

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 5

HEARING ON THE MERITS

Friday, March 31, 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 9:27 a.m. before:

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DR. GAVAN GRIFFITH KC, Co-Arbitrator

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CONFIDENTIAL SESSION: (None)

P R O C E E D I N G S

PRESIDENT CROOK: Okay, with that, let's open this fifth session of the hearing in the case.

We face a threshold procedural issue. The Tribunal is mindful of the e-mails we received rather late last night, and has discussed them beginning rather early this morning.

The Tribunal must inform you, we are simply not in a position, because of medical concerns that we've tried to make clear throughout the course of this hearing, to extend the hearing today. So I'm sorry, that is just not something that is possible for us to do.

That said, we're then left with a situation. We understand that Respondent's wish is that a couple of their witnesses travel over the weekend, but again, that's a challenge, but it's not a challenge the Tribunal has created.

We face this situation because of choices that have been made in allocating time for some rather lengthy cross-examinations. So, we've simply reached the point where we have a last day, and if these

1 witnesses are not going to be available beyond today,  
2 then I think we have a problem, because it is  
3 incumbent upon the Respondent, under the rule, for  
4 securing the appearance of its own witnesses in the  
5 hearing when they have been called. That's 19.5 of  
6 PO-1.

7           So I'm afraid we're going to have to throw  
8 the ball back in your court. I respect the effort  
9 that was made obviously late at night to try to find a  
10 solution. But for fairly compelling medical reasons,  
11 we are simply not able to accommodate that request.  
12 I'm sorry, we are where we are, so we put it back to  
13 you.

14           Now, with respect to witnesses' travel  
15 plans, we obviously don't control that, but I think it  
16 might behoove Respondent to take a look at that issue  
17 and see whether there is some room to give because  
18 they do have the obligation under the rule to assure  
19 the appearance of their witnesses.

20           So I'm sorry, but that's where we are.

21           MR. GALLEGOS: Thank you, Mr. Chair.

22           Just one comment on that.



1           Today we are, as was announced in the  
2 e-mail, going to start with Mr. Saavedra, and then  
3 move on to Ms. Dufour.

4           Now, from our perspective, we will be having  
5 a bit of clearer picture on whether we actually do  
6 need to cross-examine Mr. León during the course of  
7 the day; and therefore, this issue may, may go away.  
8 We estimate around mid-afternoon will be a time when  
9 we can determine that.

10           PRESIDENT CROOK: Well, that's obviously  
11 your call, sir.

12           Mr. León is in some respects one of the few  
13 witnesses before us who actually has some firsthand  
14 knowledge of these events. A lot of the other  
15 testimony we've gotten has been derivative from what  
16 Mr. León has said to people, and the reports he has  
17 written. So that's--you know, it's your call, but his  
18 testimony is of a witness who has some firsthand  
19 experience.

20           MR. GALLEGOS: Many thanks. We'll take that  
21 into consideration.

22           PRESIDENT CROOK: All right. Shall we move

1 to the first witness? This is Mr. Saavedra, who I  
2 understand is no longer a government official; is that  
3 correct?

4 MR. GRANÉ: That's not the case,  
5 Mr. Chairman. He is a government official.

6 PRESIDENT CROOK: He is now a government  
7 official. Okay.

8 ESTEBAN SAAVEDRA MENDOZA, RESPONDENT, WITNESS, CALLED

9 PRESIDENT CROOK: Good morning, sir, and  
10 welcome. Can you hear me?

11 THE INTERPRETER: No microphone.

12 THE WITNESS: Good morning, Mr. President.  
13 I hear you perfectly.

14 PRESIDENT CROOK: Appreciate your being with  
15 us this morning. You should have before you a--an  
16 affirmation or declaration.

17 Do you see that, sir? I believe it's a  
18 plastic coated piece of paper. We will find your  
19 witness declaration.

20 While that's being taken care of--ah, good.  
21 There we are.

22 THE WITNESS: Thank you.

1           PRESIDENT CROOK: Can you read out loud that  
2 affirmation, please.

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

6           PRESIDENT CROOK: Thank you, sir.

7           You will remain subject to that undertaking  
8 throughout the proceeding. Now, are you familiar with  
9 the procedure that will be followed? You will first  
10 be asked a short series of questions by counsel for  
11 Perú. You will then be cross-examined by counsel for  
12 the Claimant. You then may be asked some additional  
13 questions by counsel for Perú.

14           Are you comfortable with that procedure,  
15 sir?

16           THE WITNESS: Yes, I do feel comfortable,  
17 Mr. President, with the procedure you just outlined.

18           PRESIDENT CROOK: Thank you.

19           Now, if at any time, you feel the need to  
20 take a break, let us know, and we will try to  
21 accommodate.

22           THE WITNESS: I shall do so, sir.

1           PRESIDENT CROOK: Thank you.

2           All right. Shall we turn to the direct  
3 examination.

4                         DIRECT EXAMINATION

5           BY MR. GRANÉ:

6           Q. Good morning, Mr. Saavedra. You have your  
7 witness statement on the table in front of you. It's  
8 dated 15 March 2022. I think you have it in hand.  
9 I'd ask you to look at it quickly, particularly the  
10 last page, and to please confirm that this is your  
11 witness statement in this case, that that is your  
12 signature, and that you ratify the content of this  
13 witness statement.

14          A. Good morning. What I have here is the  
15 statement by Fernando Trigoso.

16          Q. Just a second, please.

17                         (Pause in the proceedings.)

18          THE INTERPRETER: Mr. President, this is the  
19 interpreter. If you could ask Mr. Grané to make sure  
20 he stays close to the mic; otherwise, there's a lot of  
21 extraneous sound.

22                         Thank you very much.

1 THE WITNESS: Yes. This is my statement in  
2 Spanish.

3 BY MR. GRANÉ:

4 Q. Would you like to make any correction to  
5 your statement?

6 A. No.

7 MR. GRANÉ: Thank you. We don't have any  
8 more questions at this time.

9 CROSS-EXAMINATION

10 BY MR. GALLEGO:

11 Q. Good morning, Mr. Saavedra. My name is  
12 Jaime Gallego. We're going to have a conversation  
13 today. I'm going to be putting questions to you. We  
14 have very limited time.

15 The questions that I'm going to put to you  
16 will often ask for a yes or no answer. I'll ask you  
17 to please focus on the question, and that you answer  
18 the question very concisely.

19 Of course, you could elaborate, but I would  
20 ask you to please focus on the question and answer it.  
21 That way, we'll be able to move forward.

22 I understand that you are a public official

1 today?

2 A. Yes. I'm the director at the ministry  
3 for--the Affairs of Women and Vulnerable Persons.

4 Q. I understand that you've read the relevant  
5 parts of the claim, the Memorial and the statement of  
6 Luis Felipe Bravo, the first one, that's what you said  
7 in the only statement that you have made here?

8 A. I have read, because it was put to me to  
9 prepare for coming here, the statement by Mr. Bravo.

10 Q. Did you read both of the statements by him?

11 A. Yes.

12 Q. Did you not have anything to add in the wake  
13 of the second statement by Mr. Bravo, since you've  
14 only filed one statement?

15 A. It wasn't for me to answer whether I agreed  
16 or not with Mr. Bravo's statement. He does say some  
17 things which, no doubt through this session, we'll be  
18 able to clarify because he does say some things that  
19 are out of context. He extrapolated, so to speak.

20 Q. But you decided in due course not to present  
21 a written statement responding to Mr. Bravo's second  
22 statement; right?

1       A.     Of course, there is a statement here, the  
2 second one, in which I have said some things regarding  
3 Mr. Bravo's witness statement.

4       Q.     You presented a second statement?

5       A.     Of course. It's right here. Isn't this it?

6       Q.     That is the only statement you've presented  
7 that you have before you.

8       A.     This is the statement that I made after I  
9 read Mr. Bravo's statement.

10      Q.     Of course. Well, let's have certain rules  
11 of the game. There are interpreters who are  
12 interpreting our conversation into English. I'm going  
13 to speak, we'll take a brief pause, then you will  
14 speak and vice versa. We can't be speaking at the  
15 same time.

16             You will see I'm taking a brief pause, and  
17 I'll ask you to do the same, to make a brief pause  
18 before you speak.

19             After you filed your statement, Mr. Bravo in  
20 turn presented a second statement, and you did not  
21 present a statement responding to what Mr. Bravo said  
22 in his second statement; correct?

1       A.     As regards Mr. Bravo's statement--well, he  
2 made a statement, and then I made a statement, which  
3 is the one that is signed right here.

4             ARBITRATOR GRIFFITH:   Sorry.  I've  
5 transgressed.

6             (Comment off microphone.)

7             MR. GALLEGO:   Thank you, sir.  I thought I'd  
8 established that I will--

9             ARBITRATOR GRIFFITH:   He hasn't seen the  
10 second statement.

11            MR. GALLEGO:   I thought I had established  
12 that he had, but maybe I haven't.  Thank you for that,  
13 sir.

14            BY MR. GALLEGO:

15       Q.     Have you seen Mr. Bravo's second statement?

16       A.     Yes.

17       Q.     You were Vice Minister for Public Order of  
18 the Ministry of Interior from October 2019 to [recte:  
19 November] 2020; correct?

20       A.     Yes.  I was Vice Minister for Internal Order  
21 from the 31st of October 2018 until the 19th of  
22 November 2020.



1           Q.     Very well.

2                     During that time, did you give written  
3 instructions to your subordinates about the social  
4 conflict that had Parán and Lupaka at loggerheads?

5           A.     Written provisions?

6           Q.     Instructions, or any type of  
7 information--say, instructions to your subordinates  
8 about how they should proceed?

9           A.     Perú has many conflicts, and Lupaka, which I  
10 didn't know as Lupaka at the time, I knew it as minera  
11 Invicta, it came to my awareness through the  
12 information that the bureau that looks at conflict  
13 prevention passed on to the Vice Minister.

14                    The Vice Minister then follows up on what he  
15 is told, and then is constantly reporting. The need  
16 for this information is in tandem with the partner of  
17 conflict prevention at the Ministry of Interior to the  
18 partner of Mining and to the office that has to do  
19 with the national police. The information goes along  
20 those two vectors, the information, that is, from the  
21 conflict prevention unit.

22          Q.     So I had asked you about instructions that

1 you gave your subordinates, but you have told me  
2 something else.

3           You have told me that you received  
4 information constantly regarding this conflict. Have  
5 I understood properly?

6           A.     Yes. I received information on that matter  
7 as on others, and all that one says in those meetings  
8 one must continue monitoring because that is the  
9 function based on the vision of public order that  
10 the--to see to it that it not continue to be a  
11 governability issue, and that's where the function of  
12 the ministry and vice ministry is to give instructions  
13 when it's being reported to them.

14           If it's said that there's going to be a  
15 meeting on day X, they need to say, well, you're going  
16 to have to attend that meeting on day X.

17           Q.     Did you report to the minister in turn on  
18 this conflict?

19           A.     As is natural, the information that comes to  
20 a Vice Minister has to be reported to the minister.

21           Q.     Did you do so in writing?

22           A.     Yes. Communications that run in tandem,

1 information that goes to the ministry.

2           Now, in this case, when this meeting came  
3 with Lupaka, I had to communicate to the minister that  
4 it had been addressed. I went to address that case  
5 because I had to address it--they didn't direct it to  
6 me, just as I had to deal with others, other mining  
7 companies, such as Anglo American, Choclon, Bambas, or  
8 politicians who would--or politicians who would come  
9 to have meetings with the minister, and the minister  
10 might not be able to handle it, and he would have one  
11 of the vice ministers, there were two vice ministers  
12 to receive that person who had come to the vice  
13 ministry, for one of the functions of the minister is  
14 to receive people who are seeking protection or who  
15 come to the minister with some matter that  
16 requires--that needs to be addressed.

17       Q.     I understand that you would report to the  
18 minister for him to make the corresponding decisions  
19 with respect to this case; is that right?

20       A.     Yes. The information--well, there's a  
21 meeting of the Council of Ministers on Wednesdays, and  
22 at that meeting of the Council of Ministers, the

1 information that was produced within the Ministry of  
2 Interior has to be reported so that the minister can  
3 then share it with his peers, who are at that meeting  
4 of the Council of Ministers.

5           So information of this nature, like any  
6 other, should be made known there, because in  
7 addition, if you allow me to, please, a vice minister,  
8 when handling a requirement of this nature, does not  
9 do so alone. He is accompanied by other members who  
10 have--who deal with the matter.

11           Plus, as a matter of transparency, which is  
12 a national law, the prime minister has access to  
13 that--the meeting that we, the vice ministers have.  
14 They keep tabs on us. It's not just that there's a  
15 meeting and that's it. Rather, there is a follow-up  
16 on what is discussed in those meetings.

17           That's what I wanted to say.

18       Q.     Thank you very much, Mr. Saavedra.

19           How often was there discussion of the  
20 Invicta case at the cabinet level?

21       A.     I don't know.

22       Q.     In turn, you would give instructions to your

1 subordinates about how they should proceed within the  
2 Ministry of Interior in relation to this Invicta case?

3 A. A vice minister doesn't have to set out such  
4 provisions. There is a provision, which is the  
5 regulation on the organization and functioning, and  
6 all public officials are subject to the ROF. And the  
7 director for prevention had to do so, that is the  
8 regulation on organization and functions.

9 Q. I understand that.

10 But it's not a legal question. It's a  
11 practical question. You were being sent information,  
12 and then you would forward it to the minister. There  
13 would be discussions, I imagine, to make some  
14 decision. And then, one would have to implement that  
15 decision; therefore, logically, there would have to be  
16 a communication to the subordinates.

17 Did you give instructions to your  
18 subordinates in relation to this specific case in  
19 terms of how they should proceed?

20 A. In this specific case, like any other  
21 investment, because we are concerned about investment  
22 in the country, which we as a country need--well, all

1 of us officials who work in the state are obligated to  
2 follow up on and provide instructions when appropriate  
3 based on their authority.

4 Q. Of course, thank you.

5 It would be only logical that such  
6 instructions be put in writing?

7 A. There's not a need to put them in writing.  
8 We come to a meeting like this where people talk and  
9 information is shared and a decision is made. And  
10 then it has to be carried out. It doesn't need to be  
11 in writing.

12 Imagine, so many cases. Only when the case  
13 so merits, when the situation has gone beyond--and the  
14 situation has gone beyond a certain limit and there's  
15 no action, and you've come to learn about it, and you  
16 need to inform that unit, well, obviously, they're  
17 going to say, we are following up on the case.

18 Q. Excuse me, but you were vice minister.  
19 That's a very high-level position within the Ministry  
20 of Interior. Your decisions are--or instructions are  
21 not an informal matter, and it's not a small ministry,  
22 the Ministry of Interior.

1           So if you make a decision, your subordinates  
2 within the Ministry of Interior need to know about it.

3           Isn't it only logical that you would issue a  
4 written decision or at least that there would be some  
5 minutes or a report that would be a written  
6 verification of your decision?

7           A.     What we do are internal notes. Where it is  
8 said that there must be follow-up and there is already  
9 a decision on that, and then one works on that basis.

10           From the time that one learns of it and then  
11 reports, then the document goes back and says, you  
12 should follow up and report. There's nothing else to  
13 add, just continue monitoring, and following up on the  
14 situation.

15           That is what's issued, and that is what's  
16 written.

17           Q.     Thank you very much.

18           And I understand that with respect to this  
19 case, there were some provisions that were pulled  
20 together in minutes or some other--memorialized in  
21 some other form that would reflect your decisions;  
22 correct?

