  Let's  
8 move to the other component, which is topographical  
9 survey.

10            ARBITRATOR GARIBALDI:  Before we move on  
11 this topic, there is a very important point here.

12            On March the 24th, there was an announcement  
13 that the illegal demonstration has been lifted, and  
14 then there is another announcement on March 21st, that  
15 the Community of Parán had failed to honor the  
16 commitment to provide continuous access to Invicta.

17            What does that mean?  Do you mean that the  
18 blockade was lifted for a week--a little more than a  
19 week, from March 4th to March 21st, or that the  
20 initial understanding of the company that the blockade  
21 had been lifted was incorrect, and the blockade had  
22 never been lifted.  One of the two; which one is it?

1           THE WITNESS: The second one, because  
2 we--the blockade was never lifted. They gave us  
3 access through the dirt road, walking to the site of  
4 the mine. The blockade was never lifted.

5           Despite of the--what the press release says,  
6 despite of the timing of the press releases because  
7 they don't companion with the actual date that  
8 happened, but in--the blockade was never lifted.  
9 That's the position we have.

10          ARBITRATOR GARIBALDI: So the information  
11 you received that the blockade had been lifted was  
12 incorrect; is that what you are saying?

13          THE WITNESS: No. I never received any  
14 information that the blockade had been lifted. The  
15 information I got was that we got access to the mine.  
16 At first--

17          ARBITRATOR GARIBALDI: No, no, no, no. Wait  
18 a second.

19          THE WITNESS: --on March 2nd.

20          ARBITRATOR GARIBALDI: We just saw a text  
21 message exchange which said that it had been lifted.  
22 That was incorrect?

1           THE WITNESS: The interpretation was  
2 incorrect. What he said, what Arévalo told me--I  
3 mentioned to Mr. Arévalo was that the assembly that  
4 was supposed to be--was to took care on March the 2nd  
5 agreed to lift the blockade, the assembly. That's  
6 what I'm telling Mr. Arévalo.

7           ARBITRATOR GARIBALDI: I see.

8           THE WITNESS: They gave us access to the  
9 mine, and we were able to go to the site on March 2nd.

10          ARBITRATOR GARIBALDI: All right.

11          THE WITNESS: The blockade remains. That's  
12 the position. They never took off the tents. They  
13 just allowed us to get into the mine, but the rocks  
14 and the tents remained in the same place.

15          ARBITRATOR GARIBALDI: All right. Thank  
16 you.

17          ARBITRATOR GRIFFITH: Mr. Bravo, was the  
18 access issue that the rocks on the road stopped access  
19 other than to motorbikes?

20          THE WITNESS: Sorry?

21          ARBITRATOR GRIFFITH: Sorry. What's your  
22 definition of lifting, clearing it for motorbikes or

1 clearing it for trucks or clearing out everything?

2 THE WITNESS: Clearing everything.

3 Everything. Clearing the tents, clearing the rocks  
4 that they put in the middle of the road. That's the  
5 definition of lifting the blockade. Nobody allowing  
6 the people that was there guarding this blockade would  
7 have to be taken out. But still, they were--they were  
8 still there, and they just allowed a companion with  
9 the Parán people to get up the site to the mine.

10 ARBITRATOR GRIFFITH: Was the access limited  
11 to motorbikes because of the rocks on the road?

12 THE WITNESS: Yes.

13 ARBITRATOR GRIFFITH: Because of the  
14 condition of the road?

15 THE WITNESS: Yes.

16 ARBITRATOR GRIFFITH: Which one?

17 THE WITNESS: It was basically the two of  
18 them. The conditions were not able for us to go on a  
19 vehicle, and also there was people from Parán guarding  
20 the entrance, this blockade place.

21 So it was impossible either going on a  
22 vehicle, and the only way to get in was walking with

1 the Parán people that allowed us access to the mines.

2 But the blockade remained there, so  
3 the--yeah, the blockade remains. It is not that they  
4 lifted the blockade. They don't remove the tents or  
5 remove the rocks there or even went out. The people  
6 remained there blocking the access.

7 ARBITRATOR GRIFFITH: But the Parán people  
8 were only responsible for the blockade, weren't they,  
9 not for the condition of the road.

10 THE WITNESS: No, they put rocks on purpose  
11 to avoid us trying to get into the mine, if the road  
12 was passable.

13 ARBITRATOR GRIFFITH: I thought I already  
14 asked you about that. One way of blocking the road is  
15 to have rocks. Another way to make the road  
16 impassable, is the road's condition makes it  
17 impossible to drive a truck. Which is the problem?

18 THE WITNESS: In this, both are the problem.  
19 Basically depends on what part of the road. I cannot  
20 tell you right now if the specific part where the  
21 blockade was established, there was a problem with the  
22 rainfalls and everything else.



1           But the whole road, the whole Lacsanga road  
2 was impossible to drive through, and--but specifically  
3 on the blockade, what we were expecting for them to  
4 take out the tents and the rocks that they placed  
5 there to avoid and prevent us from getting in.

6           ARBITRATOR GRIFFITH: Apart from the places  
7 of the blockade, do you say that the people of Parán  
8 are responsible for the condition of the road?

9           THE WITNESS: In somehow, the rocks they put  
10 in, and--

11          ARBITRATOR GRIFFITH: I'm not talking about  
12 the rocks they put in.

13          THE WITNESS: Mm-hmm.

14          ARBITRATOR GRIFFITH: Ignore the rocks they  
15 put in, but for the rest of the road up to the mine,  
16 do you say that the Parán people were responsible for  
17 it being impassable?

18          THE WITNESS: No.

19          PRESIDENT CROOK: I keep besieging you with  
20 details, sir.

21                I'm a little confused. I thought--I was  
22 under the impression that the initial trip up on moto

1 was up the Parán road; is that correct?

2 THE WITNESS: It is correct.

3 PRESIDENT CROOK: So the first  
4 reconnaissance went up the Parán road. Okay. Thank  
5 you.

6 MR. GRANÉ: Thank you.

7 BY MR. GRANÉ:

8 Q. Mr. Garibaldi mentioned the event of the  
9 21st March, and it's connected to the issue of the  
10 topographical study, which is what I'm hoping we can  
11 get to, in hopefully not too many minutes.

12 So there was the text on the 26th February  
13 2019 agreement that referred to a topographical study,  
14 and there's also disagreement between the parties  
15 about what that meant.

16 The position of the company, and correct me  
17 if I'm wrong, but the position of the company is that  
18 the purpose of the topographical study was to conduct  
19 an environmental assessment of how the Parán territory  
20 had been impacted by the mine; is that correct?

21 A. No. Not environmental.

22 We specifically avoid the word

1 environmental.

2           In the meeting we had in January, January  
3 29, if I recall well, we couldn't come to an agreement  
4 because they insisted that we include the words  
5 environmental damages. And we refused firmly that we  
6 cannot recognize any environmental damage because,  
7 first, we're not an authority--we're not the experts  
8 on doing that, and secondly, because simply, we don't  
9 recognize any environmental damages on their property  
10 at that time.

11           So at the meeting on February 26, there was  
12 some discussion about it. Finally they accepted to  
13 not include the words environmental damages in there,  
14 so the topographic study was supposed to be to  
15 identify the potential damages that the operation or  
16 the construction of the mine brought to Parán.

17           Identify, including--and there was a  
18 discussion about it, and the draft mentioned a  
19 specific location called Piscocalla (phonetic) that is  
20 part of what Parán says is a conflicted area, meaning  
21 that the boundaries are not specified, according to  
22 Parán.

1           That's where they wanted us for the survey  
2 to be conducted in order to determine if in that  
3 specific area there was damages, and where is that  
4 located, specifically, we sent the topographer.

5       Q.     So no mention of environment, and no mention  
6 of OEFA which is the environmental agency; correct?

7       A.     As far as I recall, we all wanted OEFA to go  
8 up there to verify that, but I don't recall exactly if  
9 the agreement finally said OEFA, but I think no.

10      Q.     You don't recall earlier drafts of the  
11 agreement that had OEFA?

12      A.     For sure. That's what I mentioned. In the  
13 previous--in the meeting we had--we held in January  
14 29, there were discussions about it, and we agreed  
15 that the OEFA could go up and verify that.

16           In the draft, as far as I recall, that  
17 actually drafted, the representative and the mining  
18 industry, we included that, but they refused to sign  
19 it because they didn't want to agree to lifting the  
20 blockade. They didn't want to agree to take out the  
21 words environmental damages.

22      Q.     Okay. Good. I think we're getting there.

1 I think we're going to--we are finally in agreement  
2 about the history and the drafting, and let's put up  
3 the document to see the language that did end up, that  
4 doesn't mention OEFA as you have correctly indicated.

5 Can you put up C-200 again, please. Just to  
6 look very quickly at what it says in relation to the  
7 topographical study. It's Tab 29, if you want to see  
8 it in hard copy, but we'll put it up on the screen.

9 Okay.

10 So that's Paragraph 4 of the agreement  
11 section, and indeed, there's no mention of the OEFA  
12 that would have conducted the environmental  
13 assessment.

14 There is mention of the topographical  
15 survey. It says, to identify and locate the affected  
16 land in Parán.

17 You recall that there was, then, a  
18 disagreement concerning who was going to pay for the  
19 topographical study, a survey, that had been agreed.

20 Do you recall that?

21 A. No. There was no disagreement. I mean, it  
22 was not established in the agreement, but somehow it

1 was--that was why I asked Mr. Estrada to go and talk  
2 and discuss with the president of Parán on the 15th,  
3 how we were going to proceed with the topographical  
4 survey on the 20th.

5 Q. I don't understand when you say that there's  
6 no disagreement. The parties agreed who was going to  
7 pay the topographer?

8 A. I said there's no disagreement. There is  
9 no--it hadn't been established. It's not that we  
10 agreed or disagreed who was paying the fees. It just  
11 that it wasn't established in the agreement, and  
12 that's why I asked Mr. Estrada to go on the 15th and  
13 discuss those topics, and the scope of the  
14 topographical study with Mr.--

15 Q. Let's see if I put it differently, and see  
16 if we can get some common ground.

17 Did Parán say that Invicta had to pay for  
18 the topographical survey?

19 A. Not at the meeting.

20 Q. I'm not saying about the meeting. We are  
21 trying to understand--we read the agreement. Now  
22 we're trying to understand how that was implemented.

1           And the disagreement that arose as a result  
2 of the different interpretations of the agreement?

3           A.     On March 15, when Mr. Estrada went to talk  
4 to the president of Parán, there was a disagreement,  
5 not necessarily for the--it wasn't about the amount of  
6 money. It was about the scope of the work.

7           I mean, aside of if we are in agreement or  
8 not with the amount of the study, the main issue was  
9 what was it going to be the survey about.

10           We never talked about the road. A survey  
11 for a road probably costs \$200- or \$500,000. It's not  
12 what we are talking about. We're talking about the  
13 scope of the agreement. What was agreed.

14           Q.     Mr. Bravo, I'm asking a very simple  
15 question.

16           Was there a disagreement between the parties  
17 about who was going to pay for the topographical  
18 study; yes or no?

19           A.     As I mentioned, yes.

20           Q.     Okay. Thank you.

21           A.     On March 15.

22           Q.     Okay. Thank you. So there was a

1 disagreement about that.

2 Do you recall the amount of the  
3 topographical survey; how much it would have cost, the  
4 survey?

5 A. In between 30 and 35,000 soles.

6 Q. Would it be fair to say to that is at the  
7 exchange rate, roughly \$9,000?

8 A. Fair enough, yes.

9 Q. Okay.

10 So before you have--because you have  
11 indicated that there's this disagreement in March 15,  
12 we don't have to take you to the documents, that, in  
13 fact, reflect that there was a disagreement between  
14 the parties about who was going to pay for that  
15 survey. On the one hand, Parán was saying, you,  
16 Invicta should pay for it, and Invicta, on the other  
17 hand, was saying, I will not pay for that survey.

18 There was the issue of the scope of the  
19 survey, which also was another point of disagreement.

20 Are you with me so far?

21 A. Yes.

22 Q. Okay. Let's move on to what were the



1 consequences of that disagreement.

2           So you said March 15th, disagreement between  
3 the parties concerning the topographical survey.

4           Do you recall that the survey was supposed  
5 to take place on the 20th of March; yes?

6           A.     That's correct.

7           Q.     Okay. Was the topographical survey carried  
8 out on the 20th of March?

9           A.     No. Mr. Estrada showed up in the main  
10 square of Parán, and there was no Parán officials  
11 there to conduct the survey.

12          Q.     Okay. You recall that in conversations  
13 between the Parán Community and Invicta, a couple of  
14 days before the 20th of March, Parán very clearly  
15 said, you must pay the surveys of the topographer  
16 immediately?

17          A.     I mean, there was this meeting on the 15.  
18 Mr. Estrada and Mr.--the president of the Community of  
19 Parán. We got what we just mentioned, and then on the  
20 19th, the CEO, Will Ansley and myself drove down to  
21 Huacho to meet with Mr.--the president of Parán, and  
22 the two other representatives. We had a long meeting

1 with them, and we tried to understand their concerns  
2 because our intention again was dialogue, we want to  
3 come to an agreement with them somehow.

4           We offered them several things, and at that  
5 point in time, they started throwing on the table  
6 several other requirements that were not discussed  
7 before.

8           Specifically, yes, they asked for us paying  
9 for the survey, yes.

10       Q.     Thank you.

11           Indeed, that meeting of the 19th March is  
12 documented. There's evidence on the record, and in  
13 the interest of time, since you've mentioned it, we  
14 don't need to go there to refresh your memory.

15           On the 19th of March, Invicta did not offer  
16 to pay for the topographical survey?

17       A.     We told them it should be part of the  
18 agreement, yes.

19       Q.     No, that didn't answer my question.

20           On the 19th of March, did Invicta offer  
21 Parán to pay for the topographical survey that was  
22 supposed to take place the next day; yes or no?

1       A.     We didn't offer that directly. It was part  
2 of the general agreement.

3       Q.     You didn't offer directly to pay for the  
4 survey.

5       A.     That's correct.

6       Q.     Do you know what happened the next day on  
7 the 20th of March, when the topographical survey was  
8 supposed to take place.

9       A.     Two things. First, we showed up as I  
10 mentioned before, in the main square of Parán to  
11 conduct the topographical study, but the Parán people  
12 have gone up to the mine and evict all our employees  
13 and take them out, and established the whole problem.

14      Q.     So that happened on the 20th of March. So  
15 on the 21st of March, there was--the blockade was  
16 installed as you just indicated; yes?

17      A.     The blockade--well, the blockade was never  
18 lifted, so the blockade was still there. They evicted  
19 the people from the mine camp.

20      Q.     Okay.

21             ARBITRATOR GRIFFITH: Counsel, may I ask a  
22 question?

1           MR. GRANÉ: Of course.

2           ARBITRATOR GRIFFITH: Mr. Bravo, who was to  
3 pay for the topographical survey when you turned up  
4 the next day, if no party had offered to pay for it?

5           THE WITNESS: That's--again, that hadn't  
6 been discussed. We didn't discuss that on the meeting  
7 on February, and that's why I sent Mr. Estrada to talk  
8 to Parán people to check what was the scope of the  
9 work, is what was the amount to be paid.

10           In all fairness, we understood from the  
11 first, we will have to pay for that. The Parán people  
12 don't have any money. It was a matter of the scope of  
13 the work, and it was a matter of what--who was going  
14 to do the topographical study.

15           ARBITRATOR GRIFFITH: Can we assume that  
16 whoever was to carry out the topographical survey  
17 would not carry it out if neither party was putting up  
18 its hand to pay for it?

19           THE WITNESS: Yeah.

20           ARBITRATOR GARIBALDI: Mr. Bravo, I believe  
21 you said at some point that the topographical survey  
22 of the road through Parán to the mine would be

1 something like 200- or \$300,000.

2 THE WITNESS: Probably, yes.

3 ARBITRATOR GARIBALDI: That is very  
4 different from the cost of the survey that you are  
5 talking about here.

6 THE WITNESS: Correct.

7 ARBITRATOR GARIBALDI: So how could it be  
8 possible to have a--as a matter of--not of the  
9 agreement, but as a matter of what is feasible.

10 How would it be possible to have a surveyor  
11 survey the road for that amount of money?

12 THE WITNESS: That was the question. That  
13 was part of the meeting that we held with the Parán  
14 people on the 19th.

15 It didn't make sense at all, and that's part  
16 of our position. The Parán never had the intention to  
17 solve the problem. They were only waiting around, and  
18 moving things around, and see--pretending to come to  
19 an agreement, when there was never an intention for  
20 them to sign any kind of--well, to come to a final  
21 agreement.

22 So--because it didn't make any sense.

1 30,000 soles for a survey. It was nothing. It would  
2 probably have a couple of papers, and a couple of  
3 maps. But it won't solve anything. That was not the  
4 scope of the work that was agreed.

5 Even though that--if we may agree to make a  
6 topographical survey for a road, it won't be enough.  
7 So it was a waste of money, and a waste of time for  
8 everybody.

9 So that was the reason, and that's our  
10 official position again, is that Parán never had the  
11 intention to come to an agreement.

12 So what's why we keep insisting for the  
13 police to intervene. Because they were just buying  
14 time.

15 So when we met with them on the 19th, we  
16 were trying to figure out what was behind this. What  
17 was the reason before that--behind that--behind their  
18 position.

19 And that's what they realized what they  
20 want. That's what they put on the table they want.

21 MR. GRANÉ: Thank you.

22 BY MR. GRANÉ:

1       Q.     So March 20, the Parán--the survey is not  
2 carried out. The Parán Community then goes to the  
3 mine, and lifts--I'm sorry, imposes the blockade.

4             At that time Lupaka decided to hire a  
5 security company; correct?

6       A.     We had been in discussions with them from  
7 before.

8       Q.     Okay.

9       A.     Yes. Not precise the day because that was  
10 carried out directly from the CEO, but I got meetings  
11 with them. Because in any event, any mining company  
12 in Perú needs to have security on-site.

13            Also, the police--you can sign an agreement  
14 with the police for them to protect your interests,  
15 and put policemen on your facility. So you need  
16 security anyway.

17       Q.     You didn't have security before?

18       A.     I don't recall having security guards on the  
19 front gate, but not security like we should be--like  
20 any mining company in Perú has.

21       Q.     So you didn't have--well, let me be clear  
22 because you said, "I don't recall having security like

1 any mining company in Perú."

2           You don't recall, and I want to make sure.

3           Did you have or did you not have security at  
4 the site like any mining company in Perú would?

5       A.     No.

6       Q.     You didn't have?

7       A.     Before the--before the events on October 18,  
8 2018, no.

9       Q.     Okay. So at some point, you decide to hire  
10 a security company like any other mining company in  
11 Perú would, and you decide that it shouldn't be just  
12 any regular security company, but it had to be a  
13 special security company; correct?

14      A.     That's correct.

15      Q.     Okay.

16            You decide to hire an expensive security  
17 company; correct?

18      A.     I wouldn't say expensive. It's just like  
19 the average price.

20      Q.     Okay. Let's go to Tab 42, second volume,  
21 Exhibit R-0259, please.

22            This is an e-mail from Mr. Bravo to Will



1 Ansley, and we're going to look in particular at the  
2 last paragraph on that page in which you say to  
3 Mr. Ansley, of Claimant, "It's critical to hire  
4 security. I don't think that a regular security  
5 company will help us at this point. It's either the  
6 expensive War Dogs, or our own security people from  
7 Lima."

8 Do you see that?

9 A. Yes. Referring to--not compared to what we  
10 had or the regular--meaning the guards on the gates.

11 Q. Okay.

12 A. That's what I was referring to.

13 Q. Do you recall how much Invicta paid to hire  
14 the expensive War Dogs?

15 A. I guess their contract was for several  
16 months. It was for around 200,000, maybe. Soles.

17 I don't recall exactly, but my recollection  
18 is that the agreement was for that amount.

19 ARBITRATOR GRIFFITH: Is that for the day or  
20 the week?

21 THE WITNESS: Excuse me?

22 ARBITRATOR GRIFFITH: Is that for the day or

1 the week?

2 THE WITNESS: No. For several. For a long  
3 period of time. For three months, if I recall well.

4 BY MR. GRANÉ:

5 Q. Would 450,000 soles sound more accurate to  
6 you?

7 A. Again, I don't recall, but if that's what  
8 the document says, that's the amount.

9 Q. It's a big difference between 200 and 450.

10 A. If--

11 Q. Let's put up just for the record. Tab 43,  
12 Exhibit 361. Just--you know, right behind the one  
13 that we just looked at.

14 This is a draft contract between Invicta and  
15 War Dogs. It's titled Security and Surveillance  
16 Contract. It goes on to indicate towards the end, you  
17 see that there are various amounts, but the first line  
18 indicates that the total is 450,000.

19 We're going to highlight this because it's  
20 on the second page at the top, and you have it now on  
21 your screen.

22 A. Yeah. My lack of memory was because the

1 first two payments, as you see end up in the 200,000.  
2 That's what I recall. That's what I actually paid, if  
3 I recall well.

4 Q. So the--just--again, for the record, the  
5 exchange rate at the time was such that 450,000 soles  
6 was equivalent to \$135,000?

7 A. Roughly, yes.

8 Q. Okay. You had agreed with the War Dogs that  
9 they should only enter the site in coordination with  
10 the police; correct?

11 A. That's correct.

12 Q. Okay.

13 A. Sorry, just to clarify an answer to one of  
14 the Arbitrators' questions. What was the time frame  
15 for the agreement? Can you show me that?

16 Q. We can show you the first page. What the  
17 time frame was ultimately, we don't know. That's  
18 information that the company had, which we requested  
19 in document production, but this is what we got.

20 A. There's no time frame in the agreement?

21 Q. We asked for documents, Mr. Bravo, and  
22 Claimant produced this.

1       A.     But if we go through the document, we can  
2 find the--

3       Q.     Yeah. You have it in hard copy, if you also  
4 wish to take a look. It says at the end, you will see  
5 that it says 23rd April 2019, when this was signed.

6       A.     Show it to me.

7       Q.     At least in the draft. Again, the Claimant  
8 has not produced the final. There's no duration  
9 clause.

10            ARBITRATOR GRIFFITH: Mr. Bravo, it seems  
11 you provided 370,000 soles over a 30-day period.

12            THE WITNESS: Yep.

13            BY MR. GRANÉ:

14       Q.     Okay.

15            So we had--I had asked you, and you  
16 responded that the War Dogs were supposed to enter the  
17 site only in coordination with the police, but that is  
18 not what happened on 14th May 2019; correct? The War  
19 Dogs entered the site without the police escort?

20       A.     That's correct, because there was nobody at  
21 the blockade.

22       Q.     Okay. You remember having a conversation

1 with the War Dogs, and them asking you whether they  
2 could enter the site despite--

3 A. No.

4 Q. --the fact that the police presence was  
5 absent?

6 A. No.

7 Q. You don't--

8 A. I--we had two conversations.

9 The night before, when I specifically  
10 instructed not to get in without the police, and the  
11 day before when they called me, they told me that they  
12 reached the mine, and I asked them, is the police with  
13 you. And they said, they are coming.

14 That's the two conversations I had with  
15 them.

16 Q. Okay.

17 They asked you--you asked them whether the  
18 police officers were with them, and you asked that  
19 because your previous instructions had been, you can  
20 only enter the site with the police; yes?

21 A. That's it, yes.

22 Q. At that point, when the War Dogs call you

1 and say, we're here, there's no police. Despite your  
2 previous instructions, you didn't say, don't go in.  
3 There's no police. It was a requirement to go in with  
4 the police?

5 A. The police were late. They were already  
6 there. So it was don't go in.

7 In those circumstances, the fact that there  
8 was nobody on the blockade, and they were already  
9 walking into an empty house--in our empty house.

10 Q. So the War Dogs, therefore, did not follow  
11 your instructions; is that correct?

12 A. I can say--you can say that, yes.

13 Q. Okay. One question: Did you at that point  
14 tell the War Dogs leave the site since the police is  
15 not present?

16 A. No.

17 Q. Okay. Just quickly, since you mentioned  
18 that no one was there, you were not there; correct?

19 A. No.

20 Q. Okay. So no one was there- Is the  
21 information that the War Dogs provided to you on that  
22 day when you had the conversation with them?

1       A.     There is a video that proves it.

2               (Clarification requested by the Realtime  
3 Stenographer.)

4       Q.     The War Dogs also told you that there were--  
5 shots fired by Parán on that date while the War Dogs  
6 were there?

7       A.     After that, yes. A couple of hours after I  
8 got the call, and also to clarify, Mr. Estrada was  
9 also with them. He actually shot the video, and  
10 somebody else shot the video.

11               They called me two or three hours later to  
12 tell me that they were running out because the Parán  
13 people showed up shooting them.

14       Q.     Okay.

15               You're aware that there was a police report  
16 also from that same day that provides a different  
17 account?

18       A.     The police report just recollects what the  
19 Parán people says.

20       Q.     Okay.

21       A.     And that's their statement, and we have our  
22 statement.

1       Q.     Exactly.  You have the statement of Estrada,  
2 and the War Dogs, and you have the statement of the  
3 Parán representative that went to the police station  
4 that day, and made the report; yes?

5       A.     That's correct.

6       Q.     For the record, this is a police report of  
7 that day, 14 May 2019, and it is R-0262.

8             ARBITRATOR GRIFFITH:  What tab number?

9             MR. GRANÉ:  It is I believe 44,  
10 Mr. Griffith.

11            In the interest of time, given that there's,  
12 I believe, common ground on this--on the facts, I will  
13 not continue asking about this.

14            But it is Tab 44, R-0262, from that day, 14  
15 May 2019, in which the Parán representatives say, "The  
16 reason for the blockade was that at around 2:30, about  
17 50 strangers entered the Invicta Mine Corp. firing  
18 shots with a firearm, causing a confrontation, which  
19 is why he called the superior authority."

20            Then it carries on.

21            BY MR. GRANÉ:

22       Q.     A few weeks after the confrontation, after



1 this, you know, 14 May 2019 event, the Parán Community  
2 requested the closure of the mine; correct?

3 A. That's what we were informed.

4 Q. Okay. Just for the record--just for the  
5 record, two things: The video that you refer to, can  
6 we have the reference for the record, which it's a  
7 video from Mr. Estrada--it was shown on the first day.

8 PRESIDENT CROOK: It is--it has been shown.  
9 It's in the record.

10 MR. GRANÉ: Yes. Okay. Excellent. It  
11 shows the tents. It's C-362. Just for the record, in  
12 case you wish to see the video again, since Mr. Bravo  
13 has referred to it.

14 For the closure of the mine that was  
15 requested, also for the record, this was a few weeks  
16 after this event, 2nd July 2019. It's in Tab 45,  
17 C-221, but again, given that there's common ground on  
18 this, I will not ask questions.

19 I'm conscious of the time, and I wish to  
20 wrap up very shortly, Mr. President, which is why I'm  
21 trying to advance the discussion.

22 BY MR. GRANÉ:

1       Q.     After the Parán Community requested closure  
2 of the mine, Invicta finally did accept to pay for the  
3 topographical survey; correct?

4       A.     Sorry. Can you repeat your question?

5       Q.     After the--after Parán requested the closure  
6 of the mine, did Invicta agree to pay for the  
7 topographical survey that we had discussed a few  
8 minutes ago, that came from the--from the February  
9 2019 agreement?

10      A.     If it's--if that's what the document says,  
11 which was the document that I prepared, that was part  
12 of the discussion that we had with the government  
13 officials trying to solve the situation. It was part  
14 of the general agreement, but I don't recall precisely  
15 that we offered in that meeting to pay for the  
16 topographical survey.

17             Again, supposed to be a part of the general  
18 agreement.

19      Q.     You don't recall, Mr. Bravo, that Invicta  
20 conveyed to the community acceptance to pay for the  
21 topographical survey for the construction of a road  
22 through Parán, and your willingness to negotiate an

1 agreement with the Parán Community, you don't recall  
2 that?

3 A. I do.

4 Q. Okay.

5 A. I do recall that.

6 It started in May--March '19 when we met  
7 with the CEO in Parán. We offered him in those--on  
8 that date.

9 Q. We had discussed the topographical survey,  
10 that you thought that you didn't have to pay for it,  
11 that you thought it didn't make any sense to pay for  
12 the topographical survey to build the road. You said  
13 that in response to Mr. Garibaldi's question.

14 We have seen that--these tragic events of  
15 14th May 2019.

16 Parán as a result says, we want the mine  
17 closed. And then in July, shortly after that request  
18 to close the mine, on 8 July, you asked the  
19 authorities to tell the Parán Community, we're willing  
20 to pay for the survey, and build the road through  
21 Parán.

22 Is that correct? Is that a fair summing up

1 of the events?

2 A. Yes, but you're missing the part where that  
3 offer was made in March '19.

4 Q. Okay. But it was conveyed on 18 July 2019  
5 to the authorities?

6 A. Not conveyed. It was--it was part of the  
7 general discussion we had with the authorities. We  
8 offered that as part of the things that we can offer  
9 to a rural community that is related to the mine.

10 Q. I will try one last time, and then I'll take  
11 you to a document.

12 Was it conveyed at your request on 8th July  
13 2019?

14 A. No. Conveyed? Sorry. That word...

15 Q. Yeah. Let's go to your second witness  
16 statement, Paragraph 156, please.

17 You drafted your witness statement,  
18 Mr. Bravo?

19 A. Yes.

20 Q. Okay. And you understand the meaning of the  
21 word "convey"?

22 A. That's not what it says. It says met with

1 Parán to convey our acceptance.

2 So we somehow--this is not a discussion with  
3 the Parán. So this is a meeting between the MEM and  
4 Parán.

5 Okay, okay. I'll say yes, okay.

6 Q. It's your witness statement, Mr. Bravo.

7 This is not--

8 PRESIDENT CROOK: Counsel, you're  
9 representing that Mr. Bravo represented to this  
10 government. That's not what the document says.

11 MR. GRANÉ: No, that MEM met with Parán to  
12 convey on 8 July the acceptance by Invicta to pay for  
13 the topographical survey for the construction of the  
14 road through Parán.

15 BY MR. GRANÉ:

16 Q. This is your witness statement?

17 A. Yes.

18 Q. Those are the facts. Thank you.

19 Last few questions. Did Lupaka hire a  
20 lawyer--hire and pay for a lawyer to pursue legal  
21 proceedings on behalf of the Lacsanga Community  
22 against the Parán Community?

1       A.     No, as mentioned before, we agreed to  
2 advance payments on the general agreement we had with  
3 Lacsanga for them to be able to conduct their business  
4 and their rights against Parán, and everybody else.

5       Q.     Okay. Do you recall a lawyer by the name of  
6 Faruck Zelada?

7       A.     Yes. I recall him.

8       Q.     Do you recall paying for Faruck Zelada to  
9 provide legal services?

10      A.     For us, yes.

11      Q.     Did Mr. Faruck Zelada provide services to  
12 the Parán Community?

13      A.     I'm pretty sure he did.

14      Q.     In relation to the--in relation to the  
15 blockade?

16      A.     No, in relation with their disputes with the  
17 general other communities, including Parán for sure.  
18 What you have to understand, Huacho is a pretty small  
19 town, so you have to--there are not many lawyers.

20      Q.     Let's look just for the record at C-248, Tab  
21 5. Just very quickly, if we can go to--because the  
22 English will not show, I believe--perhaps it will show

1 the stamp placeholder at the end where--well,  
2 actually, you see that the letterhead--let's do this  
3 very quickly.

4 First page, let's see what this document is.  
5 It's a filing on behalf of the Lacsanga rural  
6 community against members of the Parán Community; yes?

7 A. You're asking me?

8 Q. Yes. It's a question to you, Mr. Bravo.

9 A. Yeah. I guess--I mean, yes.

10 Q. Let's go--if you scroll down, let's see the  
11 letterhead of this filing. Then we'll go to the  
12 Spanish so we can see the original. It's Zelada &  
13 Asociados. Is that the same lawyer that you were  
14 referring to?

15 A. I believe so.

16 Q. Let's go down to the last page, and see if  
17 there's the stamp. There it is. Yes. It has been  
18 reproduced, so it is signed by Mr. Faruck Zelada. And  
19 it's 25 March 2019; yes?

20 A. That's what the document says.

21 Q. So this would have been a few days after the  
22 Parán Community went up to the camp, and again

1 installed the blockade. We talked about the events of  
2 the 20th of March. Okay.

3 Did Mr. Zelada report to you about what  
4 legal services he was providing to Lacsanga in  
5 relation to the dispute with the Parán Community?

6 A. Don't recall precisely if he did or not.

7 Q. Let's look at Tab 25--no, I'm sorry. 26,  
8 which is C-212, which is from Mr. Estrada, to you  
9 dated 27 April 2019. Also, let's look at the--also  
10 the first bullet point where Mr. Estrada reports to  
11 you that a meeting has been held with the president of  
12 the Lacsanga Community.

13 He informs you that he has delivered the  
14 community plan to the request of the lawyer, Faruck  
15 Zelada.

16 And then the second bullet point, he--the  
17 company holds a meeting with this lawyer, Faruck  
18 Zelada, to inform the ruling against the accusation of  
19 trespassing made by Lacsanga against the Parán  
20 Community, 29 April.

21 This is in relation to inspection that will  
22 be carried out where the Parán Community members are



1 blocking the road to the camp. So it is referring to  
2 the blockade at the camp.

3 Does this refresh your memory about  
4 conversations that the company had with Mr. Zelada in  
5 relation to legal services provided on behalf of  
6 Lacsanga in relation to the blockade?

7 A. Yes. Mr. Zelada following up the actions  
8 that were going on for--from that Community of  
9 Lacsanga, for sure.

10 MR. GRANÉ: Mr. President, we have no  
11 further questions at this time. Thank you, Mr. Bravo.

12 PRESIDENT CROOK: All right. Thank you,  
13 sir.

14 I have a question or two for Mr. Bravo, and  
15 I suspect my colleagues may, but I think the most  
16 efficient would be to proceed with the redirect, and  
17 then we can put to Mr. Bravo any questions we might.

18 Would that be agreeable? Good.

19 All right, let's move directly to the  
20 redirect.

21 Mr. Bravo, you're acquainted with what's  
22 happening here. You will now get a series of

1 questions from lawyers for the Claimant.

2 All right. Thank you very much.

3 REDIRECT EXAMINATION

4 BY MR. GALLEGO:

5 Q. Mr. Bravo, Mr. Garibaldi asked you a  
6 question yesterday on the water treatment system, and  
7 the certification. You mentioned that if a component  
8 was constructed, but without being certified, you  
9 could then regularize--I think that's what you  
10 said--you could regularize it from time to time.

11 Can we go to C-497 to see if this is what  
12 you meant. And you can just comment on that. It's at  
13 Article 71, and this is a regulation of--let's have a  
14 look at the date first. Sorry. Let's have a look at  
15 the date.

16 If you can go to the beginning--if you can  
17 go to the beginning of the regulation so we can see  
18 the date and what it is, exactly.

19 MR. GRANÉ: Mr. President, if I may  
20 intervene because I'm afraid that this may be  
21 recurring.

22 The witness on redirect is being asked to

1 look at a document, and then they are pointing to a  
2 provision, and then they will ask the witness to read  
3 the provision, and provide the understanding.

4 That is leading. That is a way of using  
5 redirect to introduce evidence into the record. That  
6 should be reserved for arguments, Mr. President.

7 ARBITRATOR GRIFFITH: Counsel, shouldn't you  
8 submit this for the Tribunal to read the provisions  
9 and interpret them, and not this witness.

10 MR. GRANÉ: I fully agree, Mr. Griffith.

11 MR. GALLEGO: The witness referred to a  
12 provision, or regulation that was for the purpose of  
13 regularizing some--a component that had been not  
14 licensed, and I just wanted to confirm with him if  
15 this is what he meant.

16 I'm not going to go through and read it.

17 PRESIDENT CROOK: That's--I think that's a  
18 proper question. Why don't we drive on.

19 Is this the regulation to which you  
20 referred?

21 THE WITNESS: Correct. That's the  
22 regulation. This was in May 2019. It's called a PAD,

1 which is a regulation that the government issues  
2 basically to regularize the existing components that  
3 were not included in the EIA.

4 That was issued, again, and if I may refer  
5 to the regulation that was shown yesterday, but I  
6 couldn't understand exactly. That's my fault.

7 Article 17 of Decree 040 of 2014 that the counsel for  
8 the department rephrased, we read the last paragraph.

9 PRESIDENT CROOK: Sir, I think you've  
10 answered the question. The question was is this the  
11 document that you referred to, and the answer is yes.

12 So perhaps we should move on.

13 THE WITNESS: Okay.

14 MR. GALLEGO: Thank you.

15 BY MR. GALLEGO:

16 Q. Then a question was asked on a law--sorry.  
17 In one of your answers earlier today, you referred to  
18 determining borders by--I think you said it was the  
19 prime minister's office or the president's council of  
20 ministers, I think that's what you said.

21 A. The prime minister's office.

22 Q. The prime minister's office. Thank you very

1 much.

2 I just wanted to see whether I could do the  
3 same, whether I could project the law, and have the  
4 witness confirm, now, and then move on.

5 Now, the only issue that I have is it's not  
6 on record. But with the Tribunal's indulgence, I  
7 don't think it will take more than 30 seconds to do  
8 so.

9 PRESIDENT CROOK: I think if it is--let me  
10 defer to my colleague, Mr. Garibaldi, here.

11 Do we want to invite the introduction of the  
12 specific legal instrument that was spoken of?

13 ARBITRATOR GARIBALDI: Well, in my view,  
14 the--this issue is relevant. The issue whether--the  
15 issue of which is the proper agency to resolve a  
16 dispute between rural communities, and we have little  
17 or no information at this point about that. In fact,  
18 we don't even have the correct name of the agency.

19 We have express disagreements between  
20 examining counsel and the witness about what the  
21 witness said. It seems to me that at this point,  
22 there is sufficient reason at this point to have

1 introduced into the record the regulation that deals  
2 with this particular issue.

3           PRESIDENT CROOK: Well, on that basis, the  
4 Tribunal under the ICSID Rules has the power to  
5 request the production of evidence, and so the  
6 Tribunal requests on its own motion that this be put  
7 into the record.

8           MR. GALLEGU: Can I just ask the witness to  
9 confirm, first of all, that this is the right  
10 regulation, and then we can proceed from that.

11           MR. GRANÉ: Before we get there, may I ask a  
12 point of clarification because Mr. Garibaldi, you have  
13 asked about the agency that would be competent to  
14 resolve conflicts between the communities. That  
15 is--I'm looking at the transcript.

16           There are various agencies that within their  
17 mandate would be competent to issue--or to address  
18 conflicts between communities, but we need to be more  
19 precise. I understood you yesterday to be asking  
20 about disputes about the boundaries, and which agency  
21 would resolve that dispute as to boundaries.

22           So for instance, meaning that it has an

1 office that deals with community relations. MINEM has  
2 an office that will deal with community relations.  
3 They all have different competencies in respect to  
4 that issue, so we need to understand for the purpose  
5 of introducing the information that you require, what  
6 aspect of community relations in particular you're  
7 interested about in terms of which is the agency that  
8 would deal with that aspect of community relations.

9 ARBITRATOR GARIBALDI: That's--that's a very  
10 fair question.

11 I was interested, and I continue to be  
12 interested, primarily on the question of boundaries.

13 MR. GRANÉ: Thank you.

14 May we, Mr. President, then submit evidence  
15 into the record that goes to that specific issue?

16 ARBITRATOR GRIFFITH: Well, counsel,  
17 possibly the--we should have the Claimant say what  
18 it's referring to for what purpose, and leave to you  
19 to make a reference for that same purpose.

20 MR. GRANÉ: Although, I am--Mr. Griffith,  
21 thank you for that guidance. I am more concerned  
22 about Mr. Garibaldi's question, which may not have

1 anything to do with what the Claimant will be now  
2 putting to the witness, which is why I wish to have  
3 some clarification about what we can introduce to  
4 address that issue.

5 ARBITRATOR GRIFFITH: Speaking from one end  
6 of the bench to the other, I would have thought the  
7 starting point would be what are we being referred to  
8 by the Claimant's counsel for what purpose.

9 MR. GALLEGO: The purpose is to just clarify  
10 the witness's testimony, and to understand what he was  
11 referring to when he said what he said yesterday in  
12 terms of the law or the organ that is responsible for  
13 this.

14 I just wanted to show him the--the  
15 particular law, and then we could have an argument  
16 about whether it is correct or not, but we need to  
17 first clarify what the witness--what the witness's  
18 testimony is.

19 So if we can have a look at Law 27795.  
20 Thank you very much.

21 I mean, it's in Spanish. If we can just  
22 have the witness at least read Article number 5,



1 please. Thank you. Just stay there.

2 BY MR. GALLEGO:

3 Q. If you could just read on the screen  
4 Paragraph--just the first paragraph, and confirm, or  
5 not, that this is what you were referring to.

6 A. (In Spanish.)

7 On the competent agencies.

8 (In English.)

9 Yes, it is the natural direction for the  
10 demarcation--sorry. I don't know exactly the  
11 translation. That's exactly the agency from the prime  
12 minister's office that I was referring to.

13 PRESIDENT CROOK: Okay. So we have  
14 established that this is the document, and I think we  
15 have further established that the Tribunal would like  
16 to have access to this document.

17 Are we prepared to--will somebody submit  
18 this in request--in response to the express request of  
19 the Tribunal, in the exercise of our powers under the  
20 rules to request documents.

21 MR. GALLEGO: Understood.

22 PRESIDENT CROOK: I see an affirmative

1 nodding of the head from the Claimant.

2 MR. GRANÉ: At this point can I, therefore,  
3 renew my request, having heard the question, the  
4 document that will be introduced, are we allowed to  
5 introduce evidence that goes to this issue that was  
6 raised by Mr. Garibaldi.

7 PRESIDENT CROOK: When you say evidence,  
8 counsel, you mean legal instruments or legal opinions  
9 or writings of learned lawyers?

10 MR. GRANÉ: Legal instruments that would be  
11 considered an exhibit given that international law is  
12 what's being applied here, and, therefore, municipal  
13 law being a fact, we wish to introduce exhibits that  
14 would go to this issue.

15 (Off the record between the Tribunal.)

16 PRESIDENT CROOK: Let me do this: Let me  
17 invite you to give us a submission that lists and  
18 identifies particular instruments that you regard as  
19 relevant for this purpose.

20 Do not attach said instruments, but submit  
21 that to the Tribunal, and to the opposing party, and  
22 we will consider what to do.

1           MR. GRANÉ: Thank you very much.

2           ARBITRATOR GRIFFITH: Might I suggest that  
3 we have the first paragraph read so we have a  
4 translation in our transcript. Is that okay?

5           MR. GALLEGO: Thank you. That's very  
6 sensible, sir. If you could--I'll read it myself.

7           (In Spanish.)

8           "The following are competent agencies in  
9 matters of territorial demarcation. One, the  
10 presidency of the Council of Ministers through its  
11 National Technical Bureau for Territorial Demarcation  
12 is the lead organ of the national system for  
13 territorial demarcation. It is competent to regulate,  
14 coordinate, advise, supervise and evaluate the  
15 treatment of all territorial demarcation actions for  
16 the purpose of them being based on technical and  
17 geographic criteria.

18           The bills of proposals that are in agreement  
19 with it are processed before the Council of Ministers,  
20 are being considered or put before the Council of  
21 Ministers."

22           PRESIDENT CROOK: Next question.

1 MR. GALLEGO: Thank you, sir.

2 BY MR. GALLEGO:

3 Q. If you could then, Mr. Bravo, turn to Tab  
4 33, that is Exhibit C-347 in your bundle. You were  
5 asked about this exchange with Mr. León that you had  
6 during the meeting of 26 February 2019. At the  
7 beginning of the exchange, which I understand was in  
8 the meeting, according to your testimony, he said to  
9 you, they want that the access be through Parán. Tell  
10 them that it is not possible technically. And you  
11 responded--

12 ARBITRATOR GRIFFITH: The time reference for  
13 that?

14 MR. GALLEGO: I'm sorry.

15 ARBITRATOR GRIFFITH: The time reference for  
16 that?

17 MR. GALLEGO: Thank you, sir.

18 That was at 5:10:06 and 5:10:14 p.m.

19 BY MR. GALLEGO:

20 Q. AND you responded at 5:10:20, okay.

21 Now, can you elaborate on what you think  
22 Mr. León was saying here, and what you possibly said

1 at that meeting, or not?

2 ARBITRATOR GRIFFITH: Well, counsel, this  
3 witness can't say what the other person thought. You  
4 can ask him how he understood it.

5 MR. GALLEGO: Yes. Exactly.

6 BY MR. GALLEGO:

7 Q. How did you understand Mr. León's message to  
8 you, and if you--do you recall what you then conveyed  
9 to the participants in the meeting as a result?

10 A. Do we absolutely--I didn't understand what  
11 he tried to tell me with that message at that time.  
12 Because the main issue for us was for the Parán  
13 Community to lift the blockade, and that was already  
14 written in the agreement, and basically agreed.

15 So when he wrote me that, I understood that  
16 they wanted to mention something about the Parán road,  
17 and that it was--you know, he wanted me to point out  
18 that it was impossible to use that road for technical  
19 reasons.

20 So--but after that, we had much discussion  
21 about it.

22 Q. Moving on to Exhibit--sorry--you--before we

1 go there, you were asked on your understanding of the  
2 26 February 2019 Agreement, and you had quite a long  
3 discussion around that theme.

4 ARBITRATOR GARIBALDI: Are you going to move  
5 to another point?

6 MR. GALLEGO: I am going to move to another  
7 point, sir.

8 ARBITRATOR GARIBALDI: I made a point in the  
9 earlier part of this session that this statement by  
10 Nilton León, tell them that it is not possible,  
11 technically did not make sense.

12 Now I understand what it may have meant from  
13 an objective standpoint. I wasn't there, and of  
14 course, I cannot speculate beyond what the words say.

15 But Nilton León, who is a public official is  
16 telling you--is advising you to tell them, Parán, that  
17 access through Parán is not possible technically.

18 Now, so it makes sense only in the sense  
19 that Nilton León is trying to avoid this issue of  
20 access only through Parán, as a new issue to be  
21 introduced in the discussion.

22 And to that extent, I would like to--amend

1 for the record the comment I made earlier that it  
2 didn't make sense. It seems to me it makes sense, but  
3 only in the sense that Nilton León is trying to get  
4 rid of this issue. Is that right?

5 THE WITNESS: Due to the events that  
6 occurred after that, it make total sense. He was  
7 aware of things that we were not aware at that time.  
8 Personally, myself. And he was trying to tell us  
9 something that probably he knew at that time, but we  
10 didn't. I didn't particularly. But that was  
11 something that we realized after, and in the course of  
12 the events in the days following the agreement.

13 ARBITRATOR GARIBALDI: Okay. Thanks.

14 BY MR. GALLEGO:

15 Q. So as I was saying, moving on, you had a  
16 long discussion as to the interpretation of the  
17 agreement, and you were taken to the various  
18 provisions.

19 If we could have a look at C-17, please.  
20 This is a letter that you sent on 28th February. If  
21 we could have it in Spanish as well, please. On 28  
22 February 2019. To the MININTER, and if we could go

1 down to Paragraph 2. Thank you.

2           You sent this letter, I understand, just two  
3 days after--just two days after you entered into the  
4 agreement, and having read that, what were you doing  
5 here, writing to the MININTER, what were you conveying  
6 here at Paragraph 2?

7           A.     We are trying to tell them that the  
8 agreement was signed on the 26th. On the 27th,  
9 following the--as per the agreement says, we tried to  
10 get into the mine, but we couldn't. The blockade was  
11 still in place. Our people couldn't go up there, so  
12 we were somehow telling the ministry that we tried to  
13 comply with the agreement, but it was impossible  
14 because the blockade remains there.

15           Q.     Okay.

16           Moving on from this document, and let's go  
17 to Tab 35, Exhibit C-619, page 184. If we could have  
18 it in English as well for the Tribunal's benefit, that  
19 would be great. Could we have it in English as well?  
20 Sorry, this is taking a little time. Apologies.  
21 Okay. Thank you very much. If you could just scroll  
22 down a little bit more from where the yellow is.



1           So this is the WhatsApp page that we have in  
2 front of us, the exact reference is to 2 March 2019,  
3 time 5:29:42 p.m.

4           If you could read the Spanish, just going  
5 down, just read that conversation. You were taken to  
6 this conversation. Just read that whole conversation,  
7 because you were effectively cut off around the  
8 middle, and then read that conversation, and then I'll  
9 ask you a question.