1       A.     Of course. There are documents on that.  
2 And there are documents on the meeting of the 24th  
3 where a document was drawn up in order for there to be  
4 prevention on the issues. And that makes traceability  
5 possible.

6       Q.     Likewise, with respect to the decisions of  
7 the minister?

8       A.     With respect to the minister, I don't know.  
9 I'm here to answer for my position as vice minister.

10      Q.     Thank you.

11             At Paragraph 14--let's try to proceed more  
12 or less quickly. If you want us to look at a document  
13 or your statement, we can do so, but we have very  
14 limited time. If I make reference to your statement,  
15 if you have any doubt about it at any time, we'll take  
16 a look at it.

17             In your statement, Paragraph 14 says that  
18 there are two vice minister offices, one for internal  
19 order and the other for public security; correct?

20      A.     The Ministry of Interior has two vice  
21 ministries, internal order and public security.

22      Q.     Here, we could have--you could have been



1 much shorter. Instead of repeating the question, you  
2 could have simply said yes, that would help us move  
3 forward a little more quickly. Thank you.

4 A. Thank you.

5 Q. We've already established that you were Vice  
6 Minister for Internal Order. I understand that you  
7 are also vice minister for public security, the other  
8 vice ministry from November of 2018 to April of 2019?

9 A. Yes. If you allow me to--

10 Q. Wait a second.

11 You didn't mention it in your statement, and  
12 so the question is: Why?

13 A. Because there, I went to declare as vice  
14 minister for internal order, and not as vice minister  
15 for public security. In that context I was taken into  
16 account [called upon] as the vice minister for  
17 internal order and not as--because what they make is  
18 an assignment. Until they appoint the person who will  
19 hold the position, senior officials decide that it is  
20 the vice minister or it could have been the secretary-  
21 general.

22 So it doesn't necessarily have to be so. So

1 I handled it because it was an internal--it was a  
2 matter of--because I acted in my competence as  
3 internal order vice minister, not public security vice  
4 minister.

5 Q. At any rate from November 2018 to April 2019  
6 you held both vice ministries, both vice minister  
7 positions in the two vice ministries, the Ministry of  
8 Interior?

9 A. That's right.

10 Q. And as Vice Minister For Internal Order, I  
11 understand that you were in charge of planning,  
12 directing and supervising the functional activity of  
13 the Ministry of Interior in respect of internal order,  
14 and internal security; correct?

15 A. Yes.

16 Q. As part of that function, your duty was to  
17 design and formulate guidelines and strategies to  
18 address social conflict within the scope of your  
19 authority; correct?

20 A. Yes.

21 Q. And you were in charge of--or you had the  
22 addition of guiding the State with regard to strategic

1 guidelines relating to social conflict; correct?

2 A. Yes.

3 What I'd like to note here in answering your  
4 question is that what the office does that has to do  
5 with conflicts is prevention, and this from a  
6 normative standpoint that is not involved in  
7 intervening in respect of public policy. It has to do  
8 with that part because the part of public policy in  
9 charge of implementation goes through the national  
10 police.

11 There is confusion. When one begins to  
12 speak of the office of internal order, that it is the  
13 bureau that is to carry out operational plans. No.  
14 They sound the alert. They follow up so that those  
15 who are in charge of the functional responsibility for  
16 responding to that conflict can address such conflicts  
17 within the scope of their authority.

18 Q. Thank you, Mr. Saavedra.

19 At any rate, the general bureau for public  
20 order, which was directly under you within the  
21 Ministry of Interior has as the function propose,  
22 conduct and supervised the implementation of public

1 policies, plans, programs, strategies and actions for  
2 preventing and providing solutions to social  
3 conflicts. Is that not so?

4 I'm reading here directly from a regulation  
5 which we can look at, if you'd like. But I suppose  
6 that you already have experience in this.

7 Can you confirm that for me?

8 A. What the general office for prevention does  
9 is alert, communicate, follow the guidelines that  
10 exist when there are dialogues. That is the work that  
11 must be done by the office for prevention.

12 The strategy is that there is a dialogue.  
13 That dialogue has to continue to provide  
14 communication, and follow-up, as appropriate.

15 Q. So you don't have a duty to supervise the  
16 application of policies, and providing solutions to  
17 social conflicts?

18 A. From the normative side, yes. From the  
19 executive side, or in terms of implementation, no.

20 Q. At any rate, the general office for public  
21 order is in charge of guaranteeing internal order, and  
22 would be supervising the police; is that not so?

1           A.     No.

2                     Let me--allow me, please.

3                     The interior sector is made up of the vice  
4 ministries of public security and internal order, and  
5 it has under it the national police, the SUCAMEC which  
6 has to do with weapons. It has to do with  
7 immigration, and it has to do with the firefighters  
8 services.

9                     It's not that the minister is the national  
10 commander of the national police. The aspect of  
11 public policy, its design, supervision, and direction  
12 goes through the ministry.

13                    The public policy when it comes to  
14 implementation, there's a pertinent article of the  
15 regulation, what it says there in terms of the  
16 function, well, it explicitly notes that the public  
17 policy in terms of its implementation corresponds to  
18 the national police of Perú.

19                    Thank you.

20            Q.     Thank you.

21                    Let us turn to Tab 50 at the binder you have  
22 before you. This is what I imagine you have in

1 English first, and then in Spanish. Please look for  
2 the blue page, starting in that blue page, you are  
3 going to have it in Spanish.

4 Here we are looking for Article 83.3. Do  
5 you have it at page 47?

6 A. Of the Supreme Decree?

7 Q. Yes. 04/2017. 2017 so here you have the  
8 Supreme Decree that approves all of the roles of  
9 Article 83.

10 A. Yes, I do have it here in front of me.

11 Q. You can see that this office is the one in  
12 charge of proposing, promoting, formulating,  
13 conducting, supervising and monitoring the compliance  
14 of public order policies, and strategies in the  
15 prevention and management of social conflicts, in  
16 coordination with the bodies of the sector. That  
17 would be the Ministry of Interior working with the  
18 Directorate General of Public Order.

19 As well as designing and executing actions  
20 that contribute to the development of social  
21 organizations, rural and native communities in order  
22 to strengthen their contribution to the prevention of

1 social conflicts, and those related to social peace.

2 It reports hierarchically to you, the vice minister.

3 Now, let us look at a different provision.  
4 That we find at 54.

5 This is the Legislative Decree Number 1266,  
6 Article 8.1. I think you have it in Spanish also.  
7 Here it is referring to your powers. I wanted to show  
8 you 8.1.

9 You, at page 10 of 19--page 10 of 19, and  
10 there it says that you were in charge of, one, to  
11 propose and lead the internal order policy of the  
12 interior sector in the process of formulating the  
13 general policy to you guaranteeing through the  
14 Peruvian National Police internal order and public  
15 order, to fight against organized crime, the  
16 protection of strategic investments as well as the  
17 surveillance and control of national borders in  
18 accordance with State policy.

19 I just wanted to highlight that this is  
20 something that you need to do through the national  
21 police of Perú.

22 So I understand that there needs to be some

1 sort of coordination with the police.

2 A. I thank you for the question.

3 Let me explain to you.

4 Public policies are devised, designed by  
5 those who have the ability to do so within the State,  
6 as stated by the Minister. Specific sectors have to  
7 look into specific policies. The Ministry of Interior  
8 has to develop that type of policies, and that's how  
9 during my tenure, we looked into the public policy  
10 against organized crime, against drugs, against  
11 terrorism.

12 As to the implementation stages of the  
13 policies; that is within the realm of each sector,  
14 within the area of their powers, public policies, just  
15 not one for the whole sector.

16 The national policy sometimes works with the  
17 national police, but the part of execution,  
18 implementation, this is related to the national  
19 police.

20 Q. I thank you, Mr. Saavedra.

21 So I understand that the national police has  
22 certain autonomy, but that you are determining the



1 policies to be followed by the police; correct?

2       A.     This is not determined by the vice minister,  
3 rather, the Peruvian State, the party that  
4 communicates them also with multisectorial  
5 participation. Because for this, we have a  
6 multisectorial provisional commission that works on  
7 this with all of the sectors. And they have the  
8 obligation to contribute their input to the design,  
9 and then the vice minister puts all of this together,  
10 organizes them, analyzes them.

11             And then once they all say they agree, this  
12 is approved by the Peruvian State. This is not  
13 approved by the vice minister.

14             At any rate when--then the policy is  
15 implemented, and as part of the implementation, we  
16 have also the various actors.

17       Q.     If there is any doubt regarding a policy,  
18 let's say that the police thinks that there is a need  
19 to participate, but there is a specific policy  
20 regarding that, shouldn't that be consulted with the  
21 politicians to see whether there is a need to  
22 intervene because of a specific policy?

1       A.     I thank you for your question, and let me  
2 explain to you the following.

3             Once that policy has been consulted, and  
4 compiled, it goes through a system that is called CCV.  
5 The CCV, that is to say, the Council of Vice Ministers  
6 in all of the sectors and all of the ministers work on  
7 this.

8             If one of the elements that is mentioned  
9 there is related to an internal situation, it is done  
10 at that point in time. It is not done anytime, every  
11 time that this happens. It is done precisely at that  
12 moment.

13            ARBITRATOR GARIBALDI: (Overlapping speaker  
14 with translation.)

15             I have a question because I didn't  
16 understand the answer.

17            MR. GALLEGO: Please.

18            BY MR. GALLEGO:

19       Q.     I am going to ask you to answer my question.  
20             You determined policies at a general level.  
21 Then the police has to implement these policies. If  
22 the police sees that an intervention, a call to action

1 may be against a policy, then that would be taken up  
2 to your level for you to determine whether the policy  
3 should be observed or whether there is an exception or  
4 an exception could be introduced for that policy.

5 Is the answer yes or no, and please be  
6 brief?

7 A. No. That's the way it is.

8 Because the police is not the only one. We  
9 just--we don't have just one police. We have a  
10 justice system that governs the country. If the  
11 prosecutor that is--that has to do with crime--because  
12 the police looks into crime. If there is a situation,  
13 there has to be a participation by the judiciary, and  
14 also by the prosecutor's office.

15 Q. So on the one hand, you may have a policy  
16 that has some gray areas, and the police has full  
17 autonomy, full autonomy, to proceed as they deem  
18 appropriate, even if that policy has some gray areas  
19 and there could be some doubt as to the intervention  
20 based on that policy.

21 Please be brief.

22 A. Yes. Thank you.

1           Yes, at that point in time, the police does  
2 whatever the law provides for. If at that point in  
3 time, one of the parties feels that they have been  
4 impacted, they resort to the public--to the ministry  
5 or to the judiciary.

6           Q.     Thank you.

7           I understand that the answer was no, that  
8 the police forces would not go to you. Rather--that  
9 this would not be addressed by you; rather, that the  
10 police would implement their plan in an autonomous  
11 manner.

12           Is this correct?

13           A.     The national police does not report to the  
14 vice minister; therefore, they do not need to tell me  
15 something like that.

16           If they consider that something has to be  
17 solved, they can resort to the prosecutor, or--to the  
18 public prosecutor or to the prosecutor.

19           Q.     I am having some issues to understand your  
20 answers, your answers to my questions. You're not  
21 answering clearly. I continue even though we have not  
22 found an answer to this question.

1           You also had as part of your competence to  
2 plan and coordinate the relationship of the sector  
3 with the "rondas campesinas" within the scope of  
4 public order, correct?

5       A.     Yes.

6       Q.     The rural rondas?

7       A.     Yes. We have no control. We just train--we  
8 have no control over the "rondas."

9       Q.     Yes, but you do coordinate the relationship  
10 between the office--the Ministry of Interior and the  
11 "rondas campesinas"?

12      A.     No, it is not the vice minister. The  
13 Directorate in charge of the "rondas" carries out that  
14 relationship with the communities where "rondas"  
15 exist.

16            So for us to have those conversations with  
17 the rural population, we need to have the rural  
18 community that is represented, and for that, we have  
19 the participation to make sure that there is no  
20 violation of the rights of those people that are  
21 trained.

22      Q.     So let's continue.

1           I understand that you were also part of the  
2 National Peruvian Police between 1969 and 2011; is  
3 that correct? During 32 years?

4           A.     Well, I was a police officer for 32 years,  
5 and 22--and for 22 years, I have been outside the  
6 institution.

7           Q.     So you became colonel, that is the highest  
8 rank; correct?

9           A.     Yes.

10          Q.     That is the highest rank; correct?

11          A.     Yes.

12          Q.     You would agree with me that the police  
13 forces have the end of guaranteeing, maintaining, and  
14 re-establishing internal order; correct?

15          A.     Yes.

16          Q.     They also need to guarantee compliance with  
17 the laws and also the safety of public assets and  
18 private assets; correct?

19          A.     Yes.

20          Q.     And therefore, the police has to also  
21 intervene by force in certain assumptions, in certain  
22 areas?

1       A.     Well, once the police hears of a situation,  
2 not all of the events that get to the police will  
3 require a police operation.

4             Sometimes there is verification of the fact,  
5 and also the determination of the party that is  
6 involved in this. So therefore, just the knowledge  
7 that the police may have does not entail a police  
8 operation.

9       Q.     I thank you, but please listen--listen to my  
10 question.

11            I told you that the police is compelled to  
12 participate using the force in certain situations; is  
13 that correct? Yes or no.

14       A.     Yes.

15       Q.     Now, let us look at those assumptions or  
16 hypotheses. This has also been part of an expert  
17 report by Dr. Meini, who is an expert in criminal law.  
18 This is--we are going to look at Tab number 8. We are  
19 going to see the report there. This is at page 27, I  
20 believe.

21            I apologize, I don't think there are pages  
22 there, but this is Paragraph 72.

1           Are you looking at Paragraph 72? Then that  
2 paragraph moves on to--continues on the next page.  
3 Towards the end before the a, b, c, d, e listing, it  
4 says "the National Peruvian Police should resort to  
5 force to...". Then you have a list--you have a list  
6 based on Decree 1186, Article 8.2.

7           You are aware of this; correct?

8           A.     I am not an attorney. I do not know what  
9 this--what Mr. Meini is mentioning.

10          Q.     Well, you were a colonel with the police,  
11 and you were with the police forces for 32 years. I  
12 imagine that you should know at least when  
13 participation is warranted.

14          A.     Well, I was a police officer. I'm no longer  
15 a police officer. And if you allow me, police  
16 officers--

17                 (Clarification requested by the Realtime  
18 Stenographer.)

19                 SPANISH REPORTER: Please come closer.

20                 THE WITNESS: I was saying that I am not a  
21 lawyer and I cannot refer to Mr. Meini's opinion.

22                 BY MR. GALLEGOS:



1 Q. Thank you.

2 Now, if there is a flagrant crime, item (a),  
3 is there an obligation to intervene?

4 A. Flagrancy?

5 Q. Yes.

6 A. Yes, without a judicial order.

7 Q. Without a judicial order and there is rape.

8 A. Flagrancy.

9 Q. There is a flagrant crime, there is a rape  
10 in front of a police officer. Does he have to  
11 intervene? Yes or no?

12 A. Yes.

13 Q. Excuse me, yes or no? There is a flagrant  
14 crime, there is a rape in front of a police officer.  
15 Does he have to intervene, yes or no? Or the officer  
16 has to wait for some judicial order to intervene?