10       A.     In Spanish, right?

11       Q.     Yeah, I think that's going to be easier  
12 given the problems with the translation.

13       A.     From there--

14       Q.     Just read it to yourself. If you could just  
15 scroll down.

16       A.     I got it, yes.

17       Q.     Carry on, if you could please scroll down.  
18 I'll ask my colleague to scroll down. So you can  
19 carry on reading. Thank you.

20           Did you get that?

21       A.     Yes.

22       Q.     Okay. Excellent.

1           Now, you're referring to the Lacsanga road  
2 in this exchange, and that access was difficult  
3 through this road. You mentioned during your  
4 testimony that it had to be worked on it. How long  
5 would it have taken to recondition the Lacsanga road?

6           A.     It took like three or three weeks,  
7 approximately. Three to four weeks.

8           Q.     Was the blockade getting in the way of that  
9 reconditioning?

10          A.     No, we have to recondition it from the  
11 start, from the beginning, from the bottom of the  
12 mountain. So we didn't reach the blockade.

13                 When we tried to reach the blockade,  
14 they--the people--the contractor that we hired has to  
15 stop because they were shut down from the blockade.  
16 So they called me, and they had to stop the works up  
17 there.

18          Q.     They were shut down from the blockade?

19          A.     Yep. From the Parán people.

20          Q.     So they were told to leave; is that what  
21 you're saying? I just want to understand what you  
22 mean by "they were shut down from the blockade"?

1       A.     I mean, the--they heard gunfire, and they  
2 were afraid that they were shooting them, and they  
3 canceled the works and it had to leave.

4       Q.     They were shot down.

5            ARBITRATOR GRIFFITH:   Shot down.

6       A.     Shotguns, yeah.   Big shotguns.

7            PRESIDENT CROOK:   Counsel, before we leave  
8 that exhibit, I wondered if I could ask Mr. Bravo a  
9 quick question.

10           This is the large collection of documents at  
11 Tab 35.  Almost at the back are some pictures of a  
12 road in very distressed condition.

13           Are you able to say which road this is, when  
14 this was?  Do you know anything about what these  
15 pictures might portray?

16           THE WITNESS:   Just specify what's--

17           PRESIDENT CROOK:   This is the Tab 35, the  
18 big one you're looking at, with all of the pages in  
19 it.  But at the very back.

20           THE WITNESS:   Yes.

21           PRESIDENT CROOK:   There are some pictures of  
22 a road in very distressed condition.  There are many.

1 THE WITNESS: This one? Yes.

2 PRESIDENT CROOK: Do you have any idea what  
3 this might be?

4 THE WITNESS: That's the Lacsanga road.

5 PRESIDENT CROOK: That's the Lacsanga road.  
6 Okay. Thank you.

7 ARBITRATOR GRIFFITH: Mr. Bravo, if I could  
8 ask a question following that. Is the rock on the  
9 road a natural condition, or is it being rock that's  
10 been placed there in your opinion?

11 THE WITNESS: These are--those are natural  
12 there. It's rainy.

13 ARBITRATOR GRIFFITH: Thank you.

14 Are those motorbikes the sort of motorbikes  
15 that you had access with?

16 THE WITNESS: I'm sorry.

17 ARBITRATOR GRIFFITH: There's motorbikes in  
18 the picture. Are they the sort of motorbikes that you  
19 use for access?

20 THE WITNESS: Yes.

21 ARBITRATOR GRIFFITH: Thank you.

22 MR. GALLEG0: Thank you.

1 BY MR. GALLEGO:

2 Q. If I could just take to you your first  
3 witness statement, please, if you have it in front of  
4 you. It's at Paragraph 62 and 63. If you could read  
5 that.

6 This is my last question.

7 A. Yes.

8 Q. Now, you were asked about the topographer,  
9 and within that discussion, you referred to the 19  
10 March 2019 meeting with Parán. That's the day before  
11 Parán re-evicted Lupaka's workers.

12 I wasn't clear on your answer as to whether  
13 you told Parán you would pay for the topographical  
14 survey or not because I think initially you said you  
15 didn't offer this, and then later in questioning, you  
16 said you did.

17 I just want you to be clear on this point as  
18 to your exact testimony.

19 So what is it: Did you--during the 19 March  
20 2019 meeting, what was said in relation to the  
21 topographer, were you going to pay it, were you not  
22 going to pay it?

1           If you could just clarify.

2           A.     We said that we would pay it, as part of the  
3 general agreement for--with the Parán Community that  
4 we were seeking for.

5           We are talking about the road survey,  
6 not--it was not the survey that was agreed in the  
7 February meeting. We were talking about something  
8 different here, which maybe what Parán tried to say or  
9 tried to agree in the meeting in February, or  
10 something that was brought up, but we would agree on  
11 that if all of the circumstances are taken.

12          Q.     So are you saying that--okay, in the--there  
13 was the 26 February agreement that that was to  
14 establish a dialogue table. And then there would be  
15 another agreement going forward, and that could be  
16 part of that--I just don't understand what you mean by  
17 "as a general agreement." That's what I need  
18 clarification on. General agreement.

19                What do you mean by that?

20          A.     Again, the dialogue table was set up certain  
21 demands the community may have. As part of their  
22 demands in that dialogue table, this issue on the

1 survey for a road may raise or would be part of their  
2 demands, we were willing to accept them, and even pay  
3 for the survey because, again, it was basically in our  
4 benefit, we can use the road, or the shorter road, not  
5 for big trucks, but yes, to do for pickup trucks.

6 So it would help us out. It was in the  
7 benefit of both, so yeah, the answer was we were  
8 willing to pay for that.

9 MR. GALLEGO: No further questions.

10 PRESIDENT CROOK: Thank you, counsel.

11 We're going to need to take a short break in  
12 a moment, but just for planning purposes, but let me  
13 ask, do my colleagues have additional questions for  
14 Mr. Bravo.

15 All right. I have no additional questions  
16 for Mr. Bravo. We can thank you for your testimony  
17 and release you. You can go with our thanks and be a  
18 free man.

19 MR. GRANÉ: Mr. President, I just have one  
20 issue.

21 PRESIDENT CROOK: Yes, sir. What is your  
22 question?

1           MR. GRANÉ: We can reset after the break.

2 I'm just not sure whether Mr. Bravo needs to be  
3 present. It's in relation to the document that was  
4 read in. Counsel for Claimant asked him to read a  
5 couple of provisions at the request of Mr. Griffith.

6           We have a request that two other provisions  
7 that come earlier, also be read into the record. We  
8 can do it after the break.

9           PRESIDENT CROOK: Let's deal with that  
10 later, if we could, please.

11           So Mr. Bravo, you are excused, and thank you  
12 for your testimony.

13           We will then proceed to the next witness,  
14 but before--is the next witness is physically on hand  
15 and available? I see an affirmative nod back there.

16           All right, let us reconvene in five minutes.

17           Mr. Bravo, thank you very much.

18           (Whereupon, there was a recess in the  
19 proceedings, 12:29 p.m. - 12:35 p.m.)

20           PRESIDENT CROOK: All right. Before we turn  
21 to the witness, we have a small piece of business,  
22 which is that counsel wanted to read a couple of



1 passages in order to have the translation put of  
2 record.

3 So why don't you do that?

4 MR. GRANÉ: Thank you.

5 Can we please put up this document, this  
6 law, that was read into the record by Claimant's  
7 counsel.

8 It's Law 27795, and I'm going to be  
9 switching into Spanish in a moment so that we can read  
10 the two provisions that we believe are also relevant.

11 PRESIDENT CROOK: Why don't you simply  
12 identify the paragraph by name, number and title, and  
13 get on with reading them.

14 MR. GRANÉ: Yes. Switching to Spanish.

15 (In Spanish.)

16 It's the law on demarcation and territorial  
17 organization, and I'm talking about Article 2.4, which  
18 says territorial boundaries.

19 The boundaries of the political  
20 administrative districts to be represented in the  
21 national cartography that determine the scope of  
22 jurisdiction of the different levels of government.

1 These boundaries are different in nature from  
2 community, native, or other boundaries that recognize  
3 and grant property rights.

4 And the other provision, Article 3, which  
5 says, "Objectives of territorial demarcation."

6 And Objective 3.1, "define territorial  
7 districts at "...the district, provincial, and  
8 departmental level that guarantee the exercise of the  
9 government, and the administration, and facilitate the  
10 formation of the regions."

11 (In English.) I'll stop there,  
12 Mr. President.

13 PRESIDENT CROOK: All right. Thank you very  
14 much.

15 Are we ready, then, to proceed to the--I'm  
16 sorry?

17 MR. GRANÉ: There's one more housekeeping.

18 PRESIDENT CROOK: Yes.

19 MR. GRANÉ: I don't know if it's in relation  
20 to this witness, so I raise it now, Mr. President.

21 We received he a demonstrative this morning.  
22 We don't know whether they intend to--I'm sorry--I

1 meant no disrespect.

2 We understand that the Claimant's counsel  
3 intends to use the demonstrative, but we don't know if  
4 it's in relation to this witness, but we do have an  
5 objection in relation--

6 PRESIDENT CROOK: Let's just clarify. Is it  
7 in relation to this witness?

8 MR. GALLEG0: No.

9 PRESIDENT CROOK: Let's take the matter up  
10 subsequently. Is that all right?

11 MR. GRANÉ: (Nods head up and down.)

12 PRESIDENT CROOK: All right.

13 ARBITRATOR GRIFFITH: Counsel, you can sort  
14 that out over lunch so we don't have to use time.  
15 Your objection, can you discuss your objection rather  
16 than come first to us.

17 MR. GRANÉ: (Witness nods head up and down.)

18 PRESIDENT CROOK: I think I saw a concurring  
19 nod.

20 MR. GRANÉ: (Nods head up and down.)

21 PRESIDENT CROOK: A reluctant concurring  
22 nod. Okay. All right. Thank you, sir, as you watch

1 the things lawyers do to each other.

2 ANDRES TRIGOSO RESPONDENT WITNESS, CALLED

3 PRESIDENT CROOK: We welcome you. Has the  
4 procedure to be followed been described to you?

5 All right. We need some assistance with  
6 earphones.

7 THE WITNESS: I can't really hear the  
8 translation.

9 PRESIDENT CROOK: Can you hear me now, sir?  
10 We need to make...

11 THE WITNESS: I'm listening to the  
12 translation now.

13 PRESIDENT CROOK: Very good.

14 THE WITNESS: Could you please read what you  
15 said.

16 PRESIDENT CROOK: Well, we welcome you to  
17 the hearing. There should be before you a paper with  
18 a declaration on it.

19 Do you have that before you?

20 THE WITNESS: I do.

21 PRESIDENT CROOK: Could you read that  
22 declaration, please?

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

4           PRESIDENT CROOK: Thank you.

5           The procedure today will be that you will  
6 first be asked some short--a short series of questions  
7 by counsel for the Respondent. You will then be  
8 cross-examined by counsel for the Claimant.

9           Are you familiar with the procedure here?

10          THE WITNESS: Yes, Mr. President.

11          PRESIDENT CROOK: If at any time you feel  
12 the need to take a break, do let us know, and we will  
13 try to accommodate you.

14          Is that agreeable?

15          THE WITNESS: Yes, thank you, Mr. President.

16          PRESIDENT CROOK: Now, one thing I would ask  
17 you--I suspect that you will be getting  
18 questions--some questions in English, some questions  
19 in Spanish. Particularly, if you are getting  
20 questions in Spanish, I would ask you to pause a  
21 couple of seconds before you reply, because there will  
22 be an English language interpretation and if we do not

1 have that pause, you will be speaking over those of us  
2 listening to the English interpretation will be  
3 hearing.

4 Is that clear, sir?

5 THE WITNESS: Understood, Mr. President.

6 PRESIDENT CROOK: Very good.

7 Well, we welcome you, and we turn you over  
8 to the lawyers.

9 Counsel.

10 SECRETARY: Excuse me, Mr. President.

11 May I, I think the witness can leave his  
12 microphone on because he will be answering the  
13 questions all the time, not for everybody else in the  
14 room, but I think for him it will be easy if he leaves  
15 it on. Thank you.

16 DIRECT EXAMINATION

17 BY MR. GRANÉ:

18 Q. Good afternoon, Mr. Trigoso. You have  
19 before you two witness statements. Look at the one  
20 dated 11 March 2022. It's your first witness  
21 statement.

22 Please look at this document, and look at

1 the last page of the document, and confirm that this  
2 is indeed your witness statement, your first witness  
3 statement; that is, and that it bears your signature,  
4 and that you ratify the contents of this witness  
5 statement.

6 A. After having seen the document, I ratify  
7 that this is my statement, and my signature.

8 Q. Do you have any correction to make on it?

9 A. None.

10 Q. I'm going to ask you the exact same thing in  
11 connection with the document dated 17 January 2023.  
12 It's your second witness statement, declaration of  
13 Mr. Trigos in this arbitration.

14 Please look at the last page with the  
15 signatures. Please confirm whether this is your  
16 signature, whether this is your statement, and whether  
17 you ratify it.

18 A. Yes. This is my signature. It is my  
19 witness statement, and I ratify it.

20 Q. Would you like to introduce any corrections  
21 to it?

22 A. None, Counselor.

1           Q.     Thank you very much.

2                   MR. GRANÉ:   That's all on direct.

3                   MR. GALLEGO:   Thank you, to my esteemed  
4 colleague.

5                   I have a bundle to be distributed to the  
6 Tribunal.

7                   PRESIDENT CROOK:   A bundle, it looks bigger  
8 than a Bible.

9                   MR. GALLEGO:   It is a little bit of a Bible  
10 because it's for three witnesses, so we can stay with  
11 it for a while.   It has the benefit that we've saved  
12 some trees, given that there's no duplication.

13                   Now, with the Tribunal's agreement, given  
14 that we have a bundle, and that we'll be going  
15 through--that has the English and the Spanish, we  
16 would suggest just projecting the English because it  
17 is quite fiddly (phonetic) to have both languages on  
18 the screen, unless of course, the witness needs to be  
19 directed to the Spanish, in which case we can do that  
20 on the screen as well.

21                   But as a matter of course, we would just do  
22 it in English on the screen, and with the documents



1 physically, and that may speed up matters.

2 CROSS-EXAMINATION

3 BY MR. GALLEGO:

4 Q. (In Spanish.)

5 Good morning, Mr. Trigos. My name is Jaime  
6 Gallego.

7 A. Good afternoon.

8 Mr. President, if you allow me, I would like  
9 for me to be shown the Spanish versions. I do not see  
10 or read English.

11 Q. Yes, of course. On your left, you're going  
12 to find a binder. The binder has all of the documents  
13 about which you are going to be examined about.  
14 They're in English and in Spanish. Simply, I'm going  
15 to let you know the document, and I'm going to show  
16 you the Spanish version. It's in the bundle.

17 As you've heard the President say, we're  
18 going to talk, you and I, and we're going to have to  
19 make a brief cause between the question and the  
20 answer. We shouldn't really speak very quickly. And  
21 we should not really overlap when we speak.

22 Mr. Trigos, I understand that you were the

1 director of the Office of Dialogue Management and  
2 Citizen Participation from August 2018 to March 2019.  
3 That's in your witness statement.

4 When exactly in March 2019 you ceased to be  
5 a director?

6 A. I do not recall exactly, but it was in late  
7 March. The resolution in connection with this is  
8 published in the official gazette of Perú.

9 Q. This office that I just mentioned, you were  
10 the director office, it is under the OGGs; correct?

11 A. Yes.

12 Q. And this is the office within OGGs that  
13 deals with managing social conflicts?

14 A. Yes. That's right. That's also indicated  
15 in the regulation on the organisation and functions of  
16 the ministry, under Supreme Decree, 028/2018.

17 Q. This position you held at the same time that  
18 you were holding the position of general director of  
19 the OGGs, December 2018 until January 2019?

20 A. Yes. 6 December 2018 to 26, approximately,  
21 January 2019.

22 Q. In connection with your first position in

1 late March 2019, you were the coordinator for the  
2 Promotion of Dialogue and Citizen Participation until  
3 30 November 2019 in the same office; correct?

4 A. Yes, correct.

5 Q. Now, you continued to be in charge of the  
6 Parán and Lupaka case until you got the new position?

7 A. No. I was--I left those functions, and I  
8 was assigned another region in the country, Cusco, so  
9 I no longer dealt with those places, and those cases.

10 Q. So starting in March 2019, late March 2019,  
11 you ceased to be in charge of this case?

12 A. Yes.

13 Q. While you were in charge of this case, you  
14 provided written instructions to your coworkers, or to  
15 your superiors at the Ministry of Energy and Mines in  
16 connection with the social dispute related to Parán  
17 and Lupaka.

18 A. I did not provide instructions to my  
19 superiors; only to the people under me. I could not  
20 provide instructions to my superiors. My superiors  
21 are the ones who provide instructions to me.

22 Q. Perfect. Did you send any written

1 information to your superiors so that they could make  
2 decisions in connection with this, or in the  
3 alternative, to provide them with information about  
4 this conflict?

5 A. Yes. Information was sent.

6 Q. How frequent was information sent to your  
7 superiors?

8 A. At the request of my superiors.

9 Q. What was the purpose for which they wanted  
10 information to be given to them?

11 A. Well, because there was a dispute that had  
12 to be addressed in a priority--on a priority basis  
13 because of the size of the project, and the type of  
14 the crisis, or the status of the project.

15 Q. Was this one of those cases?

16 A. Yes. In my statement, I indicated why that  
17 project was given a priority status.

18 Q. With the people working under you, did you  
19 communicate with them in writing frequently?

20 A. In writing, and we held weekly meetings with  
21 the equipment of social management. We did not only  
22 dealt with one issue, but the other conflicts, the

1 other disputes they were there so we could address  
2 them opportunely.

3 Q. Were there minutes drawn of those meetings?

4 A. No, not meetings were held. These were  
5 internal working meetings.

6 Q. Wasn't there a summary of a meeting? Was  
7 anything sent by e-mail? Was there nothing?

8 A. Well, perhaps there were PPT presentations  
9 of the internal cases, and the person giving the  
10 presentation was heard by us, and we took notes to see  
11 what joint actions were going to be taken.

12 Q. Who was responsible for preparing the PPT  
13 presentations in connection with this conflict?

14 A. Well, it was the coordinator for each region  
15 of the country.

16 Q. Now, in connection with this dispute in  
17 particular, the Parán dispute, who was in charge of  
18 that?

19 A. Well, Mr. César Ulloa was responsible for  
20 the region, not the conflict, and he worked with a  
21 team of experts, and--

22 Q. And he was the person who made the

1 presentation?

2 A. Yes, with his team of specialists. It  
3 wasn't just dealt with one case in his region.

4 PRESIDENT CROOK: If you could just wait a  
5 second or two before you begin to answer. The  
6 interpreters are having to race. So give--slow down  
7 just a little bit before you answer, please.

8 THE WITNESS: Thank you, Mr. President.

9 BY MR. GALLEGGO:

10 Q. Now, in connection with the reports that  
11 were sent to your superiors, I have not seen any  
12 report in the case file. Is there a reason for that?

13 A. Well, mostly, the aide-mémoires were sent in  
14 connection with the issues that were of interest to  
15 the people in higher management. These were  
16 snapshots, if you will, aide-mémoires that would see  
17 to it to the person in the space and time.  
18 Aide-mémoire perhaps could no longer be current on the  
19 next day we were dealing with these types of social  
20 matters.

21 Q. Let us look at Supreme Decree 21/18. R-12,  
22 and it is behind Tab 52. You have a binder before

1 you, so please go to Tab 52. Well, C-645, but the  
2 original document is R-12. Let us look at 51-G. At  
3 page 13.

4 A. Yes. I'm looking at it.

5 Q. Have you read it?

6 (Clarification requested by the Realtime  
7 Stenographer.)

8 ARBITRATOR GARIBALDI: I am looking at the  
9 Spanish version, and I don't have that page.

10 MR. GALLEGO: So it's Article 51-G.

11 PRESIDENT CROOK: Let me make an  
12 administrative request. These binders are not easy to  
13 navigate. Could we be provided with, you know, a  
14 couple of smaller binders so we can break these down,  
15 or ideally even three.

16 I appreciate the wish to save trees, but we  
17 don't need to save plastic-growing trees. So if you  
18 could help us, please.

19 MR. GALLEGO: We will try to do that, sir.  
20 I'm not sure when we'll be able to do that, but it's  
21 duly noted, and we will try our hardest.

22 PRESIDENT CROOK: We may--you know, we may

1 bring our own, but I prefer not to.

2 MR. GALLEGO: Understood.

3 BY MR. GALLEGO:

4 Q. Article 51-G that I've made reference to, I  
5 understand that what they're trying to say here is  
6 that if there is an emergency in the management of a  
7 conflict, the OGGS has to suggest a coordination  
8 mechanism so that the Ministry of Energy and Mines can  
9 coordinate things with the other ministries?

10 A. Correct.

11 Q. 51-B, it's 51-B.d. let's see if we can find  
12 it. It's on page 26 of 40, in Spanish. It's the same  
13 document; right?

14 It talks the functions of the office that  
15 you were the director of, and it says, specifically,  
16 at D--

17 A. Excuse me. 51-B, B as in boy. Capital B.

18 Q. That "the functions of the office was to  
19 prepare and execute crisis plans as well as coordinate  
20 with internal law enforcement when appropriate."

21 A. Where exactly?

22 Q. D as in David.



1       A.     Correct.

2       Q.     Was there a crisis plan prepared in  
3 connection with this conflict?

4       A.     Let us see. The crisis plans are prepared  
5 when we deem the conflict to be in crisis. The  
6 conflict at the time was undergoing a process of  
7 negotiation. There was dialogue. There were  
8 discussions held.

9       Q.     So, your answer is no; no crisis plan was  
10 prepared at any time. Is that what you are answering?

11      A.     I didn't say that it's not prepared. When  
12 there is dialogue ongoing, we do not prepare a crisis  
13 plan. We actually try to solve the social cases by  
14 dialogue mechanisms.

15             After the crisis, then--after the crisis has  
16 ended, a crisis plan can be prepared.

17      Q.     Now, to your knowledge, was a crisis plan  
18 prepared or not prepared?

19      A.     No, to my knowledge, no crisis plan was  
20 prepared.

21      Q.     And as you have seen, you have said that--

22             PRESIDENT CROOK: Forgive me, we are now at

1 our appointed lunch time. Is this something you can  
2 conclude quickly, or are we--

3 MR. GALLEGO: Yes. Yes. We are moving on  
4 after this question, or couple of questions. I  
5 estimate two minutes. Three minutes.

6 PRESIDENT CROOK: Two minutes, but after two  
7 minutes, you're surrounded by a room full of hungry  
8 people.

9 MR. GALLEGO: That's well understood, sir.

10 BY MR. GALLEGO:

11 Q. And then here, it also refers to  
12 coordination with the internal forces, internal law  
13 enforcement.

14 Did you or your team coordinate with law  
15 enforcement?

16 A. Based on my previous answer, this was a  
17 dialogue process, and as part of the dialogue process,  
18 the law enforcement did not help.

19 They rather disturbed the dialogue within  
20 the powers under the same regulations. We used  
21 dialogue as an instrument to solve the controversy  
22 between the parties.

1           Q.     I need an answer to my question.

2                     Are you telling me that neither you nor  
3 anyone on your team coordinated with law enforcement  
4 as to this conflict?

5           A.     That is correct. We do not coordinate with  
6 law enforcement. We do not have any power to do so.

7           Q.     I apologize, but here it says that you  
8 should--that you should draft and create crisis plans,  
9 and also to coordinate with internal law enforcement,  
10 when appropriate.

11                    Are you telling me that this is not correct?

12           A.     No. I am telling you that in our opinion,  
13 this was not a crisis. We were in a dialogue process.  
14 A dialogue process whereby the parties still had  
15 efforts to be made to solve the problem. They had  
16 willingness. It was not that they were extremely  
17 radical, and that's the reason why we had the later  
18 meetings.

19                   MR. GALLEGOS: (Overlapping speaker with  
20 translation.) --take the break.

21                   PRESIDENT CROOK: All right. Thank you.

22                   Mr. Trigos, we will now take a 40-minute

1 break for lunch. You will be shown where you can have  
2 your lunch, but you should not speak to anyone  
3 regarding your testimony regarding the questions that  
4 have been asked.

5           You're going to have to have your lunch in  
6 private.

7           Is that agreed, sir?

8           THE WITNESS: I thank you, Mr. President.

9           PRESIDENT CROOK: All right. I will wish  
10 you a pleasant, private lunch, and we will now rise  
11 for 40 minutes.

12           (Whereupon, there was a recess in the  
13 proceedings, 1:04 p.m. - our 1:48 p.m.)

14           THE WITNESS: Good afternoon, Mr. President.  
15 I am ready.

16           PRESIDENT CROOK: Very good.

17           Well, I think we have no administrative  
18 business to tend to, and if not, we will return  
19 immediately to the examination.

20           MR. GALLEGOS: Thank you, Mr. President.

21           BY MR. GALLEGOS:

22           Q. On the record, I have seen internal

1 documents that you have received from OGGS that shows  
2 who was in charge of this. I understand that they  
3 took persons that were in charge of this issue  
4 reported to you while you were the director. They  
5 were Nilton León and César Ulloa.

6           Upon reviewing the documents, I did not see  
7 anyone else who was sending written communications;  
8 correct?

9           A.     Yes, correct.

10          Q.     As a matter of fact, they were the ones that  
11 were in charge of this conflict, and you led it as the  
12 director; correct?

13          A.     They were all other support specialists,  
14 Victor Vargas, and Mr. Daniel Amaro. That was the  
15 team that always facilitated the dialogue processes.

16          Q.     But the two main individuals in charge were  
17 Mr. Nilton León and César that report to you; correct?

18          A.     Correct.

19          Q.     Decisions were made jointly between the  
20 three of you while you were in charge of the office  
21 for the management of citizen participation and  
22 dialogue; right?

1       A.     Could you please repeat the question?

2       Q.     Of course. The decisions made in connection  
3 with this conflict, were they made jointly among the  
4 three of you, or was it you, the one who made the  
5 decision?

6       A.     When you're talking about decisions, are you  
7 referring to agreements, something like that, or  
8 administrative decisions?

9       Q.     I'm talking about decisions as to how to  
10 proceed in connection with this conflict. Whether  
11 there was a need to continue with the dialogue or not,  
12 for example.

13      A.     Well, the actions to be followed were  
14 assessed, and--

15      Q.     And did the three of you do it in a  
16 committee; was that the way a decision was reached?

17      A.     Yes; however--and to be a little bit more  
18 specific--however, throughout the negotiation process,  
19 have their degree of flexibility to carry out the  
20 dialogue process.

21      Q.     And I understand that Mr. Nilton León was  
22 the specialist in charge; therefore, he was the one

1 who had the greatest flexibility, or freedom; correct?

2 A. Yes.

3 Q. Mr. Trigos, OGGS had several meetings  
4 with--in the second half of 2018 with Parán and  
5 Lupaka. I think it was up to the end of the year,  
6 there were several meetings. There were some more in  
7 2019, but let us first look at 2018.

8 In your first statement, you say that after  
9 the blockade of October 2019 at Paragraph 34, the  
10 specialist attended meetings in the area. Then you  
11 state, at 34, "In exercising my role, or while I was  
12 in the office at the OGGS, I had the opportunity to  
13 participate in several of the meetings, and I also  
14 participated or exchanged communications with the  
15 Parán Community and Invicta to mediate a resolution to  
16 the conflict.

17 In 2018, did you attend any meeting with  
18 Parán?

19 A. To be clear, these were not joint meetings.  
20 They were preliminary meetings with some managers, or  
21 some representatives of the mining company.

22 In 2018, I did not have any meetings with

1   them because I was just starting with my job as head  
2   of the dialogue and citizen participation office and  
3   that was just in October of 2018.

4               It was just when we started with some joint  
5   actions with the higher management in January 2019.

6               And here I'd like to specify this chronology  
7   because it is important, Mr. President. On January  
8   20th, I had a meeting at the request of Vice Minister  
9   Incháustegui with the manager of Invicta mining and  
10   the CEO Mr. Will--

11       Q.     I am sorry, but I'm asking you about this.

12               First, we're going to look at 2018, and then  
13   we're going to look at 2019.

14               MR. GRANÉ: I believe that the witness was  
15   trying to provide an explanation in response to the  
16   question, and he's being cut off by the Claimant's  
17   counsel.

18               PRESIDENT CROOK: I know, but I think the  
19   witness may have gone a little afield from the  
20   question that was asked.

21               Let's--Mr. Trigoso, let's focus on  
22   addressing the specific question that was asked, and



1 then if there are additional points to be raised, you  
2 will be asked as well questions by counsel for  
3 Respondent, and at that point, you can offer whatever  
4 additional detail you think is appropriate.

5 Is that acceptable to you, sir?

6 THE WITNESS: Yes, Mr. President. I was  
7 just doing it to offer some context, and also to  
8 elaborate my answer. But if you think that it is  
9 proper for me to be--to give an answer that is more  
10 brief, I will do so.

11 So in connection with the question,  
12 Mr. President, if you allow me to answer...may I  
13 answer? Thank you, Mr. President.

14 PRESIDENT CROOK: Yes.

15 THE WITNESS: So your question again. Would  
16 you please repeat your question, so I can give you a  
17 brief answer.

18 MR. GALLEGGO: Certainly.

19 BY MR. GALLEGGO:

20 Q. As to the meetings, up to late 2018, I  
21 understand that you were not present in the meetings  
22 with Parán or the Invicta representatives; correct?

1       A.     Correct.

2       Q.     But I understand that in the weekly meetings  
3 held, that you would explain the contents, and these  
4 were meetings in which you saw some PowerPoint, and  
5 there you got a summary of the meetings with Parán,  
6 and OGGS, at least as of October 2018, that is when  
7 you started to work as director.

8               And I understand that you understood that  
9 throughout those meetings, the OGGS urged the  
10 community to lift the protest, to put an end to the  
11 protest?

12       A.     Yes, that is part of the documents that we  
13 presented to the community.

14       Q.     The documents that you presented to the  
15 community? That is to say, are you talking about  
16 letters; what are you talking about?

17       A.     Yes, communications.

18       Q.     Also, you urged the community not to have a  
19 dialogue while the blockade continued?

20       A.     Those were--those were instances in which we  
21 urged the parties. Yes, again, we urged the parties.

22       Q.     For the last meeting of 2018 held on

1 November 21st, the community committed to consult its  
2 assembly to put an end to the protests on the  
3 following--on the upcoming days. Do you recall?

4 A. I recall that because of the documents I  
5 reviewed.

6 Q. In early December, Parán reported that they  
7 were not going to come to an end with that protest?

8 A. Correct.

9 Q. With that, there have been several meetings  
10 from the blockade in which OGGS has urged the  
11 community to put an end to the blockade, and this  
12 proposal has been rejected; correct?

13 A. Yes.

14 Q. Now, let us move on to the meeting held on  
15 January 29, 2019, also coordinated by OGGS. I  
16 understand this was the first meeting in which you  
17 participated with Parán and Invicta; is that correct?

18 A. Yes.

19 Q. You were there with Mr. León; correct?

20 A. Yes. I was there briefly with Mr. León, and  
21 then Mr. León stayed behind with part of the team to  
22 facilitate the process.

1       Q.     And the idea of the meeting was that it be  
2 agreed to formally establish the dialogue roundtable;  
3 is that right?

4       A.     Well, that was not necessarily as part of  
5 some points. The idea was to establish a common  
6 agenda as between the parties. That was the purpose  
7 of the meeting, because we considered, Mr. President,  
8 that each party should come with its position, and  
9 those positions had to be translated into a common  
10 agenda so as to initiate a dialogue process.

11             That was a preparatory meeting. That's what  
12 we called it, so as to be able to come to agreement on  
13 agendas and begin a dialogue process, and definitively  
14 establish the dialogue roundtable.

15             That is why in that meeting, no minutes were  
16 signed. Nothing was agreed upon, because one of the  
17 parties did not accept the conditions of the points on  
18 the agenda.

19       Q.     Before moving on to that last point, I  
20 understand that from the OGGS, once again, the  
21 community was being urged to lift its protest so as to  
22 be able to proceed to dialogue?

1       A.     Correct.

2       Q.     And the community refused to do so?

3       A.     That's right.

4       Q.     At that meeting, I understand that Parán put  
5 forward a claim saying that its lands were affected by  
6 contamination?

7       A.     Mostly because of an impact generated by the  
8 company, they said. There was a prior document that  
9 they presented as well.

10      Q.     What are you saying--what you referring to  
11 when you say "impact"?

12      A.     General impact.

13      Q.     I'd like to ask for a more specific  
14 response. What do you mean by "general impact"?

15      A.     Impact of the mining activity.

16      Q.     Was that related to an environmental  
17 problem?

18      A.     Environmental impact, social impact. The  
19 impacts that mining activity can have.

20             No, these are initial points of the  
21 negotiation. Not all of the points of negotiation are  
22 part of a final agenda.

1       Q.     And these impacts, which I understand, that  
2 was the main subject of discussion; correct?

3       A.     Initially.

4             I could say that it was one of the points  
5 for unifying the agenda, because the agenda had yet to  
6 be defined nor the items to be addressed.

7       Q.     Let's turn to the draft agreement. It's at  
8 Tab 35. This is Exhibit C-346. And I understand that  
9 this--these are the minutes that were drafted as of  
10 that time, or 344, rather. 344, it's C-344.

11            PRESIDENT CROOK: We're at--the record says  
12 it's at Tab 35, and at Tab 35, I have another  
13 document.

14            Is it Tab 36 we're looking for or--

15            MR. GALLEGGO: C-344.

16            PRESIDENT CROOK: I understand. I'm trying  
17 to find where it is.

18            MR. GALLEGGO: Sorry. 35. My apologies,  
19 sir.

20            PRESIDENT CROOK: Okay. 35 is C-344, yes.

21            MR. GALLEGGO: Thank you very much.

22            PRESIDENT CROOK: Okay.

1 MR. GALLEGO: For that clarification.

2 BY MR. GALLEGO:

3 Q. And there, one finds a description of the  
4 points of discussion; correct?

5 A. Yes, three agenda items were established,  
6 initial agenda items. They're there.

7 Q. Then under item 4?

8 A. Well, it's three agenda items, not points of  
9 agreement.

10 Q. Yes, thank you.

11 Then in terms of the agreements, we see at  
12 point 1 that it is agreed that--that the parties agree  
13 to formally declare that the dialogue between the  
14 Parán Community is established. The second is a  
15 formality. The community will deliver the number,  
16 name and accreditation documents. 3 is similar, and  
17 addressing Invicta doing the same.

18 And the fourth point of agreement is a much  
19 more substantive issue. It says that the Invicta  
20 Mining Company together with the Parán Community will  
21 carry out the identification and location of the  
22 possible damages to the lands that the community

1 refers to within the mining components located with  
2 the territory of the Parán Community. And for that, a  
3 representative of the OEFA will go.

4 Do you recall that point?

5 And the representative of the OEFA, the OEFA  
6 is an agency in charge of environmental monitoring;  
7 correct?

8 A. No, that's not right. The OEFA has other  
9 functions. It's environmental supervision and  
10 inspection.

11 Q. In other words, what Parán was asking for  
12 here was that there be supervision and inspection by  
13 the OEFA; correct?

14 A. No. You're signing something that hasn't  
15 been signed. The agreements were not signed;  
16 therefore, they're not valid agreements.  
17 Therefore--allow me, please, with your permission,  
18 Mr. President, to conclude answering the question.

19 Q. Of course. Go ahead.

20 A. The agreements weren't signed. That's why  
21 the minutes weren't signed; and therefore, well, there  
22 were discrepancies so as between points 4, it was



1 mostly because of that that one of the parties didn't  
2 want to sign the agreement.

3           So we don't consider this agreement valid  
4 because, while one of the parties can come forward  
5 with a proposal, the other party did not accept it.  
6 And so the agreement came--there was a debate, and no  
7 agreement. There was no agreement. There was no  
8 consensus, and therefore, the agreement cannot be  
9 considered an agreement.

10       Q.     And mindful of this response, it appears  
11 that building a road was not included on the agenda;  
12 correct?

13       A.     As I say, the only thing that was  
14 established were the points of the agenda. There were  
15 three. And so the six points of agreement were not  
16 put forward, so I would not venture to give you an  
17 answer in response to your question.

18       Q.     Thank you, Mr. Trigoso.

19           I'm asking you because you were there at  
20 that meeting, and I wasn't.

21       A.     As I told you, Mr. Attorney, or through you,  
22 Mr. President, I was here at the beginning of the

1 process. I was an official who had other functions to  
2 perform, and therefore, we left the specialists to  
3 develop this dialogue process.

4 Q. During the time you were at that meeting,  
5 was the issue of the road discussed?

6 A. I can't say because I wasn't there.

7 Q. Not at all?

8 A. No. When the agenda items, when the three  
9 points on the agenda were discussed.

10 While there are agreements, these agreements  
11 were not signed, and I can't tell you exactly what  
12 happened during the discussions because I wasn't  
13 there.

14 Q. So let us now look at the letter from Parán  
15 that made reference to this meeting. That is at Tab  
16 53, and it is a letter from Parán dated 12 February to  
17 the Minister of Energy and Mines, as I understand it,  
18 or at least a representative of the Ministry of Energy  
19 and Mines, Mr. Francisco Ismodes. And here it  
20 explains the reason why, according to Parán, they did  
21 not sign this agreement.

22 And it says about halfway through the second

1 paragraph, that on 26 January, 2019, that a dialogue  
2 table was installed which took place on that day,  
3 taking the five-point agreements, not reaching an  
4 agreement on point 2004 between the community and the  
5 representatives of the mining company and Invicta.  
6 That dialogue was suspended. And then, he asked for  
7 another meeting on 19 February.

8 Exhibit R-13.

9 Looking back to this letter, it says about  
10 halfway through that there were five points. That  
11 agreement was not reached on point 4 between the  
12 community and Invicta, with which it appears that no  
13 specific agreement was reached on precisely how this  
14 point 4 was to be drafted.

15 Would you agree with that reading?

16 A. What I would agree with is that there was no  
17 agreement on point 4. The reasons why there was no  
18 agreement on that point, I cannot say. But there was  
19 not agreement with respect to point 4, and this  
20 resulted in the community not signing these minutes.

21 Q. And do you have personal knowledge that at  
22 this meeting Parán requested compensation of \$2

1 million?

2           And do you have personal knowledge based on  
3 the reports that came to you that Parán demanded  
4 compensation of \$2 million as compensation without  
5 justification at this meeting?

6           A.     Reviewing the documents, yes, there is  
7 information, I can't tell you where it's to be found,  
8 but, yes. They were asking for compensation.

9           And I need to state this clearly,  
10 Mr. President, that sometimes the communities have  
11 perceptions of negative impacts not only on their  
12 environment, but also on their uses and customs. And  
13 in response, they propose some sort of compensation  
14 without any technical foundation.

15           So we do believe that it is valid for one of  
16 the parties to have an expectation, and that must be  
17 respected. But it's in the agreement that that is  
18 debated and supported, and the parties make the  
19 decision. Not the State, not the Ministry of Energy  
20 and Mines but the parties.

21           Q.     Of course.

22           At any rate, did this demand seem reasonable

1 to you?

2 A. I can't pass any value judgment about the  
3 valid claims of any of the parties. What we do  
4 is--well, we try to raise awareness and bring the  
5 parties together, and have them be the ones to debate  
6 their proposals within the framework of mutual  
7 respect, and the framework of good faith. And other  
8 procedures that we promote in order to establish  
9 dialogue mechanisms.

10 Q. But at any rate, I understand based on your  
11 previous response there was no technical support for  
12 demanding this compensation?

13 A. That's right. You know that there must be  
14 technical support for any compensation in order for it  
15 to be paid. It's not simply a perception that I want  
16 someone to make reparation to me for some harm.

17 Q. And, as we can see so from this letter, they  
18 asked for a meeting on 19 February.

19 Do you recall having read this letter?

20 A. Yes, I read that letter, and I answered that  
21 letter. The letter is at C-091. It says 028.

22 Q. Yes. Let's take a look at that letter.

1 It's at Tab 20 of your binder, and it is Exhibit  
2 C-191.

3 That letter sent 18 February to the  
4 committee--community, rather, of Parán, to its  
5 president, to be more specific, and it begins by  
6 saying, "It is my pleasure to greet you and reply to  
7 your request to continue the dialogue. To be  
8 facilitated by the OGGS. It was unilaterally  
9 suspended by a decision of your client." (As read.)

10 A. That's right. That's the truth.

11 Q. So it was Parán that decided to suspend the  
12 dialogue on 29 January?

13 A. When there are no discrepancies on a point  
14 like the discrepancy at item 4 of the agreement that  
15 was not signed, one of the parties can state they're  
16 in conformity, and not sign the document.

17 By not signing the document, the meeting is  
18 suspended so as to find other moments to meet.

19 It's not that the dialogue is shut down;  
20 rather, it's suspended within the spirit of trying to  
21 persuade the parties, and then pick up on the dialogue  
22 once again.

1           The policy of the sector is always to  
2 maintain the dialogue as an instrument for  
3 facilitation, an instrument for bringing the parties  
4 together, and solving these disputes.

5       Q.     I understand.

6           Here, you are saying suspended unilaterally  
7 by a decision of your client?

8       A.     Yes. That's right.

9       Q.     What this word, unilaterally, evokes for me  
10 is that Invicta was willing to continue that  
11 discussion, and that this Parán interrupted that  
12 discussion that day on 29 January.

13           Can you confirm this?

14       A.     Well, let's see.

15           What I was told by the specialist is that it  
16 wasn't in agreement with the drafting of item 4 of the  
17 agreement. And not being in agreement with one of the  
18 points being debated, they didn't sign the minutes.  
19 By not signing the minutes, well, that implies that  
20 the dialogue could not continue at that time. Other  
21 mechanisms had to be sought to try to bring the  
22 parties together in order to agree upon a new

1 agreement.

2 Q. Do you recall the point of the drafting?

3 A. No.

4 Q. The letter continues, and it says, "In this  
5 regard, it is important to mention that after  
6 transferring the communication to the company..." and  
7 here I pause.

8 In other words, when you issued this letter,  
9 you had discussed with Invicta their response to the  
10 letter from Parán that we saw earlier?

11 A. What we, as I mentioned earlier and  
12 throughout my statement, the sector, the minister--the  
13 Ministry of Negotiation sought dialogue to resolve  
14 disputes.

15 So we invited the parties. We said what's  
16 going on. Why don't we address the agreement. We  
17 would urge them to find consensus, and also, we,  
18 through the specialist, spoke with representatives of  
19 the company, and they gave us the possibility of  
20 continuing the dialogue. They agreed. Since the  
21 community had notified the ministry that it wanted to  
22 go forward with dialogue.



1       Q.     The letter continues. It says that "the  
2 undersigned considers it advisable to continue the  
3 dialogue. But with the following conditions: The  
4 dialogue should be established in equal conditions,  
5 and on the basis of social peace."

6             And there I highlight that it says, "should  
7 be" or "must be "consistent with public order. In  
8 this sense, such continuation will be exercised  
9 without any coercive measure. In this context, the  
10 next session will be convened immediately after  
11 verifying that there's no blockade in the area or  
12 resistance of the population against the company."

13            So let's take a look at this.

14            MR. GRANÉ: According to the transcript, you  
15 have referred to the following conditions, reading the  
16 document, but it's--the document says considerations,  
17 not conditions.

18            MR. GALLEGO: Excuse me, Mr. Grané, for that  
19 mistake. "The following considerations." Correct.

20            BY MR. GALLEGO:

21       Q.     So I'm struck, as I've already noted, that  
22 the dialogue must be established on equal terms

1 without any coercive measure, and it also strikes me  
2 that it says that the next session of the dialogue  
3 will be convened only after verifying that there's no  
4 blockade in the area, or resistance.

5           And what you were noting here is that first  
6 the blockade should be lifted, and then the dialogue  
7 could go forward; correct?

8           A.     Correct, but this, Mr. President, and  
9 members of the Tribunal, is, as I had mentioned an  
10 appeal the sector made to one of the parties.

11           It's not a condition, per se, that is yes or  
12 yes [which must be fulfilled no matter what], because  
13 the work of the ministry, through the General Office  
14 of Social Management, is to promote dialogue as an  
15 instrument for dispute resolution.

16           To renounce the dialogue would be renouncing  
17 our sectoral functions.

18           Q.     But here it uses imperative language. It  
19 says that "it must be on the basis of social peace and  
20 public order without any coercive measure". It's very  
21 clear in this letter that you are conditioning the  
22 dialogue on the lifting of the blockade.

1           It could be that you are urging or appealing  
2 to the parties, but you're telling them that as an  
3 agency, you are not going to mediate in the dialogue  
4 unless the coercive measures are lifted; right?

5       A.     Let me reiterate. It is an appeal because  
6 the Ministry of Energy and Mines does not have any  
7 coercive competence so as to be able to demand the  
8 lifting of any measure, because we, as the Ministry of  
9 Energy and Mines, do not use force as part of  
10 resolving social conflicts.

11       Q.     I understand but you're saying that we, as  
12 OGGS, we are not going to continue to mediate if these  
13 coercive measures continue; yes or no?

14       A.     Not--it's not what you're concluding, sir.  
15           We are issuing an appeal here. An appeal is  
16 a request that we make. And as I say, and I  
17 reiterate, because we could not imperatively say lift  
18 it, because we do not have the function of being able  
19 to take the initiative for lifting a coercive measure  
20 by bringing in official forces.

21       Q.     That's not what I'm saying.

22           What I am asking you is what is it that you

1 were saying in this letter, and I am proposing that  
2 what was--what you are saying in this letter was that  
3 as OGGS, you were not going to continue participating  
4 in the mediation until such time as the coercive  
5 measures were lifted.

6 A. Mr. President, as I say here, we are urging,  
7 and the one who can express the spirit of the letter  
8 is the one who has drafted it. That was the aim of  
9 what was written here. We urge them to lift the  
10 coercive measure.

11 Because for me to say, if you don't lift it,  
12 then I won't engage in dialogue, then I would be  
13 renouncing the very essence of the Ministry of Energy  
14 and Mines to--by not facilitating a dialogue.

15 Q. Let us look at the next page of this letter,  
16 where in effect, in the first paragraph, the word  
17 "urge "is there. And it says, "We urge you to lift  
18 your coercive measure in order to restart the process  
19 of dialogue, and continue in a climate of peace and  
20 peaceful coexistence."

21 A. We're ratifying what we urge them to do.

22 Q. Correct. You are saying that the coercive

1 measures should be lifted in order to be able to  
2 restart the dialogue process; is that right?

3 A. That is what I am urging them to do, because  
4 in that same part, the word "urge" is being used. At  
5 no time have I said if you don't lift the coercive  
6 measures, then I'm leaving. Because that is not the  
7 function of the Ministry of Energy and Mines.

8 Q. If they don't lift the coercive measures,  
9 then I am leaving. You're referring to the OGGs?

10 A. That is what I would say. I'm not affirming  
11 this. You were mentioning something that is contrary  
12 to what I've said.

13 When we say "urge," we ask them to lift the  
14 coercive measure. Here at one point, I say--and this  
15 is one way to put it--at one point I say, if you don't  
16 lift the coercive measure, then I'm leaving. That's  
17 what I wanted to say. Not--this is what I've wanted  
18 to tell the Tribunal.

19 Let's not distort what I'm saying.

20 Q. Let's turn to Tab 41, and this is a document  
21 sent by Mr. León to Mr. Ulloa, and we know this  
22 because of the e-mail that appears there on page 4.

1 It's the first page in Spanish.

2 This e-mail was sent on 20 February 2019.

3 There is an attachment here, which is a memorandum  
4 that details the actions taken. Here mention is made  
5 of this letter on page 2 of this memo.

6 It says, with the official letter, 004/2019,  
7 this is the Parán letter, the assembly agreed to  
8 continue with the dialogue.

9 Do you see that?

10 A. You're talking about the official letter,  
11 number 04 from Parán.

12 Q. Yes.

13 Did you read that phrase? And then it says,  
14 likewise, by official letter 28/2019 dated February  
15 18, 2019, the OGGs responded to the Community of Parán  
16 regarding their request, conditioning the continuity  
17 of the dialogue to the previous lifting of the  
18 measure, the protest. "Conditioning," it says?

19 A. I don't think we're looking at the same  
20 document.

21 Q. You were talking about a letter by Parán.

22 A. No.

1 Q. No, no, this is a memorandum, sir.

2 A. In the exhibit, you have shown me I don't  
3 see any memos.

4 Q. This is a document, sir.

5 A. Mr. President, it needs to be made clear  
6 that that document is not a memorandum. It is an  
7 aide-mémoire.

8 As I said in my statement initially, an  
9 aide-mémoire is a snapshot of the moment in time.  
10 That's an aide-mémoire. It's not a memorandum.