17 A. I have said I am not a lawyer, but the  
18 officer does have to intervene when it is a case of  
19 flagrancy.

20 Q. Now, if there is any danger of a crime being  
21 committed, and that is something that the police  
22 officer is seeing, should there be intervention or

1 not?

2 A. You have used the conditional "if."

3 Q. I'm asking you to answer.

4 Here it says to prevent crimes and  
5 violations, and here I'm asking you, because you were  
6 a police officer for 32 years and then a vice minister  
7 with the ministry of the interior, to prevent a crime,  
8 should the police officer intervene or should the  
9 person just wait to receive a judicial order?

10 A. You have said it very clearly. You have  
11 said: flagrancy. That is not prevention. The task of  
12 prevention is another stage.

13 Q. So we are looking at the listing of  
14 Legislative Decree 1186.

15 A. I am not a lawyer, but I can--as a former  
16 police officer, I can say that police officers know  
17 that they need to minimize risks, and that no one is  
18 going to act just because there is--they are talking  
19 about a fact or to prevent a fact that may happen. If  
20 it is something imminent, obviously the police have to  
21 intervene, because it is a case of flagrancy.

22 Q. If someone presents any resistance to the

1 authority, there should be an intervention?

2 A. Well, if the crime is obvious, and we are  
3 talking, again, about a crime that is flagrant, then  
4 there has to be participation by the police.

5 Q. So you're telling me that if a police  
6 officer sees that there may be a crime in the near  
7 future, you are telling me that the officer has to  
8 wait to receive a judicial order rather than prevent  
9 that crime?

10 A. In that case, you're talking about the  
11 future. Who can ascertain that there will be a crime  
12 in the future?

13 Q. Let us move on.

14 Now, regarding each level of opposition,  
15 regarding the position of a person to intervene and  
16 the use of force, the force used should be in  
17 accordance with the opposition received or with the  
18 force that is being exerted against the actual  
19 officer; is that correct?

20 A. Well, once again, I cannot--I am not a  
21 police officer or a lawyer to say that.

22 Q. Very well. Thank you.

1           And you were telling me that prior to the  
2 meeting with Mr. Bravo that was in January 2018, you  
3 were informed in 2018 about the conflict?

4           A.     I had to know that there was a conflict. I  
5 had to know about it. And there was evidence--there  
6 was evidence already that something was going on.

7           And they had participated on the 14th. And  
8 on the 14th when the police showed up there, they  
9 accepted the situation, and there are also minutes  
10 with the signature of a person from the company,  
11 together with those who had been there, part of the  
12 protest, and they took the road because they  
13 considered that it was their road.

14          Q.     Very well.

15           I think you have referred to the 14th. I  
16 think it is the 14th, October 14th, 2018. We're now  
17 going to talk about that a little bit.

18           I understand that you were also told about  
19 the background of this conflict, that there was an  
20 invasion, or that there was a protest in accordance  
21 with the terms used by Parán in June 2018; correct?

22           Were you aware of this; yes or no?

1       A.     I learned about this later on because I was  
2 not the vice minister.

3       Q.     Very well.

4             Let, now us look at Tab 15, please, in the  
5 binder that you have there in front of you. If you  
6 look at this, this is C-170. This is a request for  
7 police support dated October 17, 2018, to avoid  
8 vandalism, and also possible attacks against our  
9 facilities. This was by community members of Parán.

10            This is being addressed to the police  
11 officer of Lima, Gaston César Rodríguez Limo. Were  
12 you aware of this document? Did you know of this  
13 document?

14       A.     No.

15       Q.     Thank you.

16             At any rate, we can see that there was some  
17 action, or at least something was done. There was a  
18 process for this request, for this application, we are  
19 going to see at Tab 16. I understand that this is  
20 something that you did not receive because it was  
21 quite local within the police forces.

22             Here the colonel for the Huacho area says

1 that he has decided to request operations--has  
2 directed or ordered the respective order of operations  
3 be formulated.

4           You can see it halfway down the paragraph.  
5 If you want, you can look at the Spanish version.

6           A.     This is an acknowledgement of receipt.  
7 Isn't this signed by the colonel?

8           Q.     No, this is signed by Andres Rosales Andrade  
9 in the Sayán police station.

10           But it says halfway down the paragraph that  
11 in this regard, PNP colonel chief of Huacho has  
12 ordered that the respective order of operations be  
13 formulated.

14           Do you see that?

15           A.     Yes, I do.

16           Q.     The order of operations is the same as an  
17 operations plan.

18           A.     No, it is not.

19           Q.     What is an order of operations, then?

20           A.     The order of operations are actions that are  
21 implemented based on the national plan. The national  
22 plan is at this level, and the units below this level,

1 below the police, have the orders of operation. This  
2 is on a daily basis, and they go based on topics,  
3 prevention, whatever that would be, drug trafficking.  
4 So that's an order of operation.

5           So the order of operations is a provincial,  
6 local level.

7           The national plan is the large umbrella  
8 under which each agency has its order of operations.

9       Q.     I thank you, but I think that we are talking  
10 about quite a low level. We are not talking at the  
11 level of national plans. We are talking at the level  
12 of the decisions by the Huacho chief; therefore, this  
13 is an order--or the order of operations, the  
14 respective order of operations.

15           You were not informed of this order of  
16 operations, were you?

17       A.     Well, the vice minister does not need to be  
18 kept abreast of this type of order.

19       Q.     Yes or no. It's very easy.

20           But were you aware of this when you prepared  
21 yourself for the meeting? I understand you didn't.  
22 That is January 24th of 2019.

1       A.     No, I wasn't aware of this.

2       Q.     Let us look at R-113. This is at 58, Tab  
3 58. This report is 07/2020. This is page 2 of 21,  
4 and this refers to some background information known  
5 to the police much later in 2020, but this is useful  
6 to see exactly what the police was aware of.

7             At page 5--at page 5, you would see  
8 Paragraph 6, then.

9             Can you read it?

10       A.     Yes. I can read it. This is dated November  
11 18.

12       Q.     You don't need to read it. You don't need  
13 to read it aloud. Can you read it?

14       A.     Yes.

15       Q.     It refers to a plan of operations that was  
16 looking to clear up the roadway that had been occupied  
17 since the 14th of October. Do you see that?

18       A.     Yes.

19       Q.     At the end, it says that the plan did not go  
20 forward because of the impediment on the part of the  
21 members of Parán Rural Community in order to avoid the  
22 social cost.



1           Do you see that?

2           A.     Yes.

3           Q.     The reference to social cost has to do with  
4 the potential negative repercussions that this could  
5 have on society in general because of this idea that  
6 the police was not acting appropriately, or fairly.

7           A.     Your appreciation is not correct.

8           Q.     If there is a social cost, my understanding  
9 is that this is a problem that goes beyond, or rather,  
10 a consideration that goes beyond whether an  
11 intervention or not should happen in accordance with  
12 the law.

13                   Other broader considerations have to be  
14 taken into account, and the decision of not to  
15 intervene needs to be made. Yes or no?

16           A.     The situation is the following: That is why  
17 they say on day D, hours H, because it has to do with  
18 if this is allowable. If there are risks, the  
19 potential risks, and the police is not going to  
20 intervene.

21                   There are many individuals there that may  
22 become victims of the action of the intervention.

1           From my experience in the field of the  
2 police, what you are taught is that as a police force,  
3 you need to minimize risks. That is a concept that  
4 every police person knows. You have to look at the  
5 scenario, gather information. If the moment is the  
6 right time, you are going to act. If not, you are not  
7 going to act.

8           Q.     Thank you.

9           But Parán was armed; is that right?

10          A.     I have no personal knowledge of that fact  
11 that Parán was armed.

12          Q.     I'm telling you this.

13                 The community members of Parán were armed.  
14 They had army weapons. They had perhaps their own  
15 weapons. They were heavily armed. I can show you a  
16 document that evidences this.

17                 In fact, in this very same document, we can  
18 go to page 2, please. It talks about the 19 June  
19 invasion.

20          A.     On the 18th?

21          Q.     Are you looking at this, 19 June 2018?

22          A.     Thank you.

1       Q.     A group of 250 to 300 community members of  
2 the rural Community of Parán went up to the mine.

3             Amongst them, the leaders, including the  
4 president of the rural patrol, they had short and  
5 long-range firearms, pistols, revolvers,  
6 breach-loading shotguns and carbines and violent acts  
7 ensued. It says here that the Parán Community  
8 leaders, and the Parán Community, all of those  
9 individuals were armed; correct?

10            Just a clarification. When they say armed,  
11 who are armed in the population?

12       A.     Again, what a police person does is to  
13 verify. He has to see who has the weapons. We cannot  
14 say that out of 300 individuals all of them were  
15 armed, who of them were armed.

16       Q.     It says here that the president of the rural  
17 patrol was there. It says that the leaders were  
18 there. There was a mob of 250 to 300 members. When  
19 it's identifying here the male leaders of the  
20 community, it says here the men were the ones who  
21 entered carrying short and long-range firearms,  
22 pistols, revolvers, breach-loading shotguns and

1 carbines, the same ones who without any authorization  
2 entered the camp of the company demanding an  
3 inspection, and then details are given of the violent  
4 acts that took place on that date.

5           So the police, itself, identified the  
6 individuals bearing arms.

7           Did you not know about this?

8           A.     What the police is saying is that the  
9 leaders were there. They're not saying that each one  
10 was carrying a pistol or a carbine.

11          Q.     Who was carrying those weapons? At any  
12 rate, the Parán Community members had pistols in the  
13 presence of these leaders, and to their full knowledge  
14 and under their authorization.

15          A.     Please we're talking about a fact, we're not  
16 talking about flagrancy here.

17                 This is a version of the facts. They're not  
18 talking about a current fact. They're talking about a  
19 past fact. That's not flagrancy.

20                 That event was known by the prosecutor's  
21 office, and as a consequence, you have a prosecutor's  
22 office report, and that's the path they should have

1 tread, not dealing with the police.

2 PRESIDENT CROOK: Would it be possible that  
3 we take a five minute break?

4 MR. GALLEG0: Sure.

5 PRESIDENT CROOK: Let's rise for five  
6 minutes. Mr. Saavedra, we will take a very short  
7 break now. You're free to leave the room, but you  
8 should not discuss your testimony with anyone during  
9 this five-minute period.

10 Is that agreeable, sir?

11 THE WITNESS: Thank you very much. That's  
12 agreeable.

13 PRESIDENT CROOK: Thank you very much. See  
14 you in five minutes.

15 (Whereupon, there was a recess in the  
16 proceedings, 10:37 a.m. - 10:46 a.m.)

17 MR. GALLEG0: With apologies, Mr. President.  
18 I was just seeing how I could cut to the chase here.

19 PRESIDENT CROOK: Appreciate that.  
20 Worthwhile thing to do.

21 MR. GALLEG0: Thank you for the opportunity  
22 to do that.

1           Just would like to raise whether it would be  
2 possible to see Mr. León after Mr. Saavedra. I'm very  
3 conscious that that would be a switch, but if he is  
4 available then, and if we can finish with Saavedra  
5 earlier than we had scheduled, then it would be very  
6 much welcome to be able to cross-examine Mr. León  
7 straight away.

8           Is that possible?

9           MR. GRANÉ: Yes. I think that that would be  
10 possible. If you can give us a sense--a general,  
11 rough sense of timing just to make sure that we're  
12 able to have him ready, and not waste any time--any of  
13 your time.

14          MR. GALLEGO: Well, I think it would be  
15 shortly before lunch or shortly after lunch.

16          MR. GRANÉ: Okay. Can you give me just one--  
17 well, I believe that--yes, that would be possible.

18          MR. GALLEGO: Thank you very much for that  
19 flexibility.

20          THE INTERPRETER: Mr. President, your mic is  
21 on.

22          BY MR. GALLEGO:

1       Q.     After the 24 January meeting with Mr. Bravo,  
2 Luis Bravo, reference is made to it in your witness  
3 statement, you had a WhatsApp discussion with  
4 Mr. Bravo.

5             Do you recall that?

6       A.     Yes.

7       Q.     Let us look at that WhatsApp exchange. It's  
8 at Tab 21 of the folder you have there. This is  
9 Exhibit C-192. Starting on February 5, Mr. Bravo  
10 starts sending messages to you. At 9:59:17, Mr. Bravo  
11 says, "To date, we still have a blockade in place and  
12 cannot access the camp. We had a meeting at the  
13 request of MEM last week with the governing committee  
14 of the community, but in the end we could not sign an  
15 agreement because they did not want to lift the  
16 blockade. Unfortunately, in spite of the steps taken  
17 with General Arata and Colonel Arbulú in Huacho, we  
18 have not been able to advance with the operational  
19 plan to regain control of the operation."

20             Do you see that?

21       A.     Yes.

22       Q.     Here Mr. Bravo is asking you for help; is

1 that right?

2 A. He's not asking me for help. He's just  
3 telling me what's going on. He's not coming to me and  
4 saying, "help me."

5 Q. On the next day, Mr. Bravo insisted on this.  
6 Let us see what the answer is.

7 "Luis Felipe, good evening. I have not  
8 forgotten your issues. Sorry for not responding  
9 earlier. I just spoke with General Arata who told me  
10 the following." (As read.)

11 This is what he [Bravo] said at 10:53:07  
12 p.m. of February 6.

13 Do you see that?

14 A. Yes, I do recall.

15 Q. Then it says, "1, The colonel is working on  
16 the issue."

17 I understand that it means that the colonel  
18 is working on the operational plan?

19 A. No.

20 Q. What is "the issue", then?

21 A. The conflict. The conflict that they're  
22 having, in general. It is the conflict. That's the



1 issue. That's his issue.

2 Q. It says, "The colonel is working on the  
3 issue and is going into the area, but sometimes there  
4 are problems due to the rainy weather which does not  
5 make access easy."

6 Then it says, "2, The colonel, with the  
7 prosecutor, an official of the DGOP (MININTER) and a  
8 leader from the Parán Community will enter the mine on  
9 8 February to check the existence of dynamite."

10 3, he has no proof whether or not there is  
11 dynamite in the mine's explosive magazine, and that is  
12 why it is important that the prosecutor and the PNP  
13 verify this.

14 4, that on Saturday the 9th, General Arata  
15 will have a report on the situation, which will be  
16 used as an input for the next decision." (As read.)

17 It appears that here a coordination is  
18 taking place with General Arata; yes or no?

19 A. What I am reporting is what is shown here in  
20 the communication, what I am saying in the  
21 conversation.

22 (Overlap of speakers)

1       A.    I read what is in the conversation.

2       Q.    Yes. But I deduce that you are coordinating  
3 things with General Arata; yes or no?

4       A.    Not so much coordinating at every single  
5 moment. If somebody puts a problem to me, I have to  
6 find out what's going on. That's the minimum that I  
7 should do.

8       Q.    Why is it that that was the minimum that you  
9 should do?

10      A.    Because, please recall that a country needs  
11 investments, and one of the functions of the ministry  
12 is to guarantee the investments and the area where the  
13 investments are located. That is one of our  
14 functions.

15      Q.    So here you were assisting Mr. Bravo that  
16 represented the investor?

17      A.    The function is the protection of the  
18 community, private individuals, private enterprises,  
19 and public persons. When they come to your office, you  
20 need to attend to them.

21      Q.    You did not say, "this is not within my  
22 competence, go talk to general Arata, or colonel

1 Arbulú"?

2 A. That's why he tells me he is talking with Mr.  
3 Arbulú. But it is not within my competence what Mr.  
4 Arbulú has to do.