11 PRESIDENT CROOK: Sir, we shouldn't get too  
12 involved in the nomenclature of how pieces of paper  
13 are described.

14 In any event, you have before you the  
15 document that is being referred to, and in your view,  
16 it's an aide-mémoire, not a memorandum, that's fine,  
17 but you have the document.

18 Do you have the document? Sir, the  
19 transcript doesn't read nods of heads.

20 THE WITNESS: Yes, Mr. President.

21 I was looking, physically, at a memorandum,  
22 the format of the document is different, sir. It's

1 different from an aide-mémoire. It's just an  
2 observation.

3 PRESIDENT CROOK: You've explained yourself.

4 But you have the paper in front of you, do  
5 you?

6 THE WITNESS: I do, Mr. President. Yes.

7 BY MR. GALLEGO:

8 Q. Do you see the paragraph that says, with  
9 official letter 004, have you read that paragraph? We  
10 have it on the screen as well, if you want to look at  
11 it.

12 A. Correct.

13 Q. As you can see here, Mr. León is saying that  
14 the letter stated that there was a condition placed  
15 upon the continuity of the dialogue, to the previous  
16 lifting of the protest. Do you agree, it says  
17 conditioning here?

18 A. This document, this letter, 018, we've  
19 looked at it before. You have asked questions about  
20 this.

21 As I indicated in my prior answers a number  
22 of times, the requests--the request by the social



1 management office was a manner to urge the Parán  
2 Community to lift the coercive measure as an act of  
3 good faith for the dialogue to continue.

4 But it was not an imperative condition. It  
5 wasn't a condition, per se, for continuing the  
6 dialogue.

7 ARBITRATOR GARIBALDI: Can you remind us of  
8 who sent this aide-mémoire to Ulloa César? Who is the  
9 author of this? It was mentioned before, and I don't  
10 know the author, and it doesn't appear here.

11 THE WITNESS: Yes. The drafter of this  
12 aide-mémoire is Mr. Nilton León.

13 ARBITRATOR GARIBALDI: (In Spanish.)

14 Oh, okay, Nilton León.

15 THE WITNESS: I wasn't cc'd on this; I don't  
16 have a copy. This was sent to his immediate superior,  
17 who was Mr. César Ulloa.

18 ARBITRATOR GARIBALDI: Is--would it be  
19 appropriate to say that that document reflects the  
20 interpretation of Mr. Nilton León as to the letter,  
21 this official letter, 0028/2019, would you say?

22 THE WITNESS: No. It doesn't reflect what

1 Mr. León says. It reflects the spirit of the letter  
2 that we had sent on 18 February 2019.

3 ARBITRATOR GARIBALDI: This document was  
4 drafted by Mr. León, right?

5 THE WITNESS: Yes.

6 ARBITRATOR GARIBALDI: All right. Let's  
7 shorten this discussion. We don't have a lot of time.

8 The Tribunal is perfectly capable to read  
9 and interpret and understand what this says. Thank  
10 you.

11 MR. GALLEGO: Thank you, sir.

12 BY MR. GALLEGO:

13 Q. One last question in connection with this.  
14 I understand that in your letter that of 18 February,  
15 you did not make reference to Parán's proposal that  
16 the meeting was to be held on 19 February; correct?

17 A. Well, let's see.

18 This suggested the 19th. We looked for the  
19 best conditions, right, for both parties to agree on  
20 the date. We talked to the opposing party. We also  
21 found a slot in the agenda that would be more viable,  
22 and they suggested to me by both party was the 26th of

1 February, and the meeting was held on the 26th.

2 Q. But in that letter, no mention is made that  
3 they have to agree on the date. No reference is made  
4 at all to the proposal by Parán for a meeting to be  
5 held on the 19th. Yes or no?

6 A. As I indicated, these are requests and  
7 proposals put forward by the parties. There's  
8 impartial third parties calling the meetings, the  
9 MINEM, and they, at the MINEM, asked the parties  
10 whether it could be the 26th, the 24th, the 25th. Out  
11 of the conversations held with both parties, a  
12 consensus is reached, and it was decided that the  
13 meeting be held on the 26th.

14 Q. The only thing I wanted to clarify is that  
15 that came later. In your letter, that proposal was  
16 not to be found. In point of fact, there was no  
17 proposal in connection with a future meeting.

18 A. That is done through on-site meetings,  
19 on-site visits to the community and phone calls.

20 Q. Okay. Let's go back to your letter.

21 There's another issue that you are dealing  
22 with in this letter. Again, it's at Tab 20. Could

1 you please show it in Spanish? We have Tab 20, like I  
2 said. This is C-191, and we were looking at the  
3 second paragraph here. It says first, second, third.

4 Do you see that?

5 A. Yes.

6 Q. It says, "The time that has elapsed with the  
7 road blockade in place, more than 100 days, will  
8 compel the relevant entities in charge to perform  
9 their duties within their powers, and in accordance  
10 with public policy and social peace."

11 "I hereby put you on notice for the relevant  
12 purposes."

13 Do you see that?

14 A. Yes.

15 Q. So they're saying that more than 100 days  
16 have elapsed, that that's not a short period of time,  
17 and that this will compel the law enforcement forces  
18 to act.

19 So here it says, "will compel." That  
20 doesn't mean that it's an option that they have.

21 A. I agree with you on that point, but I  
22 disagree with you when you were just saying that this

1 is a police intervention.

2           Where it says--it says here, "other entities  
3 will act within their powers," they're talking about  
4 other government entities or agencies. Entities or  
5 agencies of the national government. Perú has 18  
6 ministries. Under the 18 ministries, 15 to 16 have  
7 dialogue offices or dialogue management offices.

8           So when we're talking about other entities,  
9 other entities are going to strengthen the dialogue,  
10 because the Ministry is seeking to strengthen  
11 dialogue, and we want the other agencies to also  
12 become active.

13           For example, the Ministry of the Interior,  
14 the PCM, the Secretary of Social Management and  
15 Dialogue, the Ministry of Transportation, the  
16 Ombudsperson's Office, the other offices that may  
17 guarantee social peace.

18       Q.     In your second statement, you said that on  
19 13 February 2019, a few days before this letter, you  
20 spoke to Mr. Bravo in connection with the police  
21 intervention.

22       A.     Where in my statement do I say that?

1 Q. Paragraph 28 of your second statement.

2 THE INTERPRETER: Mr. President, this is the  
3 interpreter. Can counsel speak closer to the mic,  
4 please.

5 PRESIDENT CROOK: We're--counsel, we've had  
6 a request from the interpreter that you lean into the  
7 mic a little bit.

8 MR. GALLEG0: Thank you, sir.

9 PRESIDENT CROOK: Why don't you say  
10 something. Let's see if it's satisfactory.

11 THE INTERPRETER: This is good,  
12 Mr. President. Thank you.

13 PRESIDENT CROOK: That's better.

14 THE INTERPRETER: Yes.

15 BY MR. GALLEG0:

16 Q. Here at Paragraph 28 of your second  
17 statement, you said, "Consistent with the foregoing at  
18 the meeting on 13 February 2019, I encouraged Invicta  
19 to continue the dialogue regardless of whether the  
20 company was still attempting at the same time to make  
21 the PNP to lift the blockade with the use of law  
22 enforcement."

1           This was a few days before your letter.

2           In your letter, you were making reference to  
3 an involvement by the police.

4       A.     Let's see. At Paragraph 26, I also--of that  
5 same document at 26, when Mr. Bravo says that I agreed  
6 with the police intervention, I clarified that that  
7 was not true.

8           As the Office of Social Management of the  
9 MINEM, and I've said this before, we do not use to  
10 solve conflict the use of law enforcement because that  
11 is not a tool that would allow us to bring about  
12 dialogue and agreements, right. That weakens  
13 dialogue.

14       Q.     But you knew the plans that the police had  
15 at the time to become involved in the matter?

16       A.     No. I did not know of the plans of the  
17 police. The police has its authorities that  
18 determines the plans, the involvement plans, that are  
19 going to be used. As the Ministry, we do not have any  
20 jurisdiction over the national police.

21       Q.     Let us go back to the aide-mémoire that we  
22 have looked a moment ago at--behind Tab 41. Again,

1 this is C-468, dated 20 February 2019.

2           If we look at page--the page that says  
3 actions taken, he says that action to be implemented  
4 on page 2, the PNP has prepared an operational plan to  
5 affect the unblocking of the access roads, and the  
6 approval of which is pending by the Ministry of the  
7 Interior senior officials.

8           So Mr. León at least knew that this  
9 operational plan was undergoing? There was a weekly  
10 meeting. Didn't he tell you about this?

11         A.     What Mr. León talks about here he's talking  
12 about actions to be implemented. It's forward  
13 looking. It's not saying that the police are taking  
14 these actions. These are actions to be implemented.

15           So they have prepared an operational plan to  
16 effect the unblocking of the access roads, the  
17 approval of which is pending by the senior officials.

18           They can prepare this, but an operational  
19 plan is not a matter of public knowledge. Right? An  
20 operational plan, well, that's the jurisdiction of the  
21 national police, only.

22         Q.     Okay. According to you, that's only the



1 jurisdiction of the national police, but here we have  
2 an internal document from the OGGS. It appears that  
3 this information is being shared. The police, at  
4 least, has informed Mr. León that an operational plan  
5 exists, and that that plan will be implemented in  
6 order to lift the blockade.

7 A. In the national government or in the  
8 Peruvian State, information is passed on from one  
9 agency to the other via an official letter, right. Is  
10 there an official letter informing us of these  
11 operations with the police, no.

12 So any comment may be made, any data could  
13 exist, but no official information came to us from the  
14 police indicating to us that the police were preparing  
15 an operational plan.

16 Q. At the beginning of your testimony, I think  
17 we clarified the manner of communication with your  
18 superiors, and with your subordinates. And you said,  
19 I think, that aide-mémoires were sent to your  
20 superiors, but internally, amongst yourselves, within  
21 the OGGS, meetings were held, weekly meetings, using  
22 PPT presentations.

1           I understand that the purpose of this  
2 document was for it to be sent from the OGGS to your  
3 superiors within the Ministry of Mines; right?

4           A.     Yes. But there's a filter here that this  
5 goes through.

6           When I say that we had no official  
7 information, right, if things are not official, I  
8 cannot pass them on. I can have information from an  
9 expert under me, but for me to be able to pass on that  
10 information to my superiors, that has to be done via  
11 an official channel. I cannot use mere suspicions.

12           We did not receive any document from the  
13 national police saying that we--they were preparing an  
14 operational plan.

15           ARBITRATOR GARIBALDI: Sir, you are a fact  
16 witness here. You're not here as a witness of  
17 official communications.

18           As a matter of fact, did you or did you not  
19 know of this?

20           What you have been asked is whether you knew  
21 of the existence of a police plan subject to the  
22 approval of senior officials.

1           Did you know of this officially, or not  
2 officially?

3           THE WITNESS: No, sir.

4           ARBITRATOR GARIBALDI: Okay. Thank you.

5           BY MR. GALLEGO:

6           Q. This aide-mémoire, did you receive it?

7           A. No. I was not cc'd on the e-mail. César  
8 Ulloa was the only person cc'd on this, the  
9 coordinator.

10          Q. Do you know why this aide-mémoire was  
11 prepared? What was the purpose of it?

12          A. Yes, it was to hold a meeting with Invicta  
13 representatives.

14          Q. My understanding, then, is that what is  
15 being done here is provide information to your  
16 superiors so that they are well informed when a  
17 meeting is held with Invicta; right?

18          A. This was information that was being provided  
19 to Mr. León and Mr. César Ulloa for the holding of the  
20 meeting with Invicta. It was a preparatory meeting,  
21 because the official meeting was to be held on 26  
22 February, and we're talking about 20 February here.

1       Q.     There's something I don't understand here.

2             At the beginning of our discussion, you said  
3 to me that within the OGGS, you didn't really have  
4 written communications. You held PowerPoint  
5 presentation-related meetings. And then when you held  
6 meetings within the Ministry of Mines, you prepared  
7 reports or aide-mémoires like this for the information  
8 to be transferred on.

9             So I'm not really understanding. Now you  
10 are saying that this aide-mémoire ended with  
11 Mr. Ulloa. He was a direct superior, and I'm sure  
12 that you saw them every day.

13       A.     Let me answer your question.

14             The aide-mémoires go through filters. It's  
15 not that the expert prepares an aide-mémoire, and it  
16 goes to the senior officials. No.

17             It goes through filters. The coordinator,  
18 Mr. Ulloa, then, we go to Mr. Ulloa's boss, and then  
19 to his boss's superior.

20             So this only went up to Mr. Ulloa. It  
21 didn't go through any other filters. That's why I was  
22 saying that only certain pieces of communication or

1 analysis are passed on.

2 Q. What you're saying is that this  
3 aide-mémoire, perhaps, would have gone to the senior  
4 officials, so it was first sent to Mr. Ulloa for  
5 Mr. Ulloa to review it, but that's where it ended.

6 The buck stopped there. It stopped with  
7 Mr. Ulloa; that's what you're saying?

8 A. Yes, because otherwise, it would have  
9 followed the regular procedure.

10 Mr. President, members of the Tribunal,  
11 aide-mémoires, as I said, are temporary in nature,  
12 because social dynamics change, and social conditions  
13 may change overnight.

14 So if we want to have an aide-mémoire as an  
15 instrument that allows us to get another illustration  
16 in connection with a certain moment and a certain  
17 time, then that cannot be used in other instances.  
18 They have to be reviewed. They have to be updated,  
19 and they have to be processed. The aide-mémoires,  
20 that is.

21 MR. GALLEGO: Do we need a break or should I  
22 continue?

1           PRESIDENT CROOK: We are scheduled for a  
2 break in 15 minutes. I think we're okay to proceed on  
3 that basis, so.

4           MR. GALLEGO: Thank you.

5           PRESIDENT CROOK: Why don't we take 15  
6 minutes. Or yeah.

7           ARBITRATOR GARIBALDI: (In English.)

8           We'll wait. 15 more minutes.

9           PRESIDENT CROOK: We'll have the break at  
10 the regular time. We'll have the break at the  
11 scheduled time, which is 15 minutes from now.

12          BY MR. GALLEGO:

13          Q.     Very well.

14                Let us go back to your letter behind Tab 20.  
15 This is C-191. And we're going to look at the third  
16 paragraph. It says here, "What is stated above in the  
17 preceding paragraph is closely related to our duties  
18 as advisor of the High Directorate on social matters,  
19 and is relevant to all front-line departments."

20                Do you see that?

21          A.     Yes.

22          Q.     It appears that what was indicated in the

1 preceding paragraph was agreed with the senior  
2 officials?

3 A. Well, the Office of Social Management is an  
4 advisory body to the higher management, to the senior  
5 officials. That's what I'm saying.

6 That is the structural link that exists in  
7 connection with this office. So it says here that  
8 there is a--an advisory relationship with the senior  
9 management.

10 Q. Why are you saying that? You have many  
11 powers, and this is the one that is highlighted here.

12 A. No, let's see. Our powers. We are an  
13 advisory body to the Minister, only. We report to the  
14 minister, not to the Vice Minister, no, or the  
15 Secretary of the Ministry, no. The Minister.

16 Q. As advisors to the Minister, you were saying  
17 that the preceding graph, the one that we saw  
18 before--well, you're saying that, right?

19 A. Are you talking about the whole paragraph?

20 Q. We're talking about the whole paragraph, not  
21 the first, second, or third item here; right? Well,  
22 let's go to 43 again. This is C-570.

1           PRESIDENT CROOK: Counsel, while we're  
2 reading the document, let me clarify something. There  
3 was some ambiguity whether this was one by Mr. León or  
4 whether it went to him. My understanding is he was  
5 the author of this document?

6           MR. GALLEGO: Yes.

7           PRESIDENT CROOK: Thank you.

8           THE WITNESS: That's right, Mr. President.  
9 That's right. I was--I was the one that wrote this  
10 document.

11          MR. GALLEGO: Mr. President, I think you  
12 were referring to C-468, and yes, Mr. León was the  
13 author, and that was classified by the Respondent in  
14 the document production process.

15          PRESIDENT CROOK: Understood.

16          I think, sir, Mr. Trigos, there's some  
17 confusion here, but we were talking about a different  
18 document.

19          So now we're going to discuss the--well,  
20 I'll give it back to counsel.

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

22          BY MR. GALLEGO:



1       Q.     So you've seen this document at Tab 43. It  
2 is an e-mail sent by Mr. León to the chief of police  
3 in Sayán on the same day that you issued the letter  
4 that you--that we saw before, and that you signed.

5             And you are copied in this e-mail. Did  
6 Major Soria know that you were the person who drafted  
7 the operations plan?

8             Let me clarify the question.

9             Here you are writing to Major Soria. Did  
10 you know that Mr. Soria had drafted the operations  
11 plan by now?

12       A.     I do not know. However, Mr. President, if  
13 you allow me, in connection with this document, this  
14 e-mail, this e-mail that was sent to Mr. Soria from  
15 the Sayán district, the only goal was to send to the  
16 president of the community, the letter, the letter  
17 mentioned. Why? Because the Ministry, to get to  
18 Sayán and provide the letter would have to take 12  
19 hours. But because of logistics, he was--he  
20 communicated--he communicated via phone so that this  
21 letter be delivered, and we know that the president  
22 has received the invitation letter to a dialogue

1 process. That is the purpose--the purpose is not to  
2 get to know operational plans, et cetera. This is  
3 just for the police or the police station to help us  
4 deliver this. This was goal of this e-mail sent to  
5 Sayán.

6 Q. However, this must have been read by the  
7 police officer; correct?

8 A. Certainly.

9 Q. And he would have known of what the OGGS is  
10 saying?

11 A. I cannot assert whether it has been read or  
12 not. We sent the e-mail for him to send to the  
13 president of the community this. This was the goal of  
14 this letter.

15 Q. We saw before that you had the obligation to  
16 coordinate--yes, to coordinate with the public forces,  
17 isn't that right?

18 A. Coordination is not done by Trigos, that I  
19 am at the third level for the decision-making. I can  
20 make a decision with the general or the Minister. I  
21 may do it with the Commissioner, but it was not within  
22 my power to do so, when it was a higher type of

1 decision. There had to be coordination. I was given  
2 an office of coordination, but I could talk to the--I  
3 didn't have the jurisdiction. I didn't have the  
4 competence to ask those questions, or make those  
5 decisions.

6 Q. At the beginning--and I am not going to show  
7 you this. I am just going to read, and if you want  
8 after I read it, we can go there, but the Supreme  
9 Decree that refers to the role of your office, the  
10 office that you directed, and here it says, to draft  
11 and carry out crisis plans, and also to coordinate  
12 with internal forces.

13 You were the director of the office, and you  
14 had here, as the main role to--to give to the direct  
15 coordination with the law enforcement.

16 A. And there it says, comma, whenever  
17 applicable, so whenever applicable. That's when I had  
18 to do it or when the high management had to do it, but  
19 this was not within my purview.

20 Q. And if the sole purpose was for that letter  
21 to be conveyed, why can't you send, for example, a  
22 letter to the mayor or the subprefect or any other

1 authority that is equally close to Parán?

2 A. Because mainly, the documents in Perú, for  
3 them to be official, for them to be valid, have to be  
4 issued by the--have to be notified by the police  
5 forces. There is an administrative process. I am not  
6 a lawyer. I cannot explain it. And whoever will  
7 explain the legal aspect may do so, but it is the  
8 police, the one that serves notice of any of these  
9 notices, for them to be valid. And that's the reason  
10 why notices usually have the support of the national  
11 police forces, and we usually get it from them.

12 I can ask the mayor to send a letter. I'm  
13 certain that the mayor will not send it, because the  
14 role of the mayor is different, and that it's not the  
15 role to serve notice; whereas, this is something that  
16 is usually done by the police forces.

17 Q. We're going to look again at this document  
18 that we were looking at. This is Tab 41. We are in  
19 between both documents. C-468. And once again, you  
20 were saying and once again this is two days after your  
21 letter that the national Peruvian police had  
22 established an operations plan pending the approval by

1 the high management of the Interior Ministry or  
2 Ministry of the Interior.

3           Would you please tell me who is part of the  
4 leadership of the Ministry of the Interior in terms of  
5 the positions. I'm not looking for names. Just  
6 positions.

7           A.     Let me offer you two answers, if you allow  
8 me, Mr. President.

9           To answer your question about the management  
10 ministers, by its ministers and the general  
11 secretariat, but the operational plans are not  
12 approved by the Ministry of the Interior. That is  
13 separate. The approval and the implementation is  
14 separate, and this is what I was able to see. I would  
15 have to review that from the legal standpoint, and  
16 that is something that has to be in the hands of the  
17 national police. They are the ones who plan and  
18 implement.

19           There is a reason behind it, but that's the  
20 issue. The Ministry of the Interior does not develop  
21 Police Operational Plans.

22           ARBITRATOR GARIBALDI: (In Spanish.)

1           You are not an official of the Ministry of  
2 the Interior.

3           THE WITNESS: Correct.

4           ARBITRATOR GARIBALDI: And you are not a  
5 police officer?

6           THE WITNESS: Correct.

7           ARBITRATOR GARIBALDI: You are not a lawyer?

8           THE WITNESS: Correct.

9           ARBITRATOR GARIBALDI: Thank you.

10          BY MR. GALLEGO:

11          Q.     At any rate, this was the understanding of  
12 Mr. León, and was this communicated in the weekly  
13 meetings that this was your opinion?

14          A.     I already addressed this topic, and I ratify  
15 what I said at the beginning in connection with this.

16          Q.     Yes or no.

17          A.     Let me repeat.

18                 This document was addressed to Mr. César  
19 Ulloa, and it could be the opinion of a specialist.  
20 And as the member of the Tribunal just said, Mr. León  
21 is not a member of the Ministry of the Interior or the  
22 national police.

1           So the opinions may just be opinions, but  
2 the knowledge is not official.

3           MR. GALLEG0: Mr. President, I will carry on  
4 going until you tell me to stop.

5           PRESIDENT CROOK: I think this will be a  
6 good time to stop and the record will show the last  
7 sequence of questions was actually Ambassador--I  
8 promoted him--Arbitrator Garibaldi and not me. I  
9 haven't done anything of that wit and brilliance in a  
10 long time.

11           All right. Let's take a ten minute break.

12           (Whereupon, there was a recess in the  
13 proceedings, 3:11 p.m. - 3:26 p.m.)

14           PRESIDENT CROOK: All right. Welcome back,  
15 and let us then resume the questioning.

16           MR. GALLEG0: Thank you, Mr. President.

17           BY MR. GALLEG0:

18           Q. Mr. Trigos0, we were looking at the document  
19 at Tab 41, and if we scroll down, let's see if I can  
20 find it. Just the before recommendations, it says,  
21 likewise, we know--"Also, it is known that the local  
22 police forces of Perú are preparing an operational

1 plan in the community, having identified long-range  
2 weapons among the community members."

3 Do you see that?

4 A. Yes.

5 Q. Were you aware of this operations plan,  
6 whether it was official or unofficial?

7 It was probably a different operations plan,  
8 different from the one to put an end to the blockade.

9 A. I was not aware of that.

10 Q. So you did not inform Mr. León during the  
11 weekly meetings about your knowledge of this  
12 operations plan?

13 A. As I mentioned before, and as stated by the  
14 member of the Tribunal, neither I nor Mr. Nilton are  
15 specialists in the subject. We do not even belong to  
16 the Ministry of the Interior or to the national police  
17 forces.

18 Q. Just before this paragraph that we just saw-  
19 -

20 ARBITRATOR GARIBALDI: Witness, you cited a  
21 member of the Tribunal, and you referred to me. I was  
22 referring to your opinions, a different issue, a



1 different matter, our opinions about which the witness  
2 needs to have a foundation because of the knowledge of  
3 the law or his or her position.

4 Different from this is the factual knowledge  
5 of the witness, so please do not cite me.

6 THE WITNESS: I apologize.

7 And let me continue, then.

8 BY MR. GALLEGO:

9 Q. And here, as stated by the Arbitrator, we're  
10 not talking about official documents. We're just  
11 talking about your personal knowledge as head--as  
12 manager of the department in connection with the  
13 social conflict that is the subject matter of this  
14 arbitration.