5 Q. In any case, he is reporting that the general  
6 is coordinating with Mr. Arbulú. Isn't that true?

7 A. That's what the general told me.

8 Q. And the colonel, and the prosecutor are going  
9 to go up to verify whether the Parán community members  
10 had entered the magazine. Isn't that true?

11 A. Yes. Exactly, I am repeating what they are  
12 telling me.

13 Q. It appears that if Parán had had access to  
14 the magazine, that would be used for a decision to be  
15 made; correct?

16 A. If the prosecutor goes there, okay, yes.  
17 The prosecutor is the one that prosecutes the crime.  
18 Don't forget that.

19 Q. On 8 February of 2019, the prosecutor went  
20 up with the police to the camp; right?

21 A. Yes.

22 Q. They went together with Invicta personnel?

1       A.     Yes, because the police must provide  
2 protection and prevent actions, and there is  
3 prevention here because the prosecutor is there, and  
4 the prosecutor wants the support of the police, and  
5 the police must provide that support.

6       Q.     And you coordinated with General Arata and  
7 Colonel Arbulú for the Invicta staff members to be  
8 able to go up at that point in time?

9       A.     No, I don't have to coordinate that issue.

10      Q.     Okay. So you're saying that that's a no.  
11 So let me show you. Please turn the page and look at  
12 10:59:52 on February 6.

13             You say, "It is important that our people go  
14 up to be able to verify and provide information on the  
15 inventory and location of the explosives since Parán  
16 can say anything and evade police and prosecutor's  
17 inspection."

18             Then at 11:09:08, you say, "I don't think  
19 there is an issue for someone from the company to go.  
20 It's a matter of coordinating so that they can go  
21 together."

22             Mr. Bravo, in turn, says at 11:10:41,

1 "Tomorrow, I will call colonel Arbulú to coordinate  
2 with him, but"--this is Mr. Bravo who says this--"but  
3 a call from the general to reinforce this is  
4 important."

5 Then at 7:05:36, you say, "Okay, I'm going  
6 to call the colonel and the general again."

7 A. I never communicated with the colonel. The  
8 only person I called on one occasion was general  
9 Arata, but after that I never spoke to any of them.

10 Q. Excuse me. We saw before that on the 6th,  
11 you spoke with general Arata, and he summarized the  
12 things that we said he summarized.

13 Then Mr. Bravo is asking you to have the  
14 Invicta personnel go there in connection with a  
15 prosecutorial inspection. And you say, "Okay, I'm  
16 going to call the colonel and the general again."

17 A. But it was not up to me [within my authority  
18 or function] to coordinate whether a person from the  
19 company did or did not go up. The need was up to me.  
20 The police did not have accompanying him [sic; literal  
21 translation of incomplete sentence in the Spanish  
22 original].

1       Q.     Mr. Saavedra, I don't know whether that was  
2 within your authority or not, but here you are saying  
3 that you were going to do it; that you were going to  
4 call the general again to coordinate that ascent to  
5 the camp. That's a factual issue. Forget what the  
6 law says.

7             Here, you coordinated directly with the  
8 general and with the colonel so that the Invicta  
9 personnel could go up there in connection with the  
10 inspection to be conducted by the prosecutor; yes or  
11 not? It says this very clearly, I don't know how you  
12 can deny this.

13       A.     You are misstating what I said.

14             It doesn't say that I spoke. It's in the  
15 future here. It's not that I spoke. It says, I'm  
16 "going" to call.

17       Q.     So you are telling me that you did not do  
18 this?

19       A.     No, I didn't do this.

20       Q.     Why didn't you do it, in spite of the fact  
21 that you expressed it?

22       A.     I was not in charge of coordinating these

1 issues, whether an individual goes up there, doesn't  
2 go up there. A vice minister is not going to deal  
3 with operational issues; that was something that it  
4 was for them to do, if they were interested in going  
5 with the prosecutor.

6 Q. In any case, Invicta personnel did go up  
7 there that day, together with the prosecutor, and the  
8 prosecutor verified that the magazine had been  
9 tampered with by the Parán people.

10 Do you remember that?

11 A. No. Therefore, if the prosecutor verified  
12 this, the prosecutor had to act in accordance with the  
13 law. Remember that the police officers were  
14 accompanying the prosecutor. You should ask the  
15 prosecutor.

16 Q. Let's continue. On the 13th of February, at  
17 1:48:29--

18 A. 13 February?

19 Q. Yes.

20 Mr. Bravo said here, "Esteban, yesterday I  
21 was in Huacho with Colonel Arbulú looking at  
22 alternatives and details to carry out the operational

1 plan. He is very willing to support and carry out the  
2 operation since after his visit on Friday, he now has  
3 a clear idea of the situation, and that despite his  
4 assistance on engaging in dialogue with the company,  
5 it is clear to him that they do not want to talk for  
6 now or they want to do so with the coercive measure in  
7 place."

8           Once again--

9           ARBITRATOR GRIFFITH: Excuse me, but the  
10 "they," I would read that as being they, the Parán  
11 people, but are you able to assist me?

12           MR. GALLEGO: Sorry. It's just a matter of  
13 the Spanish translation. Yes, I--it's clear to me. I  
14 will put it to the witness.

15           Thank you, sir.

16           BY MR. GALLEGO:

17           Q. So we were reading. Once again, let's read  
18 this part, of the exchange at 1:48:29. About halfway  
19 through, it says, "he is very willing to support and  
20 carry out the operations since after his visit on  
21 Friday, he now has a clear idea of the situation that  
22 despite his insistence on engaging in dialogue with



1 the company, it is clear to him that they do not want  
2 to talk for now, or they want to do so with the  
3 coercive measure in place."

4 Now, here when it says, "they do not  
5 want"--that's a reference to the Community of Parán;  
6 is that right?

7 A. I'm not sure. You'd have to ask who he  
8 called.

9 Q. "They don't want to talk for now, or they  
10 want to do it with the coercive measure in place."

11 Who might it be?

12 A. It's unfortunate that throughout the hours  
13 that I was discussing with him, that all he wanted was  
14 the use of force as a solution for something that  
15 should be dealt with at a dialogue roundtable.

16 It's striking that he constantly repeats an  
17 operation. An operation that he didn't have any  
18 reason to tell the police that they were going to do  
19 it.

20 Q. Thank you for that comment. This is a  
21 reference to the Community of Parán; is that right?

22 A. I don't know.

1           (Clarification requested by the Realtime  
2 Stenographer.)

3           THE INTERPRETER: No microphone.

4           ARBITRATOR GRIFFITH: A question. I'm  
5 asking the witness, if it's not the Community of  
6 Parán, who do you suggest that the "they" is?

7           THE WITNESS: Well, if you allow me, as it  
8 was written by the person, I suppose that in that  
9 context, it would be those who were mounting an  
10 opposition. I could assume so, but that would merely  
11 be a supposition.

12          ARBITRATOR GRIFFITH: Thank you.

13          ARBITRATOR GARIBALDI: Just for the benefit  
14 of my fellow members of the Tribunal, as a matter of  
15 Spanish language, the only possible interpretation  
16 here is that "they" refers to the Community of Parán.  
17 There is no other plural subject that it could be  
18 referred to in the context.

19          PRESIDENT CROOK: Counsel, I do have a  
20 question on this particular document, before you leave  
21 it. So just if you could signal before you move off  
22 it.

1 MR. GALLEGO: Sir, I'm going to spend a  
2 little bit of time on this document, still. A few  
3 more questions. If it's in relation to this  
4 particular paragraph, maybe you'd like to ask it; if  
5 not, I'll move on, and I will signal as you have  
6 suggested.

7 PRESIDENT CROOK: Well, my question is  
8 simply, who was General Arata? Where was he in the  
9 hierarchy. Why was he being consulted?

10 THE WITNESS: General Mario Arata is the  
11 general who is the chief of the entire region of Lima,  
12 and Huacho fell within his jurisdiction. And  
13 therefore, the colonels who were in those provinces  
14 had the opportunity to communicate to him.

15 BY MR. GALLEGO:

16 Q. At 1:49:08, Mr. Bravo says, he's only  
17 waiting to confirm the support of the special forces  
18 of Lima to be able to set the date. That's 13  
19 February 2019.

20 Now, what are the USES in Spanish?

21 A. Those are the special services units, but  
22 that's something he said. It's not the police who

1 said the special forces were going to go.

2 Q. Yes, that same day, 13 February, Mr. Bravo  
3 indicated at 2:02:11, Finally, yesterday, Colonel  
4 Arbulú informed us that he had received a call from  
5 Ms. Evelyn Tello from the Ministry of Interior  
6 indicating that a meeting was going to take place with  
7 the MEM to insist on dialogue.

8 We spoke with the people of the MEM,  
9 Fernando Trigoso, and there was no meeting.

10 We were at the MEM, and they do not see a  
11 negotiated exit for now, but we are discussing  
12 scenarios for dialogue for the day after public order  
13 is reestablished.

14 Then he continues, 13 February at 2:03:04,  
15 "It is worrying that the insistence of Ms. Evelyn  
16 Tello would delay the operational plan that is now  
17 ready."

18 Mrs. Evelyn Tello worked under you; is that  
19 right?

20 A. No.

21 Q. In any event, she was a subordinate within  
22 the Ministry of Interior; correct?

1       A.     Yes.

2       Q.     And you did not respond to this WhatsApp  
3 message until the 15th, two days later. You--on that  
4 day, on the 15th of February at 5:35:03, you said,  
5 "Luis Felipe, I spoke with General Mario Arata, who  
6 told me that the community has presented a letter to  
7 the MEM agreeing to sit down and talk. They await the  
8 dialogue."

9               Then two minutes later, at 5:37:53, you say,  
10 "This is in line with the procedures that are followed  
11 in the treatment of this type of event, that is,  
12 before, the police must not intervene and must respect  
13 the dialogue."

14              So you did speak with Mario Arata a second  
15 time; right?

16       A.     I'm saying something that is being reported  
17 to me by the agencies dealing with -- sorry. Yes, I am  
18 saying what is being said by the Directorate for  
19 Conflict Prevention, which has received a letter and  
20 that those who are involved in the issue, namely the  
21 company and Parán, should re-initiate the dialogue.

22       Q.     Excuse me, did you not speak with General

1 Arata?

2 A. No.

3 Q. Here it says clearly, "I spoke with General  
4 Mario Arata."

5 You say so directly.

6 A. Excuse me. This--that information came  
7 through the public order [department], which [whose  
8 agents] spoke with the persons. In any event, it has  
9 been--it is--because I said that I spoke with him.  
10 The occasion--the only occasion on which I spoke with  
11 him was when he was shown the points that say, 1, 2,  
12 3.

13 Q. At any rate what is being communicated here  
14 is that because Parán presented a letter, it is  
15 decided not to carry out the operational plan.

16 Do you agree?

17 A. The operational plan was not known to me  
18 because it was not up to me to have knowledge of an  
19 operational plan. And I don't know if there was an  
20 operational plan for that at that time.

21 ARBITRATOR GARIBALDI: (Overlapping speaker  
22 with translation.)

1 Oh, I'm sorry.

2 ARBITRATOR GRIFFITH: Who's first? Who is  
3 first?

4 ARBITRATOR GARIBALDI: (In Spanish.)

5 Mr. Witness, this exchange of communication  
6 mentions Ms. Evelyn Tello of the Ministry of Interior.  
7 Could you tell us what was the function of Ms. Evelyn  
8 Tello at that time?

9 THE WITNESS: Very well. Ms. Evelyn Tello  
10 worked in the directorate for conflict prevention, and  
11 she had her boss who was a director, a professional,  
12 who follows up on, monitors and sounds alerts on  
13 conflicts. He doesn't have the authority to make  
14 decisions on a plan or not.

15 ARBITRATOR GARIBALDI: Who is the director  
16 to whom Ms. Evelyn Tello reported?

17 THE WITNESS: I think it was Manuel Rios.

18 ARBITRATOR GARIBALDI: Manuel Rios, and  
19 Manuel Rios would report to you?

20 THE WITNESS: Yes.

21 ARBITRATOR GARIBALDI: All right. Thank  
22 you.

1           ARBITRATOR GRIFFITH: Counsel, my inquiry is  
2 whether the special forces are an arm of the police or  
3 some other entity.

4           BY MR. GALLEGO:

5           Q.     The special units we were discussing earlier  
6 are special units of the police; correct?

7           A.     Yes.

8           PRESIDENT CROOK: Counsel, I would suggest  
9 if convenient, you could go about ten more minutes,  
10 and then we would take a ten minute break, if that  
11 fits with your plan.

12           If not, we will do something else.

13           MR. GALLEGO: Just having a look to see how  
14 I can cut down this. Thank you. That's much  
15 appreciated, sir.

16           BY MR. GALLEGO:

17           Q.     Then, Mr. Bravo, in summarizing, or to  
18 summarize, tells you that this is no more than a delay  
19 tactic by Parán, having presented a letter, and you in  
20 turn--well, let's see what you answer.

21           On the 15th of February, at 7:45:27. It  
22 says: "The issue of the conflict has multiple aspects



1 of attention in the country. I understand that you  
2 are bothered and indignant. We're at the end of the  
3 chain, and for that reason, we'd like the other actors  
4 to do their job and that is the path on which we are.  
5 There must be political instruction [lobbying] in the  
6 Congress for norms to be issued. If we don't adhere  
7 to protocols on the use of public force and there are  
8 consequences, those will fall back on the country, and  
9 the national and international press will do their  
10 thing. That is why we must be scrupulous."

11 So let's take this in parts.

12 ARBITRATOR GRIFFITH: Can the witness be  
13 asked to comment on the statement at 7:39:59, 7:39:59?

14 MR. GALLEGO: Before going on to this other  
15 bit, sir?

16 ARBITRATOR GRIFFITH: Yes.

17 MR. GALLEGO: Thank you.

18 BY MR. GALLEGO:

19 Q. If you could please take a look at the  
20 excerpt of 15 February. At 7:39:59, Mr. Bravo says,  
21 "If this problem is not resolved this week, the rival  
22 communities, together and belonging to the Paccho

1 district, have agreed last Tuesday to defend their  
2 lands against Parán. On Monday, they will give them a  
3 48-hour ultimatum to leave the area; otherwise, they  
4 will act, probably next week with a lot of violence,  
5 as has happened in the past between these  
6 communities."

7 And you answer at 7:40:36, "José Luis, I  
8 will ask at the MEM about the letter, and I will  
9 notify you."

10 One of the members of the tribunal has asked  
11 you to comment on this part. In particular, here, you  
12 are saying that, yes, you've acknowledged receipt of  
13 this communication, and you're going to ask the MEM  
14 about the letter.

15 Was that within your authority to consider  
16 this conflicted situation as between the communities?

17 A. The conflictivity among the communities is  
18 to be seen in the context of that rule on conflicts,  
19 not because--the public forces are not necessarily  
20 going to intervene just because there is a conflict of  
21 that sort.

22 What I'm saying is, if there is going to be

1 a dialogue--because they're talking about a  
2 letter--it's possible that they'll refer to that  
3 issue.

4           And second and most important is that Mr.  
5 Luis Felipe Bravo was playing with two weapons: On  
6 the one hand, he would go to the Ministry of Energy  
7 and Mines with one discourse, and on the other hand he  
8 sought the intervention of the police.

9           At that time a letter was being prepared  
10 that was for the 26th of February. So he had  
11 everything organized. He was following a plan.