15 In this aide-mémoire, at the paragraph that  
16 we were looking at, just above there is another  
17 paragraph that says "the social process that the  
18 mining company has with Parán is affected or impaired  
19 by the presence of other interests different from the  
20 State, marijuana crop producers. The State is aware  
21 of this and is activating the corresponding  
22 mechanisms".

1           In your opinion, what would be those  
2 mechanisms to be activated by MININTER?

3           A.     I am not aware of these mechanisms. More  
4 so, the problem between Invicta and the Parán  
5 Community. We never heard these issues as part of the  
6 dialogue process.

7           Q.     Nonetheless, Mr. León was aware of this?

8           A.     But it wasn't part of the issues discussed  
9 within the dialogue process. The agenda that was  
10 discussed, the agreements that were reached. At no  
11 point on the agenda was there talk of marijuana  
12 plantations, or other topics that are mentioned there.

13                  For example, it says, "land ownerships"  
14 nor--well, that was never mentioned as the problem  
15 that was subject of the establishment of the dialogue.

16           Q.     Land titling was not mentioned?

17           A.     It was not one of the issues at play.

18           Q.     But going back to this topic of marijuana,  
19 what would have the Ministry of Interior have done to  
20 resolve this marijuana problem? There would have been  
21 an operational plan, some police intervention because  
22 this is not going to be resolved through dialogue.

1       A.       With the marijuana plantation, as I  
2 understand it, is a crime. The Ministry of Energy and  
3 Mines doesn't look into criminal activity through a  
4 dialogue because the office of dialogue is not a  
5 court. It does not establish regular justice. It is  
6 an office for promoting dialogue, and it deals with  
7 cases as between the parties through mechanisms in its  
8 management process.

9       Q.       Understood, but it seems that these are  
10 observations that are specified there. The  
11 observations in the two paragraphs that I just read,  
12 and this led to the consequent recommendation that I'm  
13 going to read now.

14               If we can go down to the paragraph on  
15 "recommendations".

16               "First, coordination at the highest  
17 intersectoral level between the MEM and the MININTER  
18 in order to activate as soon as possible the  
19 mechanisms for the re-establishment of public order in  
20 the area by MININTER."

21               And then it continues. "dialogue mechanisms  
22 are not appropriate in this case because community

1 leadership manages a double discourse with the State,  
2 and with its population, evidencing thereby, the  
3 presence and active participation of local actors, who  
4 with an economy that is outside the law, subsidize  
5 activities contrary to the public order against the  
6 mining project."

7           So it would appear based on what I'm reading  
8 here, that there is an account of the issue--Mr. León,  
9 who was the person who was on the ground is saying  
10 that this population is heavily armed. That's going  
11 to be resolved through an operational plan.

12           This population has marijuana plantations,  
13 which is obstructing the dialogue. There will also be  
14 an operations plan in that respect. And finally,  
15 there is a blockade, and there also will be an  
16 operational plan in that regard. The dialogue is not  
17 appropriate.

18           Were you familiar with this opinion of  
19 Mr. León?

20           A.     Yes. Look, it's a recommendation. Within  
21 the administration, recommendations are not binding.  
22 They're a matter of analysis for decision-making.

1           Now, Mr. León is a social specialist. He  
2 can say that there are marijuana plantations. No  
3 doubt that's based on information he has been given,  
4 but he hasn't verified it on-site because that's not  
5 his function.

6           I reiterate, the function of the Ministry of  
7 Energy and Mines is not to take up these issues that  
8 you're mentioning. These issues are crimes. We at  
9 the Ministry of Energy and Mines are not competent to  
10 look at these cases.

11           We look at what's the issue. The population  
12 says that there's a negative impact on its community.  
13 The company says they have put up a blockade to the  
14 mine. That's the issue, and it's on that basis that  
15 we've outlined a whole strategy for dialogue so that  
16 the parties can find consensus.

17           That's what the ministry does.

18           If there were collateral actions, well, they  
19 wouldn't affect the dialogue process.

20           Q.     Mr. Trigos, I understand what you just  
21 said, but there are other factors that are being noted  
22 here by Mr. León.

1           He's saying that here there are long-range  
2 weapons, and there is marijuana, crimes, in effect,  
3 and that therefore, it is not appropriate to go  
4 forward with the dialogue.

5           Did he communicate this to you or not. That  
6 was my previous question, and you didn't answer it.

7       A.     No, he did not communicate these issues to  
8 me, and because they were not part of the issues that  
9 we were dealing with.

10           When he says that it's not appropriate to go  
11 forward with the dialogue, well, we would not be  
12 engaging in dialogue with criminals. If there had  
13 been this presence of drug traffickers, and, say,  
14 criminals with long-range weapons.

15           We as the general office for social  
16 management, we can never establish a dialogue with  
17 these people who are acting outside the law because we  
18 would be recognizing their activity.

19       Q.     And what you just said makes a lot of sense.  
20 It makes a lot of sense, and that is why Mr. León is  
21 saying that dialogue is not appropriate.

22           It's his opinion. I'm not saying that you

1 need to ratify it, but I am reading properly; correct?

2 A. Yes. That's right. It's logical. That  
3 a--how is a government office going to engage with  
4 people engaged in illegal conduct?

5 In Perú, nor anywhere else would they be  
6 engaging in dialogue with persons who are acting  
7 outside the law. There are other mechanisms of  
8 intervention but not an office that is in charge of  
9 facilitating dialogues to find consensus-based  
10 solutions to a social problem.

11 Q. So you're telling me that had it been proven  
12 that they had short or long-range weapons, and that  
13 they had marijuana plantations, then it would not be  
14 appropriate to go forward in the dialogue; right?

15 A. There would not have been dialogue. The  
16 institutions would have needed to step in. The  
17 institutions that are in charge of eradicating such  
18 situations.

19 Q. Correct, but as for the OGGS, that would  
20 have ended any possibility of dialogue until the other  
21 institution stepped in?

22 A. Well, you're talking to me about a

1 hypothetical, if there were, you're asking me in the  
2 conditional, and then putting these situations to me.

3 No, so we, in practice, say, is there a  
4 dialogue, yes. Is there a social agenda, yes. Is the  
5 social agenda being addressed in this space for  
6 dialogue, yes.

7 So that is the issue.

8 At no time has there been any discussion of  
9 drug traffickers or persons with long-range weapons.  
10 That's not part of the dialogue process and agenda.

11 Q. Actually, Mr. Trigoso, we don't have all  
12 day.

13 Mr. León is telling you, or telling  
14 Mr. Ulloa internally that these weapons exist. That's  
15 a reality, and the Community of Parán has marijuana,  
16 that they are drug traffickers. That's what he's  
17 saying. In other words. They're criminals, and,  
18 therefore, it is not appropriate to go forward with  
19 the dialogue.

20 I believe you're telling me that in that  
21 case, we as OGGs could not continue. Other  
22 institutions of the State would have to step in.



1           Are we in agreement on that point?

2           A.     We are in agreement in the hypothetical that  
3 you are putting to me.

4           Now, to generalize and say that a community  
5 is all drug traffickers, or to say that the community,  
6 generally speaking, is armed, well, I don't think that  
7 I could risk making such a characterization.

8           Q.     Very well. Let us then move on be to the  
9 letter that came in 21 February from Parán.

10           You discuss it in your first statement at  
11 Paragraph 37, and you say that on 21 February, we  
12 received a satisfactory response from the Community of  
13 Parán to the letter that we were looking at earlier  
14 that you drafted dated 18 of February 2019.

15           A.     That's right.

16           Q.     Let us look at that letter that you got from  
17 Parán. It is at Tab 24. It is Exhibit C-198, and in  
18 the second paragraph, this letter--well, it's directed  
19 to Mr. Francisco Ismodes, who I believe was the  
20 minister; is that right? Was he the minister?

21           A.     Yes, Minister Francisco Ismodes.

22           I'm sorry. I'm just trying to find the

1 letter.

2 Q. Sorry. It's at Tab 24. Do you have it?

3 A. Yes.

4 Q. In the second paragraph, it makes express  
5 reference to your letter, and it says that you asked  
6 for--demanded equality of conditions.

7 Do you see that?

8 A. Yes.

9 Q. It then says--well, excuse me. Before we  
10 get there.

11 In your letter of 18 February, when you made  
12 reference to quality of conditions, you were saying  
13 that the negotiation had to be carried out without any  
14 measures of force.

15 A. Yes, this is what I reiterated in this  
16 letter.

17 Q. And Parán says the following in the letter.

18 "Minister, we ask that you guarantee  
19 suspension of the forceful measures, and from Invicta  
20 Mining Corp., a suspension of the criminal complaints  
21 to enact the aforementioned conditions. In turn, I  
22 ask for the intervention to be able to continue the

1 dialogue roundtable through which we shall reach an  
2 agreement, according to official letter 0028. This  
3 agreement will be on 26 February."

4           Now, we're not going to give the Cervantes  
5 award for this drafting either, but it seems to me  
6 that what Parán is saying here is that they're  
7 negotiating with you. They're telling you that we  
8 will lift the coercive measure, forceful measure, only  
9 if the complaints are withdrawn. That's what I  
10 understand that they're telling you.

11           Am I right?

12       A.     It doesn't--they don't negotiate with the  
13 Ministry, but rather, they put the conditions to the  
14 company, Invicta. Because we don't have any  
15 competence to withdraw complaints, and what they're  
16 asking for.

17       Q.     Very well.

18           But you had said in the earlier letter, lift  
19 the coercive measure, and we'll continue to pursue the  
20 dialogue. An exhortation.

21       A.     Exactly.

22       Q. Answer: We are not going to do so until the

1 complaints are withdrawn. That's what they're saying,  
2 right?

3 A. And that was then conveyed to the company.

4 Q. . And the complaints that had been lodged,  
5 were they improperly filed from your point of view?

6 A. The complaint they're referring to is for  
7 the takeover of the mining unit. That's what I  
8 understand, and then a prosecutorial file was opened.  
9 I'm not familiar with that prosecutorial process.  
10 That's what they're referring to.

11 Q. Complaints had been lodged for coercion and  
12 extortion, indeed after they refused to lift the  
13 blockade following the 21 November meeting.

14 Also, complaints were lodged for  
15 disobedience [contempt] of authorities, robbery,  
16 illegal possession of arms. Right? And that was after  
17 the prosecutor's failed attempt to inspect the  
18 magazine [deposit of explosives] on 8 December. That  
19 day the community did not allow the prosecutor to go  
20 in.

21 Knowing this now, do you believe that these  
22 complaints were not properly lodged?

1       A.     Well, as I say, these complaints are lodged  
2 in the realm of the judiciary, with the prosecutorial  
3 authorities, and that has its process. Then, so long  
4 as a fiscal complaint [complaint before a prosecutor]  
5 is maintained, there's no dialogue. It is right that  
6 the fiscal complaint should be an investigative  
7 process, and in the end it is the judiciary that  
8 determines innocence or guilt. As long as there is no  
9 final judicial decision, we cannot treat anyone as a  
10 criminal or give that person any other  
11 characterization that might be possible to give.

12       Q.     You then met with Mr. Bravo on 22 February,  
13 right after this letter. And you discussed with him  
14 the position of Parán. After this meeting, Mr. Bravo  
15 sent you an e-mail on 25 February attaching a draft  
16 document of abandonment that would be presented if  
17 Parán were to lift the blockade.

18               Do you not recall this?

19       A.     I've seen a document that I've reviewed. It  
20 is a proposal to abandon the complaint, but it is not  
21 that. It's a proposal. I don't know if you could  
22 tell me where--

1       Q.     Of course. That's at Tab 25. Tab Exhibit  
2 C-199, and it's an e-mail that was sent by Mr. Bravo  
3 with a copy directly to you, and he says, as  
4 discussed, please find attached the following  
5 documents for tomorrow's meeting with the Parán  
6 Community. There is the form of withdrawal of  
7 criminal complaints, and then a draft protocol of  
8 agreement setting up the formal dialogue  
9 process--well, what was discussed with the process  
10 with Invicta.

11             You received this e-mail.

12             Despite the seriousness of the crimes  
13 committed by Parán, Invicta was ready to yield with  
14 the aim of the blockade being lifted; is that not so?

15       A.     This was the positive disposition on the  
16 part of Invicta to renew the dialogue.

17             Now, here, we cannot affirm or deny the  
18 facts being investigated because no one knows. That  
19 it's only up to the prosecutorial authorities to  
20 go--to pursue the investigation.

21       Q.     But you do confirm the goodwill on the part  
22 of the company to engage in dialogue?

1       A.     Yes. I confirm the predisposition of the  
2 company to engage in dialogue, and the community as  
3 well. One needn't speak of only of one of the party  
4 because there are two parties that come to agreement  
5 to engage in dialogue, and you have the letter from  
6 the president of the community saying I want to engage  
7 in dialogue with the company if the following  
8 conditions are met. And then the company puts forward  
9 the conditions on the basis of which it wants to  
10 engage in the dialogue, so it's the parties who need  
11 to come to agreement and see what the conditions are  
12 to be able to pursue in the dialogue.

13       Q.     So let us now turn to the meeting of 26  
14 February 2019.

15               And I understand that you were present, at  
16 least for a part of the meeting. Can you confirm  
17 that?

18       A.     Yes. I, as director, in order to convey  
19 confidence and good faith on this process, I did go  
20 and--there for the opening of this dialogue roundtable  
21 on the 26th.

22       Q.     There the OGGS said that Invicta was willing

1 to withdraw the complaints, but that Parán had to lift  
2 all coercive measures so as to be able to proceed to  
3 install the dialogue roundtable.

4 That's what the OGGS said; correct?

5 A. Can you tell me where you are at in the  
6 file?

7 Q. First, let me ask if you remember that, and  
8 then let's turn to the document.

9 A. I don't remember the details, as I was  
10 saying. I was only--for the protocol process, and  
11 then the specialist stayed. This proposal made by the  
12 company of the community was put to the community.  
13 The community then asked for a break to have an  
14 internal discussion, and I don't know this because I  
15 was there, but rather, because the specialist told me  
16 about it. They wanted to have first a break so as  
17 to--for the community to be able to make a decision.

18 Q. Let's turn to the document. It's at Tab 36.  
19 It's a WhatsApp communication sent to Mr. Bravo on  
20 that same day, apparently. And at 1:13:14, you sent  
21 him the following communication.

22 A recess has been taken so that the internal



1 debate on the proposal made by the OGGS on the lifting  
2 of all measures of force, and of the criminal  
3 complaints against the leaders, and the installation  
4 of the dialogue table, for which the MEM-OGGS will  
5 guarantee the fulfillment of the commitments that are  
6 assumed at this dialogue table.

7           So going back to what had been proposed to  
8 you, which is that the OGGS would be the one to  
9 propose that all measures of force would have to be  
10 lifted, and on the other hand, that Invicta was  
11 willing to withdraw the complaints.

12           That's what was proposed, and it seemed  
13 reasonable to the OGGS to put it--to transmit it?

14       A.     Correct.

15       Q.     Then as regards the measure of force, this  
16 was addressed in the agreement.

17           Let's look at it. This is in C-200, which  
18 is at 26, Tab 26, excuse me, of the binder in front of  
19 you. And at Item 5 on the last page, there's talk of  
20 suspending all coercive measures; right?

21       A.     Correct.

22       Q.     And I understand that there was only one,

1 the one that was on the access road through Lacsanga?

2 A. Well, the coercive measure was by the  
3 Community of Parán. Correct. They built a part of  
4 the access road to the mining unit, which one could  
5 also enter through Lacsanga, and if we see in the  
6 agreement that you mentioned, you can look at Item 4  
7 of the same agreement, and at no point in number 5 is  
8 mention made of Lacsanga.

9 Q. In other words, according to you, there was  
10 no coercive measure in the Community of Lacsanga?

11 A. Yes, there was, but the objective of this  
12 agreement which as the company also saw was to enter  
13 the mining unit.

14 The company went in to the mining unit  
15 through Parán, and I'm not the one who says it. They  
16 themselves say it. In their letter, that was sent to  
17 me on 20 March, at number 2, they say that they  
18 entered after the March 2nd assembly with the  
19 community, they went into the mining unit on March 4.

20 Q. There's talk of suspending all coercive  
21 measures; right?

22 A. Yes.

1       Q.     And according to you there was only one  
2 measure in Parán. I disagree with that, but let's  
3 continue, but there was also a coercive measure on the  
4 road to Lacsanga?

5       A.     Yes.

6       Q.     And the coercive measure on the road to  
7 Lacsanga was not lifted and here it says, "all"  
8 coercive measures, so I don't understand very well  
9 what you are saying because if we are referring to  
10 "all coercive measures", it would include both; right?

11      A.     The thing is, that in the discussion, and  
12 the agreements that they reached, it's not a question  
13 of the Ministry of Energy and Mines intervening in the  
14 proposals and counterproposals between the two  
15 parties. The two parties agreed upon what is written.

16             Nor can we interpret the agreements. The  
17 parties need to interpret it because the spirit of the  
18 agreement came out from the discussion that they  
19 themselves had, and they say, guarantee the  
20 activity--the development of the activities, of the  
21 mining company through the access road of the Parán  
22 Community. This is right there in agreement number 5,

1 the last two lines.

2 "The rural community of Parán guarantees to  
3 develop to the activities of the mining company  
4 through the access road of the Parán Community."

5 Q. And you, from the OGGS sought to mediate so  
6 that all of the communities would be content; is that  
7 not right? You didn't want to reach an agreement with  
8 one community that would then become a problem with  
9 another community; is that not right?

10 A. Correct.

11 One must also see, sir, if you allow me to,  
12 that the agreements are a construct. So that it's not  
13 that I construct the agreement. The agreement is  
14 constructed through a process. This was the beginning  
15 of that process.

16 Now, what's the company's objective to go  
17 into the mining units? We ask ourselves: did they go  
18 into the mining units. Yes. They were not satisfied  
19 with the agreement--or with the interpretation of the  
20 agreement, well, that could be taken up anew in the  
21 dialogue process.

22 One of the parties could say, my agreement

1 is not completely addressed. That's the mechanism;  
2 otherwise, they would just walk away from the process.

3 Q. I understand that but what's being done here  
4 is to lay the bases.

5 A. Yes, one lays the basis for negotiation  
6 process and the agreements which over time should be  
7 reached.

8 ARBITRATOR GARIBALDI: Witness, let us set  
9 aside for the moment the content of the agreement.

10 The purpose of the activity of your office  
11 was to provide for a dialogue, and for the dialogue to  
12 result in agreement between the parties; correct?

13 THE WITNESS: Correct.

14 ARBITRATOR GARIBALDI: That agreement  
15 between the parties is a binding agreement; correct.

16 THE WITNESS: More than binding. It's an  
17 agreement in good faith.

18 ARBITRATOR GARIBALDI: It's an agreement in  
19 good faith. What does that mean, that the  
20 obligations, are they legal obligations as long as the  
21 agreement stands?

22 THE WITNESS: No, because we don't have

1 competence.

2 ARBITRATOR GARIBALDI: No. This doesn't  
3 have to do with your competence--areas of competence.  
4 The question as to do with the agreement, the nature  
5 of the agreement.

6 Do you understand that it is a binding,  
7 legal agreement or not?

8 THE WITNESS: No. It is not. It's not  
9 legal. The dialogues are established as an act of  
10 good faith, and compliance is there. The good faith  
11 that we are or that each party should impose on it.

12 If I in good faith enter into an agreement,  
13 then I'm going to carry it out, and if I considered  
14 that that agreement is not meeting my expectations as  
15 a party to the negotiation, then I put to the  
16 facilitator once again that the dialogue be resumed so  
17 as to improve upon the agreement.

18 ARBITRATOR GARIBALDI: Let us suppose that  
19 one party acts in bad faith, and doesn't carry out the  
20 agreement, what would happen then? Is there some  
21 solution for that or not?

22 THE WITNESS: So the party that's not

1 performing under the agreement is being called upon  
2 and asked why the party cannot perform under the  
3 agreement, and then the party is going to let us know  
4 why it cannot--or why it does not want to perform  
5 under the agreement.

6           So we go back to the dialogue to improve the  
7 agreement with the other interesting party, and to be  
8 able to make the agreement viable.

9           ARBITRATOR GARIBALDI: Okay. To improve the  
10 agreement?

11           So it is an agreement, then?

12           THE WITNESS: Yes.

13           We as the Ministry of Energy and Mines don't  
14 have a coercive powers.

15           ARBITRATOR GARIBALDI: I'm talking about  
16 something different. I'm talking about the nature of  
17 the agreement.

18           If the agreement is not binding, if the  
19 agreement is a good faith agreement, that's what you  
20 are telling me, right?

21           THE WITNESS: But if you allow me, sir,  
22 those voluntary agreements, that's what they're

1 called, voluntary agreement, as a mining company to  
2 improve my relations with the company, I enter into  
3 those agreements, those are also included in the  
4 regulations, Supreme Decree, the Supreme Decree that  
5 establishes that, and you have to have a margin, room  
6 to move, if you will, for the company to deal with the  
7 communities and improve their relations.

8           In the past, the companies said, I cannot  
9 enter into voluntary agreements because that is not  
10 allowed by the regulations. So how is it that I can  
11 go to the company and render accounts before it if the  
12 company doesn't allow me to do so.

13           So the ministry understood that these  
14 created problems for many companies, and it issued  
15 these regulations so the companies can enter into  
16 agreements, voluntary agreements, with the communities  
17 in their areas, and improve social relations.

18           ARBITRATOR GARIBALDI: A voluntary agreement  
19 doesn't mean that it is voluntary for a party to  
20 become a party to that agreement, or does it mean that  
21 it is voluntary for a party to the agreement to  
22 perform under it or not?



1 THE WITNESS: It is voluntary to enter into  
2 the agreement.

3 ARBITRATOR GARIBALDI: Okay. So once the  
4 agreement is entered into, do you have to perform  
5 under it?

6 THE WITNESS: Well, voluntary agreements are  
7 made under the company because of the company's  
8 reputation, the company wants to abide by the  
9 agreement.

10 ARBITRATOR GARIBALDI: Is it obligatory or  
11 not, is it mandatory or not?

12 THE WITNESS: It is not mandatory because  
13 the agreements are not overseen, but they are followed  
14 up by the authorities. In this case, the ministry.

15 ARBITRATOR GARIBALDI: Thank you.

16 BY MR. GALLEGO:

17 Q. Mr. Trigoso, what I was getting at is that  
18 in this case, Invicta had made an agreement with  
19 Lacsanga; correct?

20 A. Yes.

21 Q. Under the agreement, and I don't know if you  
22 knew this, but Invicta was contributing yearly 80,000

1 soles for the use of the Lacsanga road.

2 Did you know that?

3 A. Well, I didn't know that. Lacsanga was not  
4 involved in this dialogue. There were only two  
5 parties in the dialogue process. There were no third  
6 or fourth parties.

7 Then, I found out later that they had  
8 agreements with Lacsanga and Santo Domingo. There  
9 were other communities there of influence, but like I  
10 said before, this was not a problem that came up to  
11 set up this dialogue.

12 Q. But the dialogue doesn't happen in a vacuum.  
13 There is a problem here with weapons, and marijuana.  
14 There are agreements with other communities. That's a  
15 fact. These agreements have to be respected.

16 And there's also another fact that the  
17 company has invested substantial amounts in the  
18 construction of a roadway that it cannot use because  
19 the roadway has been blockaded.

20 You are not taking these things into  
21 account?

22 A. The specific of dialogue don't really set

1 aside the other commitments that a company has with  
2 other actors. These are specific dialogues, and you  
3 work socially in those specifics of dialogue.

4 As a ministry, we have said, okay, we have  
5 said okay, you need to step down from your commitments  
6 that you have made.

7 The Ministry of Energy and Mines is not a  
8 party of a negotiation process. It is a facilitator.  
9 It facilitates the process. The parties are the ones  
10 that put forward their arguments, their positions, and  
11 their interests.

12 They are the ones who ultimately make  
13 decisions in this connection.

14 PRESIDENT CROOK: I want to be clear on the  
15 testimony here.

16 The transcript essentially says that the  
17 ministry's position was that the Claimant had to step  
18 down from the commitments it had made from the  
19 Lacsanga--the Lacsanga Community.

20 Is that your testimony? Is it the  
21 ministry's position that they had to walk away from  
22 their agreements with the other community?