12           So what I told him, well, to get out of it,  
13 was that I would "find out." But I never did find  
14 out, never called, never actually contacted [...].  
15 That's why you have the partners of the--among--with  
16 the different directors. I didn't need to--he didn't  
17 have to have--I didn't have to have spoken with the  
18 vice minister. I didn't have to ask about the matter  
19 of that nature. That was being handled by the  
20 directors.

21       Q.     In any event, you say that you will ask MEM  
22 and "let him know"?

1       A.     Yes.

2       Q.     Let's go back to 7:47:27.  You're saying,  
3       "we're at the end of the chain."

4               Here you are referring to--it's a reference  
5       to you at the Ministry of Interior; correct?

6       A.     No.

7       Q.     When he says, "we're at the end of the  
8       chain," what else is he saying?  What else might he be  
9       saying?

10      A.     Because we're saying that when the situation  
11     got complicated and there's flagrancy, the ones who  
12     need to step in are the national police.  That is why  
13     each of them made an effort for that issue to not  
14     reach that level of crisis.  And hence, the need to  
15     intervene in a timely fashion, with dialogue fora to  
16     avoid such risks.

17      Q.     Excuse me, but you're saying, "we are at the  
18     end of the chain."

19               It seems quite clear that it's at least the  
20     vice ministry.

21      A.     No, when I say "we," we are talking about  
22     the sector.  The sector Ministry of the Interior is

1 composed, as I mentioned before, of the Ministry of  
2 the Interior, the National Police, Immigration,  
3 Explosives, and Firefighters. So we're talking about  
4 the whole of what we are.

5 Q. So the Ministry of Interior is "at the end  
6 of the chain", and that is why we want the other--the  
7 "others to do their job. And we are on that path."

8 (As read.)

9 Who are the others?

10 A. The MINEM. Don't forget that what conflict  
11 prevention does is get the information and pass it on  
12 to the corresponding sector. In this case, on this  
13 specific issue, it was up to Mining. They were the  
14 ones who had the authority.

15 Q. Excuse me, and then you say, "There must be  
16 political instruction [lobbying] in the Congress for  
17 norms to be issued." I understand that with this you  
18 are saying "my hands are tied," correct? "The law  
19 requires that we proceed in this fashion, I wish it  
20 were not the case and in fact that it should not be  
21 the case," right? "The law would have to be changed  
22 so that there can be a police intervention in this

1 situation," correct?

2 Is that not what you are saying, that our  
3 hands are tied?

4 A. Which is what was wanted from the very first  
5 meeting Mr. Bravo had with me, he wanted that to  
6 happen. That's what he thought could happen or could  
7 be done.

8 PRESIDENT CROOK: Is this an opportune time?

9 MR. GALLEG0: Give me five more minutes,  
10 sir.

11 PRESIDENT CROOK: Of course.

12 BY MR. GALLEG0:

13 Q. Yes, that is what Mr. Bravo is saying, but  
14 you are saying "excuse me, Mr. Bravo, we need to do  
15 political teaching in the Congress to hand down laws.  
16 We need to change the laws." Here you are right. In  
17 this case an intervention was the thing to do, right?  
18 Or, here we are facing armed people and the thing to  
19 do was to intervene. Nonetheless, you cannot do so;  
20 you need to do political instruction to change the  
21 norms so that intervention is possible.

22 I think that's what you are saying. Is that

1 not right?

2 A. That's your interpretation, which I respect.

3 Q. Well, very well.

4 When you were saying that "we need to have  
5 political lobbying in the Congress or political  
6 instruction in the Congress to hand down laws", what  
7 are you saying?

8 A. That if he was not happy with--in terms of  
9 our response to what he wanted us to do, that one had  
10 to change the rules. We could not simply make use of  
11 force from the outset, which is what he wanted us to  
12 do.

13 Q. Then you say, if we [don't] adhere to the  
14 protocols on use of force and there are consequences,  
15 these will have consequences in the country and "those  
16 will fall back on the country, and the national and  
17 international press will do their thing." Your words:  
18 "That is why we must be scrupulous."

19 So here you're referring to the national and  
20 international press; right?

21 A. I'm referring to proper compliance.

22 Q. No. I'm sorry, you directly state "the

1 national and international press." You are referring  
2 to this. And you are telling him that in case there  
3 are consequences, such as somebody being killed, for  
4 example, that that would be reported to the press.

5 Yes or no?

6 A. Because of failing to stick to the protocol.  
7 Because remember, I began by speaking about the  
8 protocol.

9 Q. And that this would have a negative impact  
10 on the country's image, right?

11 A. If one doesn't comply with due--if due  
12 compliance is not done, then any person might think  
13 that they are violating that person's rights.

14 Q. At any rate, that would have a political  
15 cost; right? If there were a police intervention,  
16 that's what you're saying?

17 A. That's your interpretation.

18 Q. Indeed, we can see that in the  
19 demonstrations that took place in Lima in November of  
20 2020, and that ended up with your resignation and that  
21 of the Minister of Interior as well. Specifically, on  
22 15 November 2020; is that not so?



1       A.     I don't understand where are you going with  
2 your question.

3       Q.     You had to resign on 15 November 2020 in the  
4 wake of some demonstrations that were held in Lima,  
5 and indeed, there was major police intervention to  
6 counter those demonstrations, and you had to step down  
7 as a result of that. Yes or no?

8       A.     It's not up to me to analyze whether it was  
9 in that context or not because that's a different  
10 context, a different situation, different from Parán.

11            There, there were 200,000, 300,000 people in  
12 the streets. It's not the same thing compared to an  
13 issue of somebody bringing an environmental claim,  
14 which was their claim. And the most important:

15            in Perú, one respects the right to protest,  
16 justified protest, and that is--well, if you read the  
17 points included in the statement, when the man from  
18 Invicta went, he says that in assigning the protest,  
19 they have taken the roads. That's what he says.

20            And the protest--protest is guaranteed by  
21 the Constitution.

22            MR. GALLEG0: Thank you Mr. President. We

1 can break now. Thank you for your patience.

2 PRESIDENT CROOK: All right. Let's rise for  
3 a 10-minute break, then.

4 Thank you.

5 Again, sir--okay.

6 (Whereupon, there was a recess in the  
7 proceedings, 11:26 a.m. - 11:36 a.m.)

8 PRESIDENT CROOK: All right. Back to you,  
9 sir.

10 BY MR. GALLEGOS:

11 Q. Mr. Saavedra, we were talking about your  
12 resignation of November 2020. That resignation was  
13 due to some protests. I think that we agreed with  
14 that; right?

15 A. No.

16 Q. At any rate, that was due to the police  
17 intervention against individuals who were  
18 demonstrating, and you already said they were--there  
19 were 200,000, 300,000 individuals, but that was due to  
20 that; right?

21 A. No.

22 Q. What was the reason of your resignation?

1       A.     Because every time the minister changes, a  
2 vice minister also has to offer their resignation, and  
3 I offered my resignation.

4       Q.     But you exercise your power through two  
5 different ministers?

6       A.     Five.

7       Q.     Therefore, what you just said is not true  
8 that every time that a minister changes, the vice  
9 minister changes?

10      A.     No, what you are saying is not correct. If  
11 you want, I can clarify it.

12      Q.     I asked you about circumstances. Every time  
13 a minister changes, the vice minister also changes,  
14 that's what you told me, and then I asked you.

15             But then you have worked with several  
16 ministers, and you said, yes, five. So I am trying to  
17 understand your answer.

18             So are you saying that resignation was due  
19 to some police protest in November 2020; correct?

20      A.     No.

21             We offer our resignation, and then the  
22 minister accepts it or not. The other ministers

1 confirmed me in my position, and I stayed with them.

2           So if they don't accept the resignation, one  
3 stays in the position. When they accept, one leaves.

4       Q.     So in this case, due to those events, the  
5 minister resigned, and I understand that that led to  
6 your resignation, too?

7       A.     No. I offered my resignation with the  
8 arrival of the new minister, Mr. Vargas. Ruben  
9 Vargas, because if we--you should recall that that day  
10 we were left without a president, without a prime  
11 minister, without a minister, and the Vice Minister  
12 Saavedra of internal order was the only one who was  
13 there.

14           So when Mr. Ruben Vargas arrived at the  
15 minister, as I should have done, I offered my  
16 resignation, and he had to ratify me or not in my  
17 position. He did not confirm me in my position, so I  
18 left.

19       Q.     And that change in administration was due to  
20 these events of November 2020; correct?

21       A.     Yes. As you may understand, there was a  
22 change of administration. There was a president,

1 there was a change of president. There was a  
2 political change.

3 ARBITRATOR GARIBALDI: Would it be possible  
4 to clarify what president we are referring to, because  
5 many of us are not familiar with the politics in your  
6 country.

7 THE WITNESS: Thank you very much.

8 We had--so, the president, the incumbent,  
9 resigned, Mr. Merino took office.

10 ARBITRATOR GARIBALDI: Was Kuczynski the one  
11 in power?

12 THE WITNESS: No, it would be the regional  
13 Governor, Martin Vizcarra. Martin Vizcarra. Martin  
14 Vizcarra presented his resignation. And Merino came  
15 into office. Merino was there for a few days, and he  
16 resigned due to the events that you just mentioned.

17 And then when Merino resigned, the prime  
18 minister, the minister, and all of the ministers left  
19 on that day. That day was terrible. We were left  
20 with nothing.

21 Then Mr. Sagasti came into office. Sagasti  
22 came in--after Sagasti, we had Castillo, I think.

1 BY MR. GALLEGO:

2 Q. So I understand, Mr. Merino, I think you  
3 said, resigned because of these events, because of  
4 these police intervention against the demonstrators,  
5 and the political turmoil that ensued because of this?

6 A. The reasons for his resignation are beyond  
7 my area of concern. He resigned, and I didn't need to  
8 know why he resigned.

9 Q. At any rate, there was a political price to  
10 pay due to that police intervention.

11 A. That's your appreciation.

12 Q. Do you agree--do you disagree with that  
13 point of view?

14 A. We're not discussing here whether I agree or  
15 not.

16 Q. But do you disagree? You are a fact  
17 witness.

18 A. I am a witness of a fact in Parán, but I am  
19 not the witness of a political fact which came later.

20 Q. You are a witness in connection with any  
21 fact of which you have knowledge, Mr. Saavedra. There  
22 are no restrictions here in connection with what I can

1 ask you, except that it has to be relevant, and it has  
2 to be within your knowledge.

3           So this question meets those requirements,  
4 and this is the reason why I'm asking you this.

5           A.     When I was invited to appear as witness, I  
6 was given the scope of my testimony. I am not a  
7 lawyer to tell you whether it was a political issue or  
8 not.

9           Q.     At any rate, you seem to agree with me, or  
10 at least you do not deny it.

11           Let us now look at the document that we saw  
12 before at 58. Tab 58. This is R-113, and we are  
13 going to look at page 7, Paragraph 15, pages 7 and 8.  
14 This document refers to an operations plan of February  
15 9 for the preservation of public order that was about  
16 to be implemented in Parán because this was going to  
17 be blocked or this had been blocked as of October 14.

18           And then it says, "because of the impediment  
19 on the part of the Parán Community and in order to  
20 avoid the social cost, the implementation was not  
21 possible".

22           So once again, we are talking about the

1 social cost, the social price to be paid.

2           So here we seem to be reading that the  
3 police had a plan to unblock the road. The road was  
4 blocked by the Parán Community members, but this plan  
5 is not implemented because of the social price to be  
6 paid.

7           Is this correct?

8           A. Well, if you go back to the previous  
9 paragraph, you are going to see that it states: "on D  
10 day at H hour." What is D day at H hour? At any  
11 rate, I would like to look at that plan, because that-  
12 -if the time is known, it is included.

13           So what does it mean, D, hours, H?

14           A. So it could have been--it could have had an  
15 issuance date. I am not a police officer, but because  
16 of my experience, it could have an issuance date, but  
17 it doesn't have an implementation date.

18           The implementation date comes as a result of  
19 the sensitive situation on the ground which the chief  
20 of operations will [take into account to] determine  
21 whether the operation will be carried out or not,  
22 bearing in mind the risks, I repeat.



1       Q.     Now, since you are answering in this  
2 fashion, we are going to look at Paragraph 26. Page  
3 10.

4             There you mention, and the same is being  
5 said, at Paragraph 26.

6             But now instead of referring to the date--D,  
7 day, and H, hours, it is saying June 5, 2019, at 9  
8 hours.

9             Do you see that?

10       A.     Yes.

11       Q.     Towards the end, it says again, exactly the  
12 same. That it won't be implemented because of the  
13 social price to be paid.

14             Are you looking at this?

15       A.     Yes, I am looking at the origin of the  
16 document. This not the operations plan. It's a  
17 report. This is just a subsequent document. This is  
18 what we read in the report. This is not something I  
19 should look at. This is not something that I know of.  
20 It says at the police level.

21             So the vice minister does not need to have  
22 knowledge of this, and I didn't have any knowledge of

1 this.

2 Q. Well, but you were telling me before--look--  
3 you were actually commenting on the way the police  
4 acted because you were saying: no, here the police  
5 did not intervene because it was not the thing to do.  
6 This was completely--the time and date were not fixed,  
7 and therefore, it was not appropriate to proceed. You  
8 stated something along those lines. But now I am  
9 showing you that a time and date were indeed fixed in  
10 relation with exactly the same plan, and the time and  
11 date is June 5, 2019, and once again you tell us that  
12 the no intervention was made because of the social  
13 cost.

14 I wanted to talk with you again about this  
15 social cost, because I understand that the reason for  
16 not intervening here is that there is a political  
17 cost.

18 A. Well, that has to do with the author of  
19 this, not me.

20 MR. GALLEG0: I have no further questions.

21 PRESIDENT CROOK: Thank you, sir.

22 Over to--no, no.

1           MR. GRANÉ: We have no questions on  
2 redirect.

3           PRESIDENT CROOK: All right. Let me ask  
4 whether my colleagues have any questions.

5           ARBITRATOR GARIBALDI: I have do one.

6           PRESIDENT CROOK: Please.

7           QUESTIONS BY THE TRIBUNAL

8           ARBITRATOR GARIBALDI: (In Spanish.)

9           Mr. Saavedra, in some of the documents that  
10 you were shown, there was reference to the conflict  
11 between the Parán Community and the other two  
12 communities, and the possibility for that conflict to  
13 lead to more violent measures by the other communities  
14 to defend what they considered to be their  
15 territories.

16           That was the background.

17           You were aware, as vice minister, of a  
18 conflict between the Parán Community, on the one hand,  
19 and the Lacsanga and Santo Domingo Communities, on the  
20 other hand, as to the extent, as to the limits, the  
21 boundaries, of the lands. Is this correct? Were you  
22 aware of that?

1 THE WITNESS: I thank you, sir.

2 I learned of that as a result with the  
3 conversation with Mr. Bravo, who told us that there  
4 was a territorial situation, that there were some  
5 claims, and rights, and why, because at the outset,  
6 the mining company, with very--in very good faith  
7 attempted work with Parán. But later on, they had  
8 some disputes, and they looked for a way out with the  
9 other communities, and they offered that exit.

10 ARBITRATOR GARIBALDI: But I'm not talking  
11 about the mining company.

12 I'm asking about the community conflict.  
13 Were you aware of the conflict among the communities?

14 THE WITNESS: No, I was not.

15 ARBITRATOR GARIBALDI: Do you know if there  
16 is any body, any agency within the State that is  
17 intended to settle those differences, those disputes,  
18 territorial disputes regarding boundaries among the  
19 communities?

20 THE WITNESS: I am not a lawyer, I am not an  
21 expert in the subject, but for all I know there is a  
22 situation of land demarcation in the Prime Minister's

1 office, and it is known by the media that there are  
2 some difficulties that are known throughout the  
3 country in connection with the boundaries.

4 ARBITRATOR GARIBALDI: Now, do you know if  
5 that same agency or another State agency is meant to  
6 facilitate the negotiation among the communities in  
7 connection with their boundaries?

8 THE WITNESS: That would be as a  
9 conciliator, as a mediator, as to the institutions,  
10 that is, you have--if it an agricultural issue,  
11 agriculture will deal with it. If it is mining, this  
12 is something led with mining. If it is oil, this is  
13 led by the oil area. And if it is road demarcation,  
14 this is within the transportation unit.

15 ARBITRATOR GARIBALDI: But how about the  
16 limits between one unit and the other one? Is there  
17 any agency within the State that is meant to help the  
18 community to come to terms with a problem, settle the  
19 problem?

20 THE WITNESS: Well, the Ministry of Culture  
21 does have an area that is in charge of looking for  
22 legislation that has to do with native and old

1 cultural relations; but I don't know much about this.  
2 I know when it is something related to culture,  
3 spaces, tradition.

4 ARBITRATOR GARIBALDI: Thank you.

5 ARBITRATOR GRIFFITH: (Overlapping speaker  
6 with translation.)

7 One issue or question.

8 Last line of Paragraph 26 on Tab 58 says  
9 that "in order to avoid the social costs, its  
10 execution was not possible."

11 Are you able to tell us from that paragraph  
12 or otherwise who made the decision not to carry out  
13 the exercise, the operation?

14 THE WITNESS: Based on my experience as a  
15 police officer, this has to be seen by the chief of  
16 the operational command what is to be--who is the one  
17 to determine whether the operation is going to be  
18 completed or not.

19 So you have the operational command, the one  
20 it that is on the field, the one that determines  
21 whether something is going to be carried out or not.  
22 That's based on my police experience.

1           Now, in this case, it must have been that  
2 way. It must have been--they must have been the ones  
3 who determined that it was not possible. That party  
4 is the party that is on the field and the one that  
5 will be sued or will be the subject of a criminal  
6 process, if there is one.

7           So there has to be a lot of awareness to  
8 realize whether the conditions are proper or not for  
9 an intervention to take place.

10           PRESIDENT CROOK: I think we have no further  
11 questions, and, so we thank you, sir, for your  
12 testimony. You are excused. You may now resume  
13 normal conversations with anyone you choose.

14           So we thank you very much for assisting us  
15 today.

16           THE WITNESS: I thank you for the time and  
17 also the openness to listen to what I said. Whatever  
18 I said, I said it candidly. You all have a good  
19 morning.

20           PRESIDENT CROOK: The same to you, sir.

21           All right. Next step. I think it was  
22 anticipated that Mr. León would be on next. Okay.

1           Good day, sir. Can you identify yourself  
2 for the record, please.

3       NILTON CÉSAR LEÓN HUERTA, RESPONDENT, WITNESS CALLED

4           THE WITNESS: Good morning, everyone.

5           My name is Nilton César León Huerta.

6           PRESIDENT CROOK: We welcome you here today  
7 to assist us.

8           Before you, there should be a declaration.

9           Do you have that?

10          Are you hearing me, sir?

11          THE WITNESS: Yes, Mr. President.

12          PRESIDENT CROOK: There should be a document  
13 in plastic with a declaration on it.

14          Do you have that, sir? Could you read that  
15 declaration out loud, please.

16          THE WITNESS: I solemnly declare upon my  
17 honor and conscience that I shall speak the truth, the  
18 whole truth, and only the truth.

19          PRESIDENT CROOK: Thank you for that, sir.

20          The procedure that will be followed today,  
21 you will first be asked some questions, a short series  
22 of questions, by counsel for Perú. You will then be



1 examined by counsel for the Claimant. There may then  
2 be a final set of questions from the lawyers for Perú.

3 Are you clear on this procedure, sir?

4 THE WITNESS: Yes, Mr. President.

5 PRESIDENT CROOK: If at any time you feel  
6 that you need to take a break to leave the room,  
7 please let us know, and we will accommodate.

8 All right. Are we ready to begin, then?

9 All right. Over to counsel for Respondent.

10 DIRECT EXAMINATION

11 BY MR. GRANÉ:

12 Q. Good afternoon, Mr. León.

13 You submitted two witness statements in this  
14 case. I'm sure you have them there with you. The  
15 first, 22 March 2022, and the second 20 January 2023.

16 I'm going to ask you to please look at the  
17 first statement, the one from March 22, 2022, and  
18 please let us know whether this is your statement and  
19 if you ratify its contents.

20 A. They are in English. These are in English.

21 Q. It's behind a blue sheet, the Spanish  
22 version is.

1       A.     Yes.  That's my statement.

2       Q.     Would you like to make any corrections to  
3 this first statement?

4       A.     No.

5       Q.     We're going to do the same thing with the  
6 second one, of 20 January 2023.

7             Could you please confirm whether this is  
8 your statement, and whether you ratify its contents?

9       A.     Yes.  That's my statement.

10      Q.     Would you like to introduce any corrections  
11 to it?

12      A.     No.

13             MR. GRANÉ:  Okay.  Thank you very much.

14             We have no further questions.

15                       CROSS-EXAMINATION

16             BY MR. GALLEGO:

17      Q.     Good morning, Mr. León.

18      A.     Good morning.

19      Q.     My name is Jaime Gallego.  We're going to be  
20 discussing a number of issues with you.  This is an  
21 official environment, so to speak, and we have to  
22 follow some rules so everyone knows what we are

1 talking about.

2           The first rule is that we have very limited  
3 time. That's why I'm asking you to please answer my  
4 question specifically.

5           The second thing is that we are here dealing  
6 with interpreters that need to switch channels between  
7 English and Spanish so the Tribunal may follow what we  
8 are saying.

9           For that purpose, I'm going to ask you to  
10 please take a pause after my question is asked before  
11 answering the question. I'm going to do the same.  
12 That way, everyone is going to be able to follow what  
13 we are saying.

14           Could you please let me know how you  
15 prepared for this hearing, briefly.

16       A.     Very well.

17           I have reviewed the documents that were sent  
18 to me by the social management office. I work for  
19 that office currently in Perú. I have looked at the  
20 aide-mémoires and the internal documents, as I said.  
21 More than anything, I looked at the account of the  
22 facts that took place and the dialogue that was--that

1 took place between Parán and Invicta.

2 Q. I understand that you also talked to Perú's  
3 external counsel?

4 A. Yes, correct.

5 Q. And with other public officials of Perú in  
6 connection with your testimony?

7 A. I spoke to other people that no longer work  
8 for the office, trying to refresh my memory in  
9 connection with the facts that transpired.

10 Q. Did you talk to any senior officials in  
11 connection with your statement, a superior of yours?

12 A. What do you mean?

13 There was a coordinator at the office. We  
14 have the head of line, he's the head of the citizen  
15 participation office, and then we also have the vice  
16 ministers and the ministers, that's the organizational  
17 structure.

18 My statement is related to the facts in  
19 which I have been involved--with which I have been  
20 involved in my capacity as social specialist.

21 Q. While you were in your position, you said  
22 that on numerous times you went to the project site,

1 and you also went to Sayán, Huacho, and to the  
2 community of Parán; isn't that true?

3 A. That's correct.

4 Q. And you said that the first meeting with the  
5 community leaders of Parán was in 2018, 11 August;  
6 correct?

7 A. Correct.

8 Q. Do you know that there was a meeting on 28  
9 July 2018; does that ring a bell?

10 A. That meeting happened in Santo Domingo de  
11 Apache.

12 Q. It wasn't with Parán, a meeting with Parán?

13 A. 22 July, you said? It was with Santo  
14 Domingo de Apache.

15 Q. You were present in the meetings of October  
16 and November 2018; right? With Parán?

17 A. That's correct.

18 Q. Parán lodged a number of complaints to  
19 withdraw complaints, and to recognize the damage,  
20 environmental damage, and to use the Parán roadway;  
21 correct?

22 A. Yes, correct.

1       Q.     Invicta asked for the blockade to be lifted  
2 and for the operations to stop; right?

3       A.     Yes.

4       Q.     And you intervened in those meetings to  
5 explain about the advantages of having a roundtable  
6 discussion and also to reach an agreement?

7       A.     Yes, that's correct.

8       Q.     You also asked Parán to lift the blockade of  
9 the roadway, and reiterated that dialogue should not  
10 be--should not take place with the blockade--

11      A.     I didn't ask that question.

12      Q.     Okay. So you urged Parán to lift the  
13 blockade, and you said that the dialogue should not  
14 take place while the blockade was in place?

15      A.     Yes, that's correct.

16      Q.     That urging by you to Parán, and by the  
17 OGGS, that was something that was constant in the  
18 meetings you held with Parán; correct?

19      A.     Correct.

20      Q.     I'm talking about the meetings of 29 January  
21 2019, 26 February, and 26 March; right?

22      A.     That's correct, yes.

1       Q.     This, because the petition of Invicta seemed  
2 to you logical and reasonable, to set up a discussion  
3 table, it was necessary for the blockade to be lifted?

4       A.     That's right. I would like to put my answer  
5 into context.

6       Q.     Yes, but before you have to say yes or no.

7       A.     Yes.

8             Yes, what is you have been stating or you  
9 have stated is correct, but if you give me the  
10 possibility, I would like to say, Mr. President, that  
11 within the OGGS, we always ask the parties in this  
12 case, that is to say, the communities that are  
13 conducting the blockade of roadways, we always ask  
14 them to start the process by clearing the roadways, by  
15 lifting the blockade. That's what we ask of the  
16 communities.

17             Oftentimes this does not happen, but that is  
18 the request that we always do at the outset.

19             In this case, we asked that the roads be  
20 cleared of the blockade, and we also asked that they  
21 stop not letting the company go up to the mining unit.

22             THE INTERPRETER: Excuse me. The

1 interpreter didn't get the question. I'm sorry. I'm  
2 sorry.

3 PRESIDENT CROOK: Can you repeat your  
4 question, please. We're having--Mr. León, going  
5 forward, let's take a moment's time before you begin  
6 to answer a question, because the question is being  
7 interpreted to us in English, and we need a little  
8 time for that to happen.

9 So pause, take a deep breath before you  
10 start to answer, if you would, please, sir. Thank  
11 you.

12 Can we have the question again, please.

13 BY MR. GALLEGO:

14 Q. Did it seem logical to you, and reasonable  
15 to you, that Invicta asked that for a discussion table  
16 to be established the blockade had to be lifted? And  
17 you answered yes, and then you provided some comments.

18 Then I asked you, Parán constantly refused  
19 to do so, and I understand that you also said yes to  
20 that.

21 That, for the benefit of the Tribunal, I  
22 wanted the Tribunal to have this clear in their minds.



1 Would you like to add anything?

2 A. Yes. What you are saying is correct.

3 Q. You did not urge anything in connection with  
4 the inadequacy of your community relations team in  
5 connection with Invicta?

6 A. I didn't understand your question.

7 Q. I'll repeat it. Invicta was not urged to do  
8 anything in connection with the inadequacy of the CR  
9 team; correct, its CR team, Invicta's, correct?

10 A. Correct.

11 Q. In your statement, you say that you were  
12 surprised to see that the Claimant says that Parán had  
13 no intention to reach an agreement with Invicta  
14 because it wanted to protect its marijuana business.

15 Do you recall that? Do you remember that in  
16 your statement?

17 A. That was said to us at a meeting that we  
18 held at the OGGs in the presence of the other bodies  
19 of the State. Yes, that's correct.

20 Q. Let us look at your statement, at Paragraph  
21 60 of your statement, and I think it's your second  
22 statement. Yes, indeed. It's your second statement,

1 Paragraph 60 and 61.

2           If we look at Paragraph 60, you make  
3 reference to a number of arguments made by the  
4 Respondent in connection with marijuana and the  
5 operation of the mine.

6           And at Paragraph 60, you begin by saying, "I  
7 was surprised to hear these arguments by Claimant,  
8 including those related to an alleged marijuana  
9 business by the Parán Community."

10           And then at Paragraph 61, you continue  
11 talking about this, and I would like to summarize what  
12 you are saying here. If you think that's okay.

13       A.     Yes.

14       Q.     First, you say that Parán did not have a  
15 marijuana business. Then, that Invicta at no time  
16 expressed its concern in connection with an alleged  
17 marijuana business in Parán, and that this had an  
18 influence on the position that the community had.

19           Is that what you're saying?

20       A.     Mr. President, I would like to look at the  
21 Spanish version of this document.

22           Please repeat the question.

1       Q.     Yes, of course.

2             I was summarizing your testimony. First,  
3 you said that Parán did not have a marijuana business,  
4 and then the second thing you're saying is that  
5 Invicta at no time expressed concern related to an  
6 alleged marijuana business by Parán, or that that had  
7 an influence in the position of the company.

8       A.     That's right.

9       Q.     Let's look at 41, Tab 41, of the binder that  
10 you have right before you. You have to go to that  
11 binder. Do you have that document in Spanish right  
12 before you?

13      A.     Yes.

14      Q.     We can see that there's an e-mail here from  
15 you. It says TEMP\_OGGS 1227. That's you, right?

16      A.     Yes, that's me.

17      Q.     You have sent this to César Ulloa; correct?

18      A.     Yes, that's correct.

19      Q.     On 20 February 2019.

20             You attached to that e-mail an aide-mémoire,  
21 and the second page shows a series of remarks. At the  
22 second paragraph, it talks about the social process

1 that the mining company has with Parán is impaired by  
2 interests that are important to the State in  
3 connection with marijuana growers that the Ministry  
4 knows about this, and is activating the necessary  
5 mechanisms.

6 Do you see that?

7 A. Yes.

8 Q. It appears that you recognize here that  
9 there are marijuana plantations, and that the  
10 production of marijuana is preventing a good-faith  
11 negotiation; right?

12 A. No. That is not what I'm saying in my  
13 statement.

14 If the President allows me to do so, I can  
15 read this, and then put my answer in context.

16 Q. Sir, I'm simply asking what it says here in  
17 this aide-mémoire; right?

18 A. Yes, but--

19 Q. You're recognizing here that there are  
20 marijuana plantations, that the social process that  
21 the mining company is maintaining with Parán is  
22 negatively impacted by this; right?

1       A.     That's correct. Mr. President, that's  
2 correct.

3           THE INTERPRETER: Yes. We can't hear the  
4 witness very well, and so the interpreters also didn't  
5 hear correctly because--

6           REALTIME STENOGRAPHER: I just said that  
7 sometimes it's hard to hear.

8           BY MR. GALLEGO:

9       Q.     I'm going to ask you to please speak up.

10           I know that you have the microphone really  
11 close to you, but you need to speak up, please,  
12 because if you don't, that's not going to be helpful,  
13 but if you do, it's going to be helpful.

14           I asked you about this paragraph that talks  
15 about the social process that the mining company  
16 maintains with Parán is affected by the presence  
17 interests of the State, producers of local marijuana  
18 plantations. In this connection I asked you whether  
19 you wanted to say here is that there are marijuana  
20 plantations in the Community of Parán, first.

21           And second, if this dialogue, this quote,  
22 unquote, social process between Invicta and Parán, if

1 that is being negatively impacted by this marijuana  
2 business; right?