1 THE WITNESS: No. That was never said.

2 It was never mentioned during the process of  
3 dialogue with the Community of Lacsanga. The  
4 Community of Lacsanga was not involved in the--

5 PRESIDENT CROOK: The transcript has you  
6 saying that. Is that a misunderstanding of your  
7 remarks?

8 THE WITNESS: Surely. Surely.

9 Again, Mr. President, Lacsanga was not a  
10 party to this dialogue. They never came in as an  
11 affected third party.

12 PRESIDENT CROOK: I understand they weren't  
13 present. I'm just trying to figure out how their  
14 interests entered into this discussion, if at all, and  
15 apparently the answer is that's not part of the  
16 process that you were involved in.

17 THE WITNESS: That is right, Mr. President.

18 If the mining company had agreements with  
19 Lacsanga and with Santo Domingo, those agreements must  
20 be respected. At no time at the dialogue table the  
21 Ministry has promoted the noncompliance of commitments  
22 by the company with the communities around it.

1           On the contrary, as the Office of Social  
2 Management, we promote the compliance with commitments  
3 assumed by mining companies vis-à-vis surrounding  
4 mining--sounding communities, rural communities.

5           BY MR. GALLEGOS:

6           Q.     So if your obligation is to promote  
7 agreements with the surrounding communities, what was  
8 being created here in accordance with your  
9 interpretation of the agreement is a problem with the  
10 other communities that were in the area.

11           Because if the Lacsanga roadway could no  
12 longer be used, then the Lacsanga Community was not  
13 able to reap the benefits that it had agreed upon with  
14 Invicta.

15           Did you consider this?

16           A.     One moment.

17           You're interpreting this agreement from a  
18 legal viewpoint. We never said that the commitments  
19 should not be complied with. We said that the  
20 commitments and the agreements are constructed.  
21 They're built.

22           So the purpose, really, of a mining company

1 is to go into the mining unit.

2 So there was a blockade, and they wanted to  
3 move ahead with the process of negotiation.

4 It's not that you are going to solve all of  
5 the problems of the mining unit in one, single  
6 meeting. So a dialogue lasts a certain period of  
7 time, and it depends on the different mining unit, the  
8 different purposes, the problems that the communities  
9 may have.

10 But to consider that at one meeting, because  
11 there was a set of minutes drawn, all of the problems  
12 were solved? Well, that's not the thing. You have a  
13 series of meetings, and then you come to the final  
14 objective.

15 Q. What we are discussing here is the agreement  
16 that was indeed made at the time; right? And there is  
17 a difference of opinion in this regard.

18 Let's look at Tab 45.

19 A. But if you allow me, sir.

20 Q. No, no. Let me show you a document.

21 A. But let me say something, please. I think  
22 we're going to lose continuity of this idea. I can,

1 with all due respect, just to go ahead and continue in  
2 this connection.

3           If we look at the initial paragraph at point  
4 3, it says there was a list to deal with the issues,  
5 to deal with these different matters. And it says  
6 that they had to create a schedule of meetings.  
7 They're not saying that one meeting is it. Other  
8 meetings are going to be held, and we saw that more  
9 meetings were going to be held.

10           It's not that the meeting of the 26th was  
11 going to end everything, and be an end-all and  
12 everybody was going to be happy.

13           I just want to say that with respect.

14       Q.     Thank you. I understood that perfectly  
15 well.

16           But if an agreement is reached for the  
17 dialogue to continue, whatever has been agreed has to  
18 be respected. Because if we start on the wrong foot,  
19 we are going to continue on the wrong path; yes or no?

20       A.     Yes. But let's look at the documents.

21           Who started on the wrong foot? You said  
22 that the community started on the wrong foot?

1 Q. Well, that's what we're going to look at  
2 now.

3 A. Okay, very well.

4 Q. Look at 45, please. Tab 45.

5 This is C-572. This is a report sent by  
6 Nilton León to José Luis Carbajal Briceño. He is the  
7 Director General. Do you see that?

8 A. Yes.

9 Q. It appears that this is an official matter,  
10 and he's addressing his superior at the time. Do you  
11 confirm that?

12 A. Yes. Yes. My immediate superior, yes.

13 Q. If we look at the next page, and we look at  
14 the conclusions page, and we look at Item number 3.

15 Again, this document came two days after the  
16 agreement; right?

17 A. Mm-hmm.

18 Q. It says that the suspension of the protest  
19 was agreed, and also the amendment of the blockade  
20 access road scheduled by the parties for March 2, with  
21 the ratification of the community assembly in the  
22 presence of the OGGS.



1           This was agreed at the last meeting on  
2 26/2/2019.

3           So your superior is being informed of your  
4 interpretation, your office's interpretation of the  
5 agreement. And this report is prepared to send it to  
6 the Ministry of Foreign Affairs; correct?

7           A.     Yes.

8           Q.     So that reflects the position of your office  
9 and OGGS?

10          A.     What is your question, sir?

11          Q.     Does it reflect the opinions of OGGS?

12          A.     It reflects the opinion in the minutes that  
13 were drawn. We--what we do is we give opinions. We  
14 do not interpret agreements. The agreements are  
15 between the parties. The parties agree on things, and  
16 we take on the agreement. And this was an abandonment  
17 of blockade of access roads. These access roads, I  
18 think, should be two. There should be two or more  
19 roads here, but in practice, yes, there were two roads  
20 that had been affected.

21                Counselor, what I want to say here is that  
22 the purpose of this was for the mining unit to have an

1 access road. They were building up agreements, and in  
2 the different items on the agenda, they said that  
3 there was a schedule of meetings. This was a first  
4 meeting.

5 We saw that there were agreements that had  
6 been made here. There are differences in  
7 interpretation between the parties. Then the  
8 agreement is improved or it is changed, and this  
9 depends on what the parties want, not what the  
10 Ministry wants.

11 So it's not that 26 of February was a be-all  
12 and end-all. Okay, very well.

13 PRESIDENT CROOK: Okay, very well. You've  
14 explained that multiple times. I think we understand  
15 that.

16 I have a couple of questions, if I may about  
17 this document at Tab 45. C-572. Could we take a look  
18 at again, please.

19 This was the memorandum that was to go to  
20 the Ministry of Foreign Affairs. I have a number of  
21 very short questions.

22 THE WITNESS: Yes, Mr. President.

1           PRESIDENT CROOK: First question: Why was  
2 it necessary to inform the Ministry of Foreign  
3 Affairs?

4           THE WITNESS: The Ministry of Foreign  
5 Affairs, at the request of the mining company, has  
6 sent a document to the Ministry of Foreign Relations  
7 via its embassy, the embassy of Canada in Perú.

8           So they asked for information about this  
9 case.

10          PRESIDENT CROOK: Okay, let's--

11          THE WITNESS: The Ministry of Energy and  
12 Mines submitted that.

13          PRESIDENT CROOK: That answers the question.  
14 Thank you very much.

15          Now, my next question, I'm looking at the  
16 conclusions, and I just want to clarify, and perhaps  
17 you've already gone over this, but I want to be clear  
18 in my own mind, if I may.

19          It was agreed--and I'm looking at the third  
20 bullet point. Again, you may have already discussed  
21 this, but I want to be clear.

22          It was agreed to suspend the protest

1 measure, abandonment of the blockade of access roads,  
2 and that presumably includes both roads, does it not?  
3 Am I reading this correctly?

4 THE WITNESS: Mr. President, the agreement  
5 that was entered into was to lift all coercive  
6 measures, but what it says here is the access road of  
7 Parán.

8 PRESIDENT CROOK: Sir, I'm sorry. Maybe I'm  
9 just looking at a bad English translation.

10 But in the English, it refers to roads,  
11 plural. So is the translation incorrect; is that what  
12 you're saying?

13 ARBITRATOR GARIBALDI: (In English.)

14 That's right. It's correct.

15 PRESIDENT CROOK: Arbitrator Garibaldi tells  
16 me the translation is correct.

17 THE WITNESS: The translation is correct.

18 Mr. President, like I said, the grammar  
19 doesn't really match things. But yes it should be  
20 "vías de accesos". It should say everything in plural  
21 in Spanish.

22 ARBITRATOR GARIBALDI: That is not correct.

1 That is not correct.

2 You would not say "vías de accesos."

3 THE WITNESS: Correcto.

4 ARBITRATOR GARIBALDI: "Vías de acceso,"  
5 that's the correct Spanish.

6 THE WITNESS: Thank you for the correction,  
7 sir.

8 We understand that.

9 PRESIDENT CROOK: Let's just leave it. Was  
10 the report to the ministry speaking of roads, plural,  
11 accurate or not?

12 THE WITNESS: What we were relaying here was  
13 the agreement, Mr. President. We were not issuing a  
14 value judgment on the agreement. We were not  
15 interpreting the agreement. That was not our role. We  
16 copied the agreement, and we--

17 PRESIDENT CROOK: Sir, you've told us that  
18 repeatedly, and we understand that.

19 But I'm just trying to sort out your  
20 contemporary understanding of what was agreed on the  
21 basis of important, official information that was  
22 given to the Ministry of Foreign Affairs.

1           So was this sloppy staff work, or what?

2           THE WITNESS: No, Mr. President.

3           This report was submitted to the Ministry of  
4 Foreign Affairs on the basis of the documents that we  
5 had on file that had been prepared by the specialist,  
6 Mr. León.

7           PRESIDENT CROOK: Well, apparently those  
8 documents envisioned that there would be the  
9 possibility of transit on both roads; is that correct?

10          THE WITNESS: Could you please repeat your  
11 question, in a more precise manner, Mr. President?

12          PRESIDENT CROOK: Well, I'm sorry. I  
13 thought it was fairly precise.

14          The information you sent to the Ministry of  
15 Foreign Affairs, as described in this third bullet  
16 point, indicates that as a result of the February 26  
17 agreement, there would be the abandonment of blockade  
18 on access roads, plural, which conveys the idea that  
19 there would be passage on both roads.

20          Am I understanding this document correctly?

21          THE WITNESS: Mr. President, what the  
22 document wanted to show was the agreement. The

1 agreement was to free up the road via the Parán Access  
2 Road.

3 PRESIDENT CROOK: Okay. We just have to  
4 agree to disagree here about what the document says.

5 So thank you, sir.

6 MR. GALLEGO: How are we doing in terms of  
7 breaks, et cetera? How long do you think you would  
8 need for a break, sir? It's up to you.

9 Okay. Perfect. Thank you.

10 BY MR. GALLEGO:

11 Q. Now, the topographer was going to conduct a  
12 survey related to the construction of the Parán  
13 roadway; right?

14 A. Let's see.

15 Mr. President, counselor, I'm going to  
16 answer your question.

17 The agreement--and what is the number of the  
18 document?

19 Q. I'm just speaking about your own statement.  
20 Let me ask you the question again, and if you can  
21 answer it, please, so that then we can move forward.

22 In connection with the topographer, in your

1 statement, you say that the topographer was going to  
2 conduct a study related to the construction of the  
3 roadway through Parán.

4 A. Where am I saying that in my statement?

5 Q. Well, for example, in your second statement,  
6 Paragraphs 20 and 21.

7 A. You said 21. 21 is something else.

8 Q. Excuse me. It's at Paragraph 50. Page 21,  
9 but Paragraph 50.

10 A. Yes. Where am I saying anything about a  
11 road?

12 Q. Well, here you're saying that "the  
13 understanding of the Parán Community, (which coincides  
14 with the OGGs understanding of the agreement) is that  
15 Invicta undertook to hire a surveyor to carry out a  
16 survey of the land in the Parán Community on which a  
17 suitable access road for the project could be built."

18 A. Okay. An access road.

19 I am not a civil engineer, counselor. A  
20 surveyor or topographer is hired to prepare surveys so  
21 that infrastructure works can be built.

22 A topographer is an individual, or



1 institution may hire it to do that for those purposes,  
2 and not to prepare environmental studies or social  
3 studies, et cetera.

4 Q. In his second statement, Mr. León  
5 acknowledges that the topographer had to identify the  
6 affected areas in the territory of Parán. This, in  
7 connection with damages caused in the territory.

8 Did you know about this statement by  
9 Mr. León?

10 A. Yes.

11 The dialogue is a process. There are some  
12 agenda items that changed as time went by. The  
13 community changed them. You yourself said that it  
14 wanted a compensation of \$2 million--well, 2 million  
15 soles. Perhaps other issues came up that the  
16 community wanted to include into the discussion. Or,  
17 they wanted them to be included in the discussions of  
18 the--at the dialogue table.

19 But then an agreement was reached, and  
20 everything was included in the agenda of 26 February.

21 The other things are things that happened in  
22 the past. We cannot take them as fait accompli.

1 These were proposals during the process, and those  
2 proposals landed the meeting of 26 February.

3 Q. Okay. We're talking about after 26  
4 February, right, and we are trying to see what is  
5 exactly that was agreed in connection with the  
6 topographer.

7 In your statement, you say that the  
8 topographer was hired to build a roadway through  
9 Parán. And I'm saying that Mr. León recognizes that  
10 he was hired to identify the affected areas and the  
11 harm caused in the territory.

12 A. But that document was before the agreement.

13 PRESIDENT CROOK: Gentlemen, you're speaking  
14 over each other. We need to slow down a little bit.

15 MR. GALLEGOS: Okay. Correct, Mr. President.

16 THE WITNESS: Correct, Mr. President.

17 What counsel is saying, what he is saying in  
18 connection with Mr. León, well, that happened before  
19 the agreement.

20 As I indicated, everything was a process, we  
21 had a first set of agenda, second, third, and we ended  
22 up with the February 26 agenda. A discussion ensued,

1 and approvals were provided.

2 BY MR. GALLEGOS:

3 Q. Okay. Let us look at the letter from the  
4 Parán Community to the MINEM Ministry of 21 March to  
5 lodge a complaint that Invicta had not met the  
6 agreements--had not complied with the agreement of 26  
7 February.

8 This is at Tab 39, and it is C-357.

9 Okay. It's C-357.

10 I understand that this letter was sent to  
11 Mr. Francisco Ismodes, and that you saw it at the  
12 time; right? Is that right?

13 A. Yes.

14 Q. Let us now go to the first page where it  
15 says on page at number 2 that "On March 20, the  
16 topographic survey, identification and location of the  
17 affected surface lands of the Parán Rural Community by  
18 Invicta Mining Corp. SAC should be initiated,  
19 according to the chronogram of the agreements reached  
20 between the mining company and the Parán Rural  
21 Community.

22 So this reflects the agreement of February

1 26, 2019; correct?

2 A. Yes.

3 Q. Then at page--on the following page, "I  
4 request an urgent meeting with representatives of the  
5 PCM, representative of the ombudsman's office,  
6 representatives of the agency for the Environmental  
7 Evaluation and Supervision, ANA, to reach agreements  
8 on the noncompliance that are not being met which  
9 Minera Invicta, and the rural Community of Parán is  
10 still affected with the environmental contaminations  
11 within their community lands, for this reason, we  
12 request urgent meeting."

13 Again here, this letter does not refer to  
14 the fact that the noncompliance is related to study  
15 for the construction of a road.

16 A. Yes, but as you can see, it also states  
17 another issue. There is a recognition of what was  
18 signed on the 26th, and there is also recognition that  
19 there needs to be a field visit on the 20th of March,  
20 that wasn't conducted. And there is also a request  
21 with other actors, or with other authorities. The  
22 ombudsman also, the president of the Council of

1 Ministers, so there is an expansion of the invitation,  
2 and it introduces other issues. That was not part of  
3 the agreement on the 26th of February.

4 Q. Well, this is requesting a meeting with  
5 OEFA, and, I understand that these are environmental  
6 authorities, and water authorities, and this clearly,  
7 this is in connection with the lands; correct?

8 A. Yes. Yes. That is correct.

9 But again, I consider that what you need to  
10 assess the document. It's talking about the schedule  
11 of meetings. It is initiating this schedule of  
12 meetings.

13 It says here that this schedule was the  
14 beginning, not the end of a dialogue process.

15 Q. Before you told me that the community  
16 recognizes the agreement; that is to say that the  
17 agreement refers to surface lands that are affected  
18 within the community.

19 A. It doesn't say what type of impact, whether  
20 it is environmental, physical, et cetera.

21 Q. But what I'm trying to say is that the lands  
22 were already impacted, either physically,

1 environmentally, et cetera, that you have mentioned.

2 They were already impacted; correct?

3           PRESIDENT CROOK: Counsel, I assume that  
4 after you are finished with this document, we can take  
5 a short break.

6           MR. GALLEG0: I am done, sir.

7           PRESIDENT CROOK: Excellent. All right.  
8 Let us rise for a five-minute break.

9           (Whereupon, there was a recess in the  
10 proceedings, 4:34 p.m. - 4:43 p.m.)

11           PRESIDENT CROOK: Sorry. Let's go back on  
12 the record and resume the session.

13           SECRETARY: Mr. President. Counsel asked me  
14 for a read of time before we start. So time left is  
15 what I'm going to read as of now, and like yesterday,  
16 and this will change by the end of the day.

17           But as of now, I have Claimant has 8 hours  
18 and 12 minutes left. And Respondent has 3 hours and  
19 one minute left.

20           MR. GALLEG0: Thank you very much.

21           BY MR. GALLEG0:

22           Q. Let us change topic. Let us look at an

1 aide-mémoire that Mr. León sent to Mr. Ulloa on March  
2 8, 2019. This is at Tab 37. Exhibit 351.  
3 C-351--C-357 rather.

4 Exhibit [recte: C-351], and let me  
5 reiterate, this states the date here is March 8, 2019.  
6 We know it because of the preceding e-mail. Since  
7 there was a meeting on that day between Invicta on the  
8 one hand, and Mr. Gálvez, Vice Minister of Energy and  
9 Mines, and you on the other hand, I understand that an  
10 aide-mémoire was prepared to that end.

11 Do you agree?

12 A. I do not recall the meeting with Mr. Gálvez,  
13 Vice Minister Gálvez.

14 I recall the meeting with the [Vice]  
15 Minister, at the time, Miguel Incháustegui.

16 Q. You do not recall that meeting?

17 A. No, I do not recall that meeting, and I did  
18 not mention it in my statement.

19 Q. At any rate, it seems that this is a  
20 document that has the letterhead of the Ministry of  
21 Energy and Mines.

22 And here we are going to go to the proper

1 page. Let me see if I can find it: a paragraph that  
2 says, "it is convenient". It is on page 6.

3 A. To clarify, Mr. Gálvez was not vice  
4 minister when Mr. Francisco Ismodes was there.  
5 Mr. Gálvez was vice minister when Mr. Incháustegui was  
6 there.

7 Q. I don't think that that is the case. At any  
8 rate, you do not recall that meeting?

9 A. I do not recall the meeting with Mr. Gálvez.  
10 That's what I would like to state.

11 Q. Let us look at the paragraph that says, "it  
12 is convenient."

13 I cannot find it. I apologize. I cannot  
14 find it. Let me see.

15 The paragraph that says, "it is convenient  
16 to have a coordination at the highest level between  
17 the MEM and the MININTER for the activation of  
18 mechanisms that permit the re-establishment of public  
19 order by the appropriate sector, as there has been an  
20 end of the dialogue with the commitment undertaken by  
21 the parties to suspend coercive measures, lift the  
22 blockade on the roads."



1           We're trying to find it. It is towards the  
2 end of the page. It is right at the end of that page.  
3 The last paragraph.

4           Do you see it?

5       A.    No, I don't.

6       Q.    So I'll give you some time to read it to  
7 yourself.

8           PRESIDENT CROOK: Counsel, which page are we  
9 looking at?

10          MR. GALLEGGO: Very sorry, Mr. President, for  
11 that. It's the last page in the memorandum.

12          PRESIDENT CROOK: Okay. All right. Thank  
13 you.

14          MR. GALLEGGO: Yeah. It's the only bit that  
15 has been translated.

16          BY MR. GALLEGGO:

17       Q.    Have you read it? I understand that  
18 Mr. León believes that dialogue came to an end;  
19 correct?

20       A.    Yes.

21       Q.    He is recommending for the higher-ups to  
22 coordinate between the MEM and the MININTER; correct?

1       A.     Yes.

2       Q.     And he's asking to do this, so as to remove  
3 Parán from the Lacsanga land mining area along the  
4 lines with the recommendation of February 20?

5       A.     No. This is not what we read here.

6             It says "to activate mechanisms to--to allow  
7 the re-establishment of public order by the  
8 corresponding public sector since dialogue has ended  
9 with the commitment assumed by the parties to suspend  
10 the measure of force and lift the road blockade by the  
11 Community of Parán".

12      Q.     I don't understand what it is that you  
13 disagree with.

14      A.     You are saying through the Lacsanga road,  
15 but here it says they're asking to evict the Parán  
16 Community due to territory related issues.

17      Q.     Yes. Understood, but this is March 8. I  
18 understand that access was allowed through Parán, and  
19 then the only remaining aspect is to have a protest  
20 through Lacsanga; correct?

21      A.     Well, that is your interpretation: through  
22 the Lacsanga road. Because at one time, as I mentioned

1 before in my statements, the agreement was to enter  
2 through the Lacsanga road.

3 I apologize, Mr. President, I have to  
4 reiterate, but it was through Parán. Even though the  
5 Lacsanga area was blocked, the agreement did not imply  
6 that opening of the area, not--not even to talk about  
7 the territorial issues because we have no jurisdiction  
8 to talk about the ownership of lands or--so the  
9 territorial issue was not part of the conflict.

10 Once again, we can look at the agenda items  
11 for February 26. There is no reference to territory.

12 Q. I honestly do not understand your answer.

13 Could you please answer. At that point in  
14 time there has been an access through Parán. It is  
15 unblocked. It has not yet been blocked because that  
16 comes on March 20.

17 A. Exactly.

18 Q. So it is possible to go up on foot or by  
19 motorcycle. And here, then, the only thing that is  
20 blockaded, the only force [coercive] measure there is,  
21 is in the Lacsanga area. And what Mr. Leon is saying  
22 is that what is appropriate here is the activation of

1 mechanisms that allow for the re-establishment of  
2 public order; that is to say, that here what must be  
3 done is to lift this coercive measure in Lacsanga.  
4 That's the only option. Yes or no.

5 A. Yes. But as I have already mentioned, to  
6 use public force in a dialogue, the dialogue is still  
7 ongoing. It could be the opinion of Mr. Nilton, but  
8 dialogue is still ongoing. Because as the parties had  
9 already said, this is a schedule of meetings.

10 So if we are going to understand that on the  
11 26th, the dialogue came to an end, that is not the  
12 case. The dialogue initiated on the 26th because  
13 after many contradictions, impositions that I would  
14 like to have my agenda point only on the 26th, a  
15 milestone commences that commences the dialogue  
16 process. Then there were some differences and  
17 problems in implementation, but that is something  
18 different.

19 But from the Office of Social Management, we  
20 identify that problem. We talk to the parties, and  
21 finally, we sit down to improve the agreement and  
22 clarify the agreement.

1           Q.     Very well.

2                     So what I understand you are telling me is  
3 that Mr. León had a specific opinion, and here the  
4 police forces had to go in. And you as the director  
5 did not agree with that.

6                     And here they needed to continue with the  
7 dialogue; correct?

8           A.     Yes. To continue with the dialogue.

9           Q.     And you were totally up-to-date with León's  
10 opinion; correct?

11          A.     This is the opinion of a specialist.

12          Q.     On top of this, this is not the first time  
13 that a similar memo is written. This is the second  
14 time we see that. This is correct? They don't seem  
15 to understand that your idea that dialogue prevails  
16 over force; correct?

17          A.     Yes, correct, because we didn't have the  
18 mechanism of resorting to force in case of disputes.

19          Q.     Let us look at Tab 38, C-353.

20                     This is a report sent by Mr. León to you on  
21 March 18, 2019. Now, you are being sent a report  
22 directly. Why? Why are you--

1       A.     I don't remember why he sent it to me. I  
2 may have requested it, or maybe he thought proper  
3 through his coordinator to send me this report. I  
4 don't recall.

5       Q.     Wasn't it because Mr. León was dealing  
6 with--directly with you in connection with this issue?

7       A.     No, but he was always dealing directly with  
8 me. This was a team meeting. We sat down. We had a  
9 conversation, and the opinion one had does not become  
10 the agency's decision. The agency has regulations to  
11 be followed.

12      Q.     Let us look at the analysis section.  
13 Everything that has to do with analysis. I don't know  
14 if you can read that section. I do not want to read  
15 it aloud. Let me sum up what I see there.

16             Is that okay?

17      A.     Yes.

18      Q.     So Mr. León, so then you think that the end  
19 to the blockade in Lacsanga was not agreed on February  
20 26; correct?