3 You can answer.

4 A. Well, Mr. President, before providing an  
5 answer, I would like to contextualize this in  
6 connection with the reason and the causes that we, as  
7 the State issued these kinds of documents.

8 PRESIDENT CROOK: Sir, you will, in due  
9 course, will be asked further questions by lawyers for  
10 the Respondent, and I think that might be an  
11 appropriate subject, if they want to raise it.

12 But I should assure you that we are quite  
13 familiar with the work of your office, with the record  
14 of this case, with the behavior of the parties.

15 So I don't know that we necessarily need a  
16 great deal more context. But as we go forward, if you  
17 feel there are specific facts that we should be aware  
18 of, you should certainly bring that to our attention.

19 We have very little time here today, and we  
20 are very pressed to complete the work so, for example,  
21 you can go back to Lima.

22 So let's see if we can press on.

1 BY MR. GALLEGO:

2 Q. Yes.

3 Mr. León, I was referring you to this  
4 paragraph, and I was asking you to confirm my  
5 understanding that the social process was affected by  
6 the marijuana business.

7 I understand that you said yes; right?

8 A. No. It was not being affected by the  
9 situation you have just referred.

10 Q. Excuse me. But here it says that the social  
11 process of the mining company maintains with Parán is  
12 affected by the presence of interests outside the  
13 State, producers of local marijuana plantations.

14 A. This has to do with the State, and not with  
15 the mining process.

16 Q. What it's saying is interests outside the  
17 State. So we're talking about things against the law.

18 A. Yes.

19 Q. There is an illegal business. This entails  
20 certain interests. These are illegal, and this is  
21 preventing a good faith negotiation between the  
22 company and Parán; correct?

1       A.     That's not true. At no time did the  
2 company, during the dialogues of the meetings, say  
3 that these kinds of illegal activities were adversely  
4 affecting the dialogue. At no time was that an  
5 obstacle for us as the government, and for the  
6 community, and the company to have a rapprochement.

7       Q.     I'm not talking about what the company said.  
8             I'm talking your assessment, your specific  
9 assessment of the situation that you are expressing  
10 here in this aide-mémoire; right?

11            Are we understanding each other in this  
12 connection? This is your assessment of this  
13 situation. You understand that?

14       A.     Yes.

15       Q.     Not only do you say this, but if we go to  
16 the next page where it talks about the "dialogue  
17 mechanisms are not to be--are not appropriate in this  
18 case because the community leadership manages a double  
19 discourse with the government and its population,  
20 evidencing with this the presence and active  
21 participation of local actors who, in an economy  
22 outside the law, subsidize activities contrary to



1 public order against the mining project."

2 Do you see that?

3 A. Yes.

4 Q. It appears that you are making a correlation  
5 between these facts here. First, you make comments in  
6 connection with the marijuana business within the  
7 community that is preventing dialogue.

8 Then you say, my recommendation in this  
9 document is that the dialogue process is not  
10 appropriate because of this marijuana business.

11 That is what you are saying; right?

12 A. Mr. President, if you take this into  
13 account, this document was issued on 20 February 2019,  
14 six days after the assessment I make in this document  
15 in connection with the lifting by the actors of the  
16 circumstances.

17 And the community and the company came  
18 together and engaged in dialogue to lift the blockade  
19 after the issuance of this document--six days after  
20 the issuance of this document.

21 So this document is a snapshot of the  
22 circumstances at the time.

1       Q.     Would you please answer the question about  
2 this snapshot.

3             On 20 February, in your opinion, the  
4 dialogue was continuing?

5       A.     The dialogue was not appropriate. On the  
6 part of the government, the dialogue was always  
7 something that was asked.

8       Q.     But internally, in your recommendation,  
9 you're saying that the dialogue mechanisms are not  
10 appropriate. Mr. León, please, you're saying this  
11 clearly.

12       A.     Again, Mr. President, six days after--well,  
13 us, as representatives of the government, always  
14 thought that dialogue was the way in which the parties  
15 had to engage with each other and try to solve their  
16 problems.

17       Q.     Now, what was the purpose of your preparing  
18 this aide-mémoire?

19       A.     These are internal documents, aide-mémoires  
20 are. They are used to provide context to our  
21 superiors of the circumstances surrounding dialogue  
22 processes.

1       Q.     When you're making reference to your  
2 superiors, are you talking about the senior officials  
3 of the Ministry?

4       A.     Yes. This was sent, as my e-mail indicates,  
5 to my coordinator, Mr. Ulloa. That's not what the  
6 e-mail says.

7       Q.     Well, the e-mail doesn't really say  
8 anything.

9       A.     The e-mail is directed to César Ulloa, who  
10 is my coordinator.

11      Q.     So the idea of this aide-mémoire was to  
12 inform César Ulloa, or was it to inform higher levels;  
13 specifically, the highest level officials at the  
14 Ministry of Energy and Mines, through a filter, which  
15 Mr. Ulloa was the filter.

16             But the idea of the aide-mémoire was for it  
17 to go to the senior-level officials; yes or no?

18      A.     The mechanism of the aide-mémoires, which  
19 are internal documents--well, I sent it to my  
20 coordinator, and then my coordinator has meetings with  
21 the director of the OGGS, depending on the time and  
22 space for dialogue or during the time that the

1 dialogue process lasted. There have been three heads  
2 of the OGGS, Mr. Fernando Castillo, Fernando Trigos,  
3 and Miguel Kuzma.

4 Q. I think that what you are telling me is that  
5 you constantly worked with Mr. Ulloa, and that you  
6 would send an aide-mémoire to Mr. Ulloa, the aim being  
7 for him to send it on to your superiors; yes or no?

8 A. That's right. And so analyze strategies for  
9 continuing the dialogues.

10 Q. Let's look at the next document.

11 ARBITRATOR GRIFFITH: May I ask a question?

12 MR. GALLEGO: Yes, sir.

13 ARBITRATOR GRIFFITH: May I ask you, in your  
14 reference towards the bottom of the second page, when  
15 you say "MININTER is aware of this problem and  
16 activating the corresponding mechanisms," could you  
17 say what your understanding is of what those  
18 corresponding mechanisms were that you referred to?

19 THE WITNESS: Yes. Each state entity has  
20 its functions, and its areas of competence. With  
21 respect to that, I can say that Ministry of Interior  
22 and--that we--and at MINEM, we had information about

1 marijuana plants, not of the community, but of some  
2 community members, and the Ministry of Interior people  
3 mentioned that they were going to take actions on that  
4 topic.

5 ARBITRATOR GRIFFITH: Tell us what your  
6 understanding of these actions--I mean, this is a  
7 reference to the Parán Community.

8 What actions did you have in mind when you  
9 said "MININTER is activating the corresponding  
10 mechanisms"?

11 THE WITNESS: The representative of the  
12 ministry did not say what they would be, those  
13 corresponding mechanisms. He just said they were  
14 going to take action. He didn't tell me what they  
15 would be.

16 BY MR. GALLEGO:

17 Q. And Ms. Tello, I understand, found out about  
18 this through her coordination with the police;  
19 correct?

20 A. She knew that because of what  
21 representatives of the company had said.

22 Q. That they were going to take actions with

1 respect to the marijuana, that the police were going  
2 to?

3 A. I don't get your question.

4 Q. If here in your aide-mémoire you are  
5 referring to--well, in the paragraph that we see, and  
6 it begins with "the social process," it says,  
7 "Ministry of Interior is aware of this issue, the  
8 issue of the marijuana, and is activating the  
9 corresponding mechanisms." (As read.)

10 And in response to the Arbitrator's question  
11 regarding how you found this out, you said it was  
12 communicated to me by Ms. Tello; correct?

13 A. Correct. At the end of a meeting.

14 Q. Ms. Tello, how did she find out?

15 A. I don't know how she found out, but I would  
16 like to add that that issue was also taken up by--or  
17 mentioned by the company in a meeting.

18 Q. In other words, you believe that as of 20  
19 February--or by 20 February, the company had already  
20 discussed it with State entities, and that is why  
21 Ms. Tello also mentioned it?

22 A. That, I don't know.

1       Q.     Yes, but you raised the company, so I want  
2 to understand, chronologically speaking, why it's  
3 raised in connection with this comment that you make  
4 here, that the MININTER is aware of this problem and  
5 is activating the corresponding mechanisms.

6             It's the MININTER that is activating the  
7 corresponding mechanisms. I suppose it would do so on  
8 the basis of more than a simple comment by the  
9 company; correct?

10       A.     The issue that you refer to, having to do  
11 with marijuana, was one in which, I repeat, it wasn't  
12 of much interest in connection with the social  
13 conflict. And I would state that it was not  
14 considered an underlying problem during the  
15 negotiations, and it did not affect how--the course of  
16 the negotiations.

17             That's what I can say in response to your  
18 question.

19       Q.     Well, I don't really understand what you are  
20 telling me, because you are noting it here at the 20  
21 February memorandum that it is a problem, but let's  
22 continue, then.

1           So you recall that the company did raise the  
2 marijuana problem as such?

3           A.     Correct, yes.

4           Q.     Very well.

5           Then you'd have to change your statement  
6 where you say that the company had never mentioned it.  
7 This is at Paragraph 60, the last sentence. And the  
8 company, Invicta, said nothing about concern about  
9 marijuana. You clearly state this, so this needs to  
10 be corrected; right?

11          A.     The context of my statement, sir,  
12 Mr. President, is that if we take the time to read the  
13 next paragraph, it was not a matter of concern to the  
14 company, the marijuana question, that is. It wasn't  
15 tied in with the social conflict. It was separate  
16 from the social conflict. This is what I say if one  
17 continues reading my statement where the attorney just  
18 cited it.

19          Q.     Let us turn to Tab 10. That's Exhibit C-18.

20                ARBITRATOR GRIFFITH: Sorry, counsel. May I  
21 ask a question.

22                Having regard to your last answer, can you



1 explain how that is consistent with the paragraph that  
2 I took you to on the second page of your aide-mémoire  
3 where you refer to the social process with the mining  
4 company maintains with the Parán Community is affected  
5 by the presence outside the State.

6 Are those two statements inconsistent? What  
7 you just told us and this statement here, how do you  
8 reconcile them?

9 THE WITNESS: Sir, the impact has different  
10 degrees, or levels. So there is an impact because  
11 marijuana production is outside of the law. It's an  
12 illegal activity, but it was not very weighty when it  
13 came to the dialogue process.

14 ARBITRATOR GRIFFITH: What I was asking you,  
15 aren't you saying the opposite in your aide-mémoire?  
16 You say that it is affected. You don't need to answer  
17 the question if you can't, but that's the question.

18 THE WITNESS: Excuse me, sir.

19 I didn't understand.

20 ARBITRATOR GRIFFITH: I'm suggesting to you  
21 that the statement you make in Paragraph 61 of your  
22 witness statement is inconsistent with your statement

1 that the social process with the mining company  
2 maintains with the Parán Community is affected by the  
3 presence of interests outside the State, producers of  
4 local marijuana plantations.

5 Now, as I understand it, you're saying that  
6 these statements are not inconsistent.

7 If that's your view, just say so.

8 THE WITNESS: The two statements have  
9 different contexts in time, sir.

10 BY MR. GALLEGO:

11 Q. Well, let's turn to Tab 10, please. That's  
12 Exhibit C-18. Let me mention that this is a meeting,  
13 or a meeting summary of a meeting that happened on 27  
14 May in [recte: 2019]. You were there with officials  
15 of the PCM the--or 2019, rather.

16 Mr. Bravo was there on behalf of Invicta.  
17 He was general manager. Also Mr. Velasquez, or  
18 rather, Mr. Vasquez. And at 9, point 9, which is on  
19 page 5, number 9.

20 You say, that Invicta indicated that the  
21 Parán leaders are being individuals and/or financed by  
22 persons from outside the community with their own

1 interests, drug trafficking, and informal mining  
2 mafias. With which at this meeting, which seems quite  
3 formal, because several State entities are  
4 represented, you are--they're being told that there  
5 are interests from outside the law.

6 Would you agree with me on that?

7 A. That is what Mr. Bravo said, yes.

8 Q. With which, there would appear to be some  
9 inconsistency with your statement where you say, in  
10 any event, at no time did Invicta argue or express  
11 concern over alleged marijuana activity; yes or no?

12 A. That's correct. But I repeat, they did not  
13 say that that was a cause for the parties not sitting  
14 down and not reaching an agreement.

15 Q. Very well. Here, Mr. León, we find  
16 ourselves in a desperate situation. This is May of  
17 2019. Seven months have gone by, seven-and-a-half  
18 months since the blockade.

19 Invicta is saying here it's stating its  
20 concerns here, the causes of the blockade, and it's  
21 saying clearly, that there are illegal interests here,  
22 and it's saying that there is drug trafficking and

1 informal mining mafias, who--what they want is to  
2 exploit the mine. He is saying it clearly. It's not  
3 a comment with no consequences. Rather, it's a  
4 comment that he's making precisely because they want  
5 to recover the project.

6 And, he's saying here that these people,  
7 community members of Parán, don't want to negotiate  
8 because they have illegal interests in mind. The same  
9 exact thing that you were saying in 20 February with  
10 your memo; wouldn't you agree?

11 A. May I make a clarification?

12 The aide-mémoire that you've put before me  
13 has the date of 27 February. As of that date, there  
14 had already been an agreement and a lifting of the  
15 coercive measure which happened 26 February, four  
16 months after Parán began the blockade.

17 This document that you are now putting  
18 before me as a reference does say what you are  
19 indicating, but it doesn't reflect the reality. There  
20 had already been a rapprochement and a lifting of the  
21 blockade. There was an understanding of the parties  
22 was reached on 26 February.

1       Q.     Thank you, Mr. León, but on 20 March, they  
2 invaded the site, the Parán Community members did,  
3 once again; isn't that so? So once again, we are  
4 facing a coercive measure, no?

5       A.     The dialogues have that peculiarity. Any  
6 dialogue form has its high points, its middle points,  
7 and its low points, and we always understood that that  
8 was the mechanics of the mechanism that unfolds in the  
9 context of a dialogue.

10      Q.     At any rate, the only thing I want to point  
11 out here in showing you this document is that you  
12 state in your witness statement that they never said  
13 anything about it. The representatives of Invicta,  
14 that is, that there were unlawful interests related to  
15 marijuana production. And here, it is--it says that  
16 the leaders of Parán are being advised or financed by  
17 persons from outside the community with their own  
18 interests, drug trafficking and informal mining  
19 mafias.

20             You're saying this directly. So is that  
21 simply to--correct your statement. That's why we're  
22 looking at this, Mr. León; right?

1       A.     In the alleged situation, the reference is  
2 to leaders, and not the community as a whole.

3       Q.     Well, we have little time, so we're talking  
4 here about a meeting that you had with the authority,  
5 the same authorities that we're seeing here who were  
6 present at this meeting, which was held as of 11:15  
7 a.m. in Lima, and right before that, there was another  
8 meeting between just the--just among the authorities  
9 of the State to prepare this.

10           Do you recall that?

11       A.     I do not.

12           ARBITRATOR GRIFFITH:   Might I ask?   Sorry to  
13 interrupt.

14           MR. GALLEGGO:   Sure.

15           ARBITRATOR GRIFFITH:   I'm somewhat concerned  
16 about your statement in Paragraph 60 that in any event  
17 at no time did the Claimant or Invicta argue or  
18 express concern over alleged marijuana activity.

19           Do I understand you correctly to say that,  
20 when you look at Paragraph 9 under Tab 10, that you  
21 make a distinction between leaders raising this issue  
22 and nonleaders?