21             But this request by the company, since it  
22 was presented at this point in time would not be

1 accepted by Parán, at any rate, and that the dialogue  
2 should not continue, and that since the dialogue  
3 should not continue, public order should be restored  
4 with the police intervention.

5 This is what is being said; correct?

6 A. Well, if we look at the previous paragraph,  
7 before I answer your question, it says, however, the  
8 re-establishment of public order is insufficient for  
9 Parán.

10 So this is whether it was the minister or  
11 the Office of Social Management, the Office of Social  
12 Management has to request Parán the total opening or  
13 release of the access roads in between Parán--this is  
14 including access through Lacsanga. Without  
15 contemplating, and this is even highlighted by  
16 Mr. Ulloa that this request directly violates the  
17 commitments established between the parties with the  
18 facilitation of the state.

19 So he's the one that is even acknowledging  
20 that the company would like to have a release of  
21 access, but the agreement did not include Lacsanga,  
22 because the company's goal was to go into their mining

1 path. And opening or releasing Lacsanga was a  
2 different step. That's why there was a schedule of  
3 meetings, and there was a schedule that was drafted at  
4 the meeting of the 26th, and we have agreements that  
5 are being implemented step by step.

6 Q. Was that the interpretation by Mr. León?  
7 That is to say, based on this report, and in the  
8 following paragraph, we read in this context, in this  
9 regard, we see that the request by the company is  
10 beyond the dialogue under the facilitation of the  
11 sector, and with the support of the MININTER.

12 However, in the face of an access road  
13 blockade, that does not support any dialogue, transit  
14 routes through Lacsanga, it is expedited by function,  
15 and re-establishment of the public order through the  
16 corresponding channels.

17 So for him, it's okay.

18 Is it possible that the opening up of the  
19 road to Lacsanga was not included in the agreement,  
20 but the company is asking for it? It's not an  
21 unreasonable request. The community of Parán won't  
22 agree, and therefore, what is appropriate is for the



1 police to intervene.

2 That is what he's saying directly, is that  
3 not so?

4 A. Yes. But that does not mean that the  
5 police, at the request not only of the Ministry, but  
6 any Ministry approve is going to intervene. They do  
7 their own evaluations. The identification of harm  
8 that might be caused, and based on that, they  
9 intervene.

10 One mustn't forget that in Perú, protest is  
11 a right. Particularly, if it's in the public way.  
12 Because a local road was being destroyed.

13 Q. I would ask a bit more for cooperation from  
14 you. I only asked you about Mr. León's opinion. He's  
15 the one sending the memo, and here he is saying the  
16 right thing to do is for the appropriate thing to do  
17 is for the police to intervene. Yes or no?

18 A. Yes. I said yes, but I'm also clarifying,  
19 sir.

20 Q. And did you tell Mr. León at that point:  
21 "no, this is wrong. Here the intervention of the  
22 police is not appropriate".

1           Did you tell him that?

2           A.     The indication that we have is that just as  
3 the police may make the decision to intervene, we  
4 maintain dialogue as the principle for being able to  
5 find a solution to the problems.

6           There have been cases where we have  
7 intervened with the presence of the police, and we  
8 have had to sought dialogue after this action of the  
9 police.

10           We cannot renounce dialogue as a means for  
11 solving problems. That's why we're at Office of  
12 Social Management. In the midst of crises, we have  
13 also intervened.

14           So to say that I, because the police are  
15 going to intervene have to renounce my function, well,  
16 that's not the case.

17           Q.     We have really limited time, so I'm going to  
18 ask if you can be briefer. I know you have to give me  
19 context, but I've asked you something very specific.

20           This memo--in this memo, Mr. León is saying  
21 that what has to happen here is that the police need  
22 to intervene.

1           Now, you in turn told him that that was not  
2 so, and that what had to happen was that one had to  
3 continue pursuing the dialogue; yes or no?

4           A.     Yes.

5           Q.     Thank you.

6           Let's look at another document, this is  
7 internal memo of 20 March, two days after this, and  
8 it's at Tab 46. 46. It is Exhibit C-576. You tell  
9 us in your second statement that you did not see this  
10 document contemporaneously; correct. Can you confirm  
11 that?

12          A.     That's right. But later on reviewing it,  
13 I've seen it. For this hearing.

14          Q.     But did you receive this document, or see it  
15 at the time, or something similar?

16          A.     I don't recall whether I received it.

17          Q.     Were you able to verify in the internal  
18 documents that you reviewed, and I understand that in  
19 your statement that you said that you reviewed some  
20 other internal documents.

21                 Were you able to confirm whether you  
22 received this document or something similar at the

1 time?

2       A.     I can't actually confirm whether I received  
3 it because the protocol in the Ministry, after  
4 you--once you leave the Ministry, your e-mails are  
5 closed off, and I didn't have any access to them.

6       Q.     Thank you.

7             Just for the transcript, this is C-576, and  
8 not C-572.

9             Let us turn to what we know that this  
10 document is dated March 20, even though it doesn't  
11 have a date, because under current situation, it says,  
12 today, March 20th, they have placed at the blockade  
13 points once again. Today, March 20th. And it  
14 continues impeding the way to the mining unit.

15            The construction work on the road to the  
16 mine has been completed, and that means that  
17 approximately 150 community members are once again  
18 stationed at the blockade points, completing blocking  
19 access to the mining unit. The mining unit has  
20 completed its construction, and is operating which  
21 implies having personnel within the mining unit which  
22 could be at risk.

1           Then it speaks of--then, after there's a  
2 risk--following the community's decision to resume  
3 protest actions, as a result of the company's  
4 noncompliance, the dialogue has broken down, and the  
5 executive has exhausted this channel, to the extent  
6 that the noncompliance with the community has broken  
7 the trust and credibility of the actors participating  
8 in the process and any urging in this regard on the  
9 part of one of the actors could generate a perception  
10 of bias that allows for escalation of the protest."

11           Do you see that?

12           PRESIDENT CROOK: You might want to slow  
13 down a little bit. That was giving the interpreter a  
14 really hard time.

15           MR. GALLEGGO: Really sorry, sir.

16           ARBITRATOR GARIBALDI: Counsel, I may have  
17 missed it, but can you establish the author and the  
18 date for this document?

19           MR. GALLEGGO: Absolutely, sir. Absolutely,  
20 sir.

21           BY MR. GALLEGGO:

22           Q. I understand that this document was drafted

1 by Mr. León. Perú has confirmed it for us in the  
2 correspondence that we had with them, because we did  
3 ask them. So I'm passing on what the lawyers for Perú  
4 have told me.

5 This document is dated March 20, 2019, and  
6 here, we get into the questions, so it's clear for  
7 Mr. León that's it's of no use to go forward with the  
8 dialogue; correct?

9 A. According to this document--according to the  
10 document, yes.

11 Q. And this document came--well, we've seen a  
12 number of documents that were repeating this. And the  
13 last one you told me that you were told that it would  
14 not be appropriate, and that it was said again two  
15 days later.

16 Do you agree?

17 A. Yes.

18 Q. And in your recommendation--or in his  
19 recommendation, he says, "Given this situation, it is  
20 recommended that the public order mechanisms be  
21 activated by the MININTER, which has an action plan  
22 for this, but not signed, given that the current

1 policy is one of nonintervention; therefore, it is  
2 proposed that dialogue be exhausted, as in this case.

3 "However, since the beginning of the  
4 conflict, and to date, the policy of nonintervention  
5 has prevailed in relation to which a discussion at the  
6 highest level among the deputy ministers is proposed  
7 to enable the activation of this plan of action in the  
8 face of the scenario like the present one."

9 So it says--or he says that there is a  
10 policy of nonintervention that is prevailing, and that  
11 that's why there's been no police intervention; right?

12 A. May I respond?

13 Q. Of course.

14 A. When it says here, when he says here--he  
15 says, given that the--the current policy of one of  
16 nonintervention therefore requiring that the dialogue  
17 be exhausted. So when we speak of exhaustion, that  
18 means that we need to move on to another stage where  
19 other sectors of the national government are involved  
20 that help to strengthen the dialogue form in order to  
21 find a solution as between the parties.

22 That's why after the 20th, when the company

1 did not follow through on the agreement having to do  
2 with the topographer, the conflict resumed, that  
3 should be clear, so the PCM, the Presidency of the  
4 Council of Ministry--Ministers through the Secretary  
5 of Social Management and Dialogue, the ombudsperson,  
6 MININTER, and the Ministry of Energy and Mines  
7 articulated actions so as to, once again, get the  
8 parties to sit down and resume the dialogue that had  
9 been broken off because of the company's failure to  
10 follow through.

11           And this led to the measures that forced the  
12 committee to be resumed.

13           And there are documents, there are e-mails  
14 that went between the PCM, the Ministry of Energy and  
15 Mines, Office of Ombudsperson, and so on.

16       Q.     I'm trying to understand how one reaches the  
17 conclusion that you have just conveyed to me. Because  
18 here Mr. León is saying what has to happen here is  
19 that a plan of action needs to be activated; that is  
20 to say, the police need to step in, after you've said  
21 several times, no.

22           And at the same time you are saying, no,



1 here, after this, 20 March, which was the renewed  
2 invasion by the community of the camp, here what had  
3 to happen was coordination with other institutions,  
4 but not intervention, with which you are confirming  
5 that what followed this memo was a decision at a  
6 higher level to not have police intervention, despite  
7 this recommendation.

8 Is that not so?

9 A. Excuse me. What I am saying is that with  
10 the exhaustion of the dialogue, because the dialogue  
11 had broken down. You had mentioned that because the  
12 company had failed to carry out its commitment, the  
13 community set up the blockade once again.

14 So what do we do. We strengthen the  
15 dialogue form in order to give greater guarantees to  
16 the population and the company, and we can sit them  
17 down once again to see in which respect the commitment  
18 is falling short, or they are falling short of  
19 implementing the commitment. In this way, we would  
20 invoke other actors to strengthen the dialogue.

21 It would be different--it's one thing to  
22 have somebody from the Ministry of Energy and Mines,

1 and it's something quite different to have four or  
2 five people from four or five different ministries of  
3 national government. That helps strengthen the form.  
4 And then some of the expectations of the population of  
5 the company, they could then work in this dialogue  
6 forum.

7 That was the objective.

8 Q. And that decision to convene several  
9 different agencies to go forward with the dialogue,  
10 and to have those additional representatives seated at  
11 the table, that decision was taken at a high level.

12 A. No. It was made at the level of the General  
13 Bureau For Social Management. It was made by my boss  
14 at the person previously--immediately above me.

15 Q. I don't understand because from that moment,  
16 representatives of other ministries sat at the table.  
17 How could the OGGS make the decision in that regard?

18 A. Well, let me explain briefly.

19 The secretariat for management--Social  
20 Management and Dialogue, the PCM, is at the same level  
21 as the Office of Social Dialogue. The Office of the  
22 Dialogue at the Ministry of the Interior is at the

1 same level.

2           So among them they coordinate actions  
3 depending on their authority, and those  
4 representatives sit down.

5       Q.     Very well. Thank you.

6           Now, what I do understand is that Mr. León  
7 was recommending one thing, and you, as director,  
8 decided that you were not going to follow that  
9 recommendation.

10           Is that so?

11       A.     The one who made the decision there was the  
12 OGGS, my boss and immediate superior.

13       Q.     Mr. Briceño?

14       A.     Mr. Carbajal Briceño, and there were some  
15 later e-mails that were sent by the presidency of the  
16 council of ministers to Carbajal and other officials  
17 from other sectors so as to strengthen this dialogue  
18 forum.

19       Q.     Given that Mr. Briceño is a counselor to the  
20 minister, I understand that he coordinated that with  
21 the minister?

22       A.     Certainly. I did not participate in nor did

1 I have knowledge of such meetings.

2 PRESIDENT CROOK: Counsel, let me just ask  
3 you what your intentions might be. We've got about 25  
4 minutes before our scheduled rise.

5 We don't know how long your examination will  
6 take. We don't have a sense for how long any--

7 MR. GALLEGO: I have some good news. I've  
8 finished my cross-examination.

9 PRESIDENT CROOK: You've finished.

10 Well, I'm sorry, I didn't mean to sort of  
11 steal your thunder. Okay.

12 So do we have any redirect? I see a nod.  
13 Over to you, sir.

14 MR. GRANÉ: Thank you very much,  
15 Mr. President. I'll be extremely brief, in light of  
16 the time.

17 REDIRECT EXAMINATION

18 BY MR. GRANÉ:

19 Q. Mr. Trigos, a question: You were shown the  
20 document C-351, which is this communication from  
21 Mr. León to Mr. Ulloa.

22 I'm going to ask my colleagues to put it up

1 on the screen.

2 In particular, you were asked to go to the  
3 last page, and to read the last paragraph, and to  
4 comment on what it says, and to provide the  
5 explanations.

6 Now, the translation, I want to show the  
7 Tribunal, is the translation only of the last  
8 paragraph, not of the previous paragraph, and  
9 therefore, I'm going to ask you, Mr. Trigos, to read  
10 it aloud, but slowly, so that we can get a  
11 translation, because we're not able to put up in  
12 English what I'm asking you to read for the benefit of  
13 the Tribunal.

14 So first, I'm going to read you--ask you to  
15 read it slowly, and then as the lawyer for the other  
16 party did, with respect to the second paragraph, for  
17 you to provide your--for to you explain what you  
18 understand this first paragraph to be saying. Thank  
19 you.

20 A. Very well.

21 "Going forward, should one accede to the  
22 company's request to condition the community as

1 Ministry of Energy and Mines, to a lifting its  
2 blockade of the roads in the Community of Lacsanga  
3 that are not part of the commitment taken on in the  
4 agreement, the perception of the community--of the  
5 ministry--the community's perception of the ministry  
6 would become negative in the face of an image of  
7 collusion with the company. And with this motivation,  
8 with there--they would become agitated, and this would  
9 escalate the protest, blocking once again the access  
10 road that has been opened, which is part of the  
11 commitment taken on March 2, 2019.

12 "Then all that would--has been done would be  
13 for naught."

14 Q. That second part has been translated. So my  
15 question is, having read that first paragraph, could  
16 you please share with us your understanding of that  
17 first paragraph.

18 A. Yes, this section that is the last section  
19 about going forward, set out by Mr. León is real,  
20 because nowhere in the agreement signed on February 26  
21 is there commitment to lift the blockade on the  
22 Lacsanga road.

1           Moreover, if we--well, if the company were  
2 to pressure us to say go and convene the community,  
3 and tell them that they also need to free up the road  
4 to--to leave, and free up the road to Lacsanga, they  
5 might understand that we were working in collusion  
6 with the company in order to reach an agreement where  
7 the community itself, in its own view, would not have  
8 been part of such an agreement.

9           And that, instead of increasing--improving  
10 the relationship with an impartial third person, which  
11 is the MEM, then they would see us, rather, as being  
12 tied to one of the parties. And the credibility and  
13 trust would be lost, and therefore, we would lose any  
14 legitimacy in fostering the dialogue.

15           That is why we always, from the General  
16 Bureau of Social Management have maintained our  
17 impartiality, and we have not become involved in the  
18 problems that are as between the parties, and up to  
19 the parties to solve them.

20           MR. GRANÉ: I have no further questions on  
21 redirect.

22           PRESIDENT CROOK: I think the members of the

1 Tribunal may have a question or two.

2 ARBITRATOR GARIBALDI: Thank you. Thank  
3 you, Mr. President.

4 QUESTIONS BY THE TRIBUNAL

5 ARBITRATOR GARIBALDI: (In Spanish.)

6 In your testimony, I find an internal  
7 contradiction that is inseparable. That is on the  
8 other hand, you say it and you say it, and you have  
9 repeated it many times the last two hours.

10 On one hand, you say in our office, we don't  
11 take sides. You've also said that we did not  
12 interpret the agreements between the parties. That it  
13 wasn't our function to interpret the agreements  
14 between the parties.

15 Yet, on the other hand, you interpret the  
16 agreements. Not only do you interpret them, but  
17 moreover, you reach the conclusion that those  
18 agreements were violated by the company.

19 So there's a contradiction between the two  
20 things. You take sides on the one hand, and on the  
21 other hand, you say you don't take sides, that you  
22 can't take sides, that it's not my function to take



1 sides.

2           If it were true that you don't take sides,  
3 you would not interpret this agreement of February  
4 26th, nor would you reach conclusions about who  
5 violated it, and who did not violate it.

6           What comment do you have in this regard?

7           THE WITNESS: Let's see--let's see.

8 Distinguished member of the Tribunal, it's not that we  
9 take sides. We undertake an internal analysis.  
10 Analyses that we evaluate. We don't take those  
11 analyses to the dialogue roundtable, and expound upon  
12 them. We don't do that, but we do have to analyze the  
13 agreements, and that is our analysis. But we don't  
14 share it with the parties. And when you say that we  
15 are taking sides and developing an agreement, we  
16 analyze facts.

17           For example, on the 15th, the company said  
18 bilaterally with the community that they're not going  
19 to be able to hire the topographer because it's very  
20 expensive. It's a fact. And therefore, that fact, of  
21 not hiring a topographer for the community was a  
22 failure to carry out the commitment. This is our

1 internal analysis, but I'm not taking it to the debate  
2 itself.

3 ARBITRATOR GARIBALDI: But the commitment  
4 doesn't say anything about who should pay for the  
5 topographer.

6 So that opinion that you just expressed  
7 requires an interpretation of the contract in one way  
8 or another. And while you don't make that  
9 interpretation--you don't express that interpretation  
10 at the dialogue roundtable, you do in your testimony,  
11 in your written statement, and in your testimony  
12 before this Tribunal.

13 THE WITNESS: Yes, because I'm here to  
14 expound upon the facts before the Tribunal. In terms  
15 of not saying who would pay the fees, in the context  
16 of an agreement, in practice, the expenses for  
17 implementing the agreement are always taken on by the  
18 company.

19 And I can explain to you why.

20 ARBITRATOR GARIBALDI: The Tribunal is  
21 perfectly able to interpret the contract.

22 According to you it's not a contract. It's

1 an agreement that is not binding, at any rate.

2 And I'm not asking you about the content of  
3 the contract. I'm drawing attention to an  
4 inconsistency between what you say are your functions  
5 and what you do in reality. Which is to interpret the  
6 contract, not only interpret the contract, but also  
7 express an opinion about who violated it, and who did  
8 not.

9 You are taking sides. Even though you say  
10 that you don't take sides.

11 THE WITNESS: May I?

12 ARBITRATOR GARIBALDI: Yes.

13 THE WITNESS: What I have to note here,  
14 before the Tribunal, is that we undertake internal  
15 analyses, and we have to do so.

16 PRESIDENT CROOK: Sir, excuse me. You've  
17 already said that, and I think we understand your  
18 position in that regard.

19 You analyze it internally, but you are  
20 telling us that you do not allow those analyses to  
21 affect your external conduct. Is that your testimony?

22 THE WITNESS: Exactly. That is it, yes.

1           PRESIDENT CROOK: So perhaps we can move on.

2           ARBITRATOR GARIBALDI: Yes.

3           PRESIDENT CROOK: Anything further?

4           ARBITRATOR GARIBALDI: (In English.)

5           No, no, no.

6           PRESIDENT CROOK: I have a sort of a  
7 structural question of how decisions get made in the  
8 Ministry.

9           Now, you testified earlier today that you  
10 are up three tiers in the bureaucracy. We know there  
11 was your immediate boss, who you told us was a  
12 counselor to the Minister.

13           Now, you've also referred to three higher  
14 areas of hierarchy, the Minister, the Deputy Minister,  
15 and an official who was translated as the counselor.

16           Is that right, then, that we go Minister,  
17 Vice Minister, counselor, perhaps someone else before  
18 we get to the level of your boss?

19           Is that right?

20           THE WITNESS: No. What I wanted to say,  
21 Mr. President, is that the high-level management--

22           PRESIDENT CROOK: Sir, I don't--I'm simply

1 asking facts that you know.

2 Can you describe for me the hierarchy in the  
3 ministry?

4 THE WITNESS: That's what I want to  
5 describe, the hierarchy of the ministry. There's my  
6 boss, my immediate superior, who was the head of the  
7 OGGS, which is an organ that advises the office of the  
8 minister. That's what I could say, and it's in the  
9 ROF and the organizational chart for the institution.

10 PRESIDENT CROOK: All right, then.

11 So a decision to cease dialogue, a decision  
12 to pursue the course that Mr. León was proposing,  
13 would that be made at the level of your boss, or at  
14 some higher level?

15 THE WITNESS: That would first have to go  
16 through my boss, and then to a higher level.

17 PRESIDENT CROOK: Can you say in the  
18 abstract how high, deputy minister, or would something  
19 like that have to go to the minister?

20 THE WITNESS: Well, let's see. It would  
21 have to reach the minister.

22 PRESIDENT CROOK: Thank you.

1           Now, I had a question very similar to  
2 Arbitrator Garibaldi, so I don't think we need to  
3 duplicate that ground, but I just wanted to confirm my  
4 understanding.

5           It was as you did this internal analysis of  
6 the agreement, you agree--you concluded that the  
7 agreement did not provide in any way for the reopening  
8 of the Lacsanga road; is that correct?

9           THE WITNESS: That's correct.

10          PRESIDENT CROOK: And further, I'm looking  
11 now at Paragraph 48 of your second witness statement.  
12 You also concluded that the survey was for the purpose  
13 of essentially surveying the design of a road; is that  
14 right?

15          THE WITNESS: Mr. President, that is my  
16 interpretation. It's internal in nature, in  
17 connection with the--

18          PRESIDENT CROOK: Sir, I fully understand  
19 that, and I don't want to waste your time. I just  
20 want to make sure that we're clear on what your  
21 position is.

22          I had a further point I wanted to check with

1 you, but at the end of a long day, I have forgotten  
2 what it is, so I will not trouble you further.

3 Are there any other questions?

4 All right. If not, then, we thank you for  
5 your testimony. You are now relieved. You can join  
6 your team. You can do whatever you want, but you have  
7 no further business with us, and we thank you for your  
8 testimony.

9 THE WITNESS: Thank you very much,  
10 Mr. President, members of the Tribunal. Thank you,  
11 for the secretary to the counselor. Thank you to the  
12 counselors on both sides.

13 PRESIDENT CROOK: All right. Do we have any  
14 further business tonight? Any further administrative  
15 business?

16 The witness is released, so he doesn't have  
17 to be sequestered tonight.

18 Anything we need to deal with?

19 MR. GRANÉ: Yes, Mr. President. Just--

20 PRESIDENT CROOK: Yes, sir.

21 MR. GRANÉ: Mr. President, we have to raise  
22 these issues to ensure that there's an orderly conduct

1 of the proceeding, and it concerns scheduling, so we  
2 can leave it until tomorrow.

3 PRESIDENT CROOK: No let's raise it.

4 MR. GRANÉ: Thank you.

5 So the schedule is such that we should be  
6 interviewing--or I'm sorry, cross-examining two fact  
7 witnesses tomorrow, and then commence with--well,  
8 commence and conclude the cross-examination of  
9 Ms. Dufour.

10 We just want to inform the Tribunal that  
11 Ms. Dufour would have to leave--she has to be back in  
12 Lima by Monday.

13 So we are concerned that we may not be able  
14 to complete the cross-examinations tomorrow. That's  
15 why we're raising the issue.

16 PRESIDENT CROOK: Let me ask, would it be  
17 possible to shuffle the order of the witnesses so that  
18 she comes first, second, whatever is feasible. It  
19 seems to me that's in your control.

20 MR. GRANÉ: Which is why we are raising the  
21 issue. It's not within our control because we need to  
22 decide what happens with the fact witnesses that come



1 before the expert.

2 PRESIDENT CROOK: All right. Have you  
3 raised this with the other party?

4 MR. GRANÉ: No, we have not.

5 PRESIDENT CROOK: Could we please ask you to  
6 do that, and give us a report. If you need to get a  
7 decision of the Tribunal overnight, we can do that;  
8 although we'd rather not. But perhaps could you  
9 liaise with the other party.

10 MR. GRANÉ: Happy to do so.

11 PRESIDENT CROOK: All right. Any other  
12 business we need to tend to? Anything on Claimant's  
13 side? Anything on the Tribunal side?

14 If not, we will see you again tomorrow at  
15 the accustomed time and place.

16 (Whereupon, at 5:34 p.m. the Hearing on the  
17 Merits was adjourned until 9:30 a.m. the following  
18 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