1           What I suggest to you is that the statement,  
2 "In any event at no time did Claimant or Invicta argue  
3 or express concern over alleged marijuana activity,"  
4 is it possible to read that as consistent with the  
5 statement in Paragraph 9? You said there's a  
6 difference because it refers to leaders. But are you  
7 saying that that does not contradict your statement at  
8 the end of Paragraph 60?

9           THE WITNESS: Correct.

10          BY MR. GALLEGO:

11          Q.     So let's go to the minutes of the meeting  
12 held ahead of time among the various ministers. This  
13 is at Tab 47 of the binder. It's at page 3. Where it  
14 says, current situation, critical aspect.

15               First, you come across the English language  
16 version, and then you get to the Spanish language  
17 original.

18          A.     46, did you say?

19          Q.     I'm sorry, Mr. León. It's Tab 47.

20               Once again, we have an aide-mémoire dated 27  
21 May 2019 which has been drafted, it appears by the  
22 Presidency of the Council of Ministers, and at page 3,

1 under current situation, critical aspect, mention is  
2 made of the meeting prior to the meeting with  
3 Mr. Bravo, and we know this because it says, at 9 to  
4 11 a.m., and then in the third paragraph, it speaks of  
5 the subsequent meeting with Mr. Bravo, at 11 a.m. to 1  
6 p.m.; right?

7 A. Yes.

8 Q. Well, and in that first meeting, you were  
9 mentioning several things, but at the end of the  
10 second paragraph, you say there is evidence of poppy,  
11 marijuana crops in Parán, and in relation to the  
12 possession of weapons in the community, it is known  
13 that they have weapons that were handed over in the  
14 1990s to the Rondas Campesinas, and specifically  
15 defense groups and others that have not been  
16 registered. It was suggested that the PNP schedule  
17 the corresponding search and seizure.

18 Do you see that? Do you see that?

19 A. Yes.

20 Q. So just before the meeting with Mr. Bravo,  
21 even before Invicta mentioned that it was a concern of  
22 it, it was also being discussed internally that this



1 was a problem; right? The issue of the marijuana  
2 crops?

3 A. Yes, according to the date, 27 May.

4 Q. So for you all, it was a concern, the  
5 question of the marijuana crops. It was an impediment  
6 to reaching an agreement; correct?

7 A. No, it is not. That is not correct.

8 Q. So, why are they discussing it here. Here  
9 there are several of you authorities who are in charge  
10 of the dialogue, including particularly you, and  
11 they're here discussing the situation in Parán.

12 By now, by this time, being seven months  
13 have gone by, and you are about to meet with  
14 Mr. Bravo, and you are noting the important points  
15 that are standing in the way of progress being made in  
16 the negotiation.

17 And two are mentioned: First, marijuana;  
18 second, weapons. It seems to me that this was an  
19 important consideration on the part of the State in  
20 that meeting; yes or no?

21 A. As I repeat, Mr. President, the marijuana  
22 issue was not a priority that we had, as the State,

1 had mapped out in the context of that incident or that  
2 activity being at odds with the dialogue going  
3 forward. We did not understand that nor did the  
4 company understand that.

5 Had that been the case, then the State--then  
6 the company, rather, would have attached the copy of  
7 some complaint.

8 This was a report on the circumstances that  
9 need to be put in context. These are situations that  
10 need to be mapped out in order to have a response in a  
11 different scenario. But I will state once again, the  
12 activity referred to was not the preponderant negative  
13 in the State going forward to establish a dialogue,  
14 since in February, four months after the takeover of  
15 the mine, we were able to establish a dialogue.

16 Q. Very well. And at this point, three months  
17 had gone by since that--those minutes of 26 February  
18 2019, several months had gone by, and we are in the  
19 situation that's being mentioned here; right? And  
20 here--well, you were at that meeting. And what's  
21 being said is that there is a concern over the weapons  
22 and the marijuana in the community.

1           Can you confirm for me, please, that you did  
2 discuss that?

3           A.     It was just mentioned.

4           Q.     Specifically it was suggested that the  
5 national police schedule the corresponding  
6 registration and search. That would appear to be a  
7 very important suggestion, don't you think, to be able  
8 to continue with the dialogue? Isn't that so?

9           A.     No. There was no nexus between the searches  
10 such as to have it be a requirement for continuing the  
11 dialogue.

12          Q.     So in other words, according to you, it was  
13 reasonable for the company to negotiate with drug  
14 traffickers and with people who were armed. That was  
15 the policy of the State; correct?

16          A.     That is not right. That's not correct.

17                 We could not very easily, Mr. President,  
18 because of two or three individuals, accuse a whole  
19 community of such a serious crime. I think it would  
20 be irresponsible on the part of the State,  
21 Mr. President, for us to take on that topic.

22                 What I can say, Mr. President, is that we as

1 the State, have always been in favor of dialogue, and  
2 that has been a constant throughout the process.

3 Q. And indeed, at least as long as Invicta was  
4 there, there was no search and seizure of the weapons;  
5 correct?

6 A. I'm not able to say.

7 Q. In other words, you don't know?

8 A. I don't know.

9 Q. Nor were the marijuana plantations  
10 eliminated while Invicta was there; correct?

11 A. I don't know that, Mr. President.

12 Q. In other words, you were commenting during  
13 this meeting it seems that that was a major  
14 discussion, and it was reiterated by Mr. Bravo, this  
15 issue, that is, at the meeting that happened  
16 immediately thereafter.

17 And you are not aware of what happened with  
18 that in relation to the weapons, as well as in  
19 relation to the marijuana plantations; correct?

20 A. As you mention it, after May 27th, after the  
21 meeting we had, the legal office for social management  
22 continued with that up to September, I do not know, I

1 do not know whether some mechanisms were activated on  
2 the matter to which you refer, the issue of marijuana  
3 and the issue of weapons.

4 Q. Okay, so we would agree that up to September  
5 2019, nothing was done in connection with these two  
6 issues?

7 A. I do not know. I cannot assert or deny  
8 that.

9 Q. How can you not know this, since you were  
10 attempting to promote dialogue? You had to know all  
11 of the facts, all of the important facts, and also the  
12 factors that could have an impact on the dialogue.

13 How can you say that, Mr. León?

14 A. You just said it. It was not a gravitating  
15 issue, the issue of weapons and the issue of illicit  
16 drug trafficking in this dialogue process.

17 PRESIDENT CROOK: This is the time for the  
18 lunch break. Is this a convenient time for you?

19 MR. GALLEGO: It is, Mr. President. Thank  
20 you very much.

21 PRESIDENT CROOK: All right. Then let us  
22 rise for 40 minutes.

1           Mr. León, during the lunch period, you will  
2 not be able to discuss your testimony with anyone, and  
3 someone will take you to a nice place for a private  
4 lunch, and we will then see you in 40 minutes.

5           Is that agreeable, sir?

6           THE WITNESS: Yes, sir.

7           PRESIDENT CROOK: Good. Thank you.

8           (Whereupon, there was a recess in the  
9 proceedings, 1:02 p.m. - 1:41 p.m.)

10          PRESIDENT CROOK: I thank everyone for  
11 returning so efficiently.

12          Let's assume the examination.

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

14          BY MR. GALLEGOS:

15          Q.     Mr. León, let us look at Paragraph 41 of  
16 your second statement, please. Do you have it in  
17 front of you?

18          A.     Yes, I do.

19          Q.     At 41, you are saying, Second, in any of  
20 these documents there is any recommendation to  
21 encourage the use of force, contrary to what Mr. Bravo  
22 indicated in the internal memorandum of March 2019. I

1 never referred to the use of force when suggesting the  
2 restoration of public order on the part of the  
3 MININTER and DGOP and PNP.

4 To restore public order, restoring public  
5 order does not necessarily imply the use of force or  
6 the execution of a Police Operational Plan. These  
7 entities have other means of dialogue, negotiation and  
8 persuasion.

9 Having read your statement, let us now look  
10 at the memorandum that you drafted on March 20, 2019.  
11 This is at Tab 46. And this is Exhibit C-576. Do you  
12 have it in front of you?

13 A. What tab?

14 Q. 46. And this document we know was drafted  
15 by you. And we also know that it was on March 20,  
16 2019, since this is what we read at Paragraph--at the  
17 paragraph in connection with the current situation.

18 Almost towards the end of the first page, it  
19 says, "As of today, March 20, 2019, approximately 150  
20 community members are once again stationed..."

21 Do you see it?

22 A. Yes.

1       Q.     In the paragraph "prospects", it says,  
2 "Following the community's decision to resume protest  
3 actions as a result of the company's noncompliance,  
4 the dialogue has broken down. And the executive has  
5 exhausted this channel.

6             To the extent that the noncompliance with  
7 the commitment has broken the trust and the  
8 credibility of the actors participating in the  
9 process, and any exhortation on the matter in favor of  
10 one of the actors could generate a perception of bias  
11 that allows for the escalation of the protest  
12 measure".

13            Mr. Leon, in other words, there is no  
14 longer any room for dialogue, and no entity within the  
15 executive branch ought to promote this, correct?

16       A.     That's not the case.

17             Should I repeat? As the office of social  
18 management, we never give up to have dialogue as the  
19 best solution to the conflict.

20       Q.     Mr. León, here you are saying on March 20  
21 that there is no dialogue. It has been broken down;  
22 yes or no?



1       A.     That was an interpretation of the minutes,  
2 basically, and the dialogue spaces have some time, and  
3 it doesn't mean that the February 20th session was  
4 going to bring an end to that dialogue. This is just  
5 the beginning, the lifting of that measure, the  
6 lifting of the blockade is just the beginning. There  
7 is no set duration.

8               So even though it is true that we were  
9 unable, and we should not, and we do not say that one  
10 of the parties is responsible for breaking down the  
11 dialogue, as stated here. Because, Mr. President, it  
12 could well be that one of the parties decides to state  
13 that we are biased, and that is not the role of the  
14 State, in this case, the Ministry of Energy and Mines.

15       Q.     Mr. León, I find it very difficult to  
16 understand what are you telling me, because here it  
17 clearly states that dialogue has broken down. If  
18 dialogue has broken down, it's impossible to continue  
19 with dialogue, and for that reason, in your  
20 recommendation, you state, given this situation, it is  
21 recommended for the public order mechanisms to be  
22 activated by the MININTER, which has an action plan

1 for this. But not signed, given that the current  
2 policy is one of nonintervention; therefore, requiring  
3 that dialogue be exhausted as in this case.

4           However, since the beginning of the conflict  
5 to date, the policy of nonintervention has prevailed  
6 in relation to which a discussion at the highest level  
7 between the deputy ministers is proposed to enable the  
8 activation of this plan of action in the face of a  
9 scenario like the present one.

10           So in this case, first, are you saying that  
11 there is a need to restore public order, and that this  
12 will be done by means of a plan of action to this end;  
13 correct?

14           A.     Yes.

15           Q.     This plan of action is the Police  
16 Operational Plan that you were aware of; correct?

17           A.     No. That is not true.

18           No, the Ministry of the Interior has as part  
19 of its structure the office of public management.  
20 MININTER does not implement an intervention plan.

21           That office, the office of public order  
22 management is the one that has some ability to solve

1 social conflicts.

2 Q. I apologize, Mr. León, but within MININTER  
3 does include the police; correct?

4 A. No, it is not part of that. The police is  
5 autonomous in the decisions, and their operational  
6 plans.

7 My suggestion here is that MININTER--I am  
8 suggesting here MININTER, not the national police.

9 Q. And what is it that is your suggestion, is  
10 it MININTER--is it for MININTER to continue with the  
11 dialogue; is that what you are saying?

12 A. I repeat: The MININTER, Mr. President,  
13 includes as part of its functions the Office for the  
14 Management of Public Order. The discourses given by  
15 each sector of the State, Mr. President, are different  
16 from that given by the Ministry of Energy and Mines.  
17 We see a social aspect here. The Ministry of the  
18 Interior, through the OGD, oversees public order.  
19 Their discourse does not relate to the social aspect.  
20 To block that public road is a crime, and it has to be  
21 opened.

22 The view of MININTER is exactly that, that

1 is to say to--when we see that there is a crime, the  
2 actors are identified, and in this type of process,  
3 there is also a prosecutor to prevent the crime. That  
4 goes together with the ombudsman, and they have a  
5 different discourse; that is to say, there is a social  
6 discourse, but there is a marked difference, and  
7 that's the reason why we need MININTER to comply with  
8 their role, and we never suggested the participation  
9 of the police. That was not our role. This is not  
10 what we do from our agency, from OGGS.

11 Q. Mr. León, so you're saying that more  
12 dialogue was needed; is that what are you saying?

13 A. Correct.

14 Q. For that dialogue to take place, even though  
15 if it was broken down, as you said in that document;  
16 correct?

17 A. That is correct. That is correct, yes,  
18 Mr. President.

19 Q. And that in spite of what you mention here  
20 that there is a nonintervention policy, that is to  
21 say, nonpolice--not intervention by the police, you  
22 are suggesting that nonintervention should continue;

1 is that what you are saying, in spite of the letter of  
2 this document, Mr. León?

3 A. Let me reiterate that intervention was not  
4 part of the OGGS.

5 Q. I apologize, Mr. León. We're talking about  
6 what you recommended, intervention by MININTER, not an  
7 operational plan.

8 And here, you are suggesting a communication  
9 at the highest level with the vice ministers to  
10 activate this action plan. This action plan assumes  
11 just a dialogue, according to your point of view?

12 A. Yes. That is correct.

13 ARBITRATOR GARIBALDI: You're saying in this  
14 document, the recommendation is--at the subparagraph  
15 on recommendation, there is a reference to MININTER  
16 that has an action plan for this, but not signed.

17 What is the plan of action that MININTER  
18 has, the one that you are referring to?

19 THE WITNESS: That is based on their roles  
20 and jurisdiction.

21 ARBITRATOR GARIBALDI: No, no, no. You are  
22 talking about a specific plan, and then later on, you

1 say that allows for this activation of this plan of  
2 action. You are talking about, in this paragraph, to  
3 a plan, a specific plan.

4 What is that plan?

5 THE WITNESS: To meet with the community, as  
6 I explained before, with various actors of the State,  
7 the office of the attorney--the prosecutor, and the  
8 ombudsman's office.

9 ARBITRATOR GARIBALDI: Did you receive a  
10 copy of the plan?

11 THE WITNESS: Well, that only reflects the  
12 ideas that we exchange at meetings.

13 ARBITRATOR GARIBALDI: So was it a specific  
14 plan, the one that you just described?

15 THE WITNESS: Not as a plan, no.

16 ARBITRATOR GARIBALDI: They were just ideas.

17 THE WITNESS: Yes. They were just ideas and  
18 guidelines we had. As I have already said,  
19 Mr. President, the State has various agencies,  
20 ministries. The National Peruvian Police also has a  
21 social management office. The use of force, for us as  
22 the MINEM, was not part of our plans.

1           MR. GALLEG0: (Overlapping speaker with  
2 translation.)

3           --the end, Mr. President, but just a couple  
4 of further questions.

5           BY MR. GALLEG0:

6           Q.    You have mentioned that here there was a  
7 crime. Isn't that correct? And that is the reason why  
8 the MININTER's intervention was proper. Isn't that  
9 correct?

10          A.    The blockade of roads is a crime in Peru  
11 because it goes against the freedom to use the road.

12          Q.    And here, therefore, we were before a crime.  
13 You confirmed this earlier. Right?

14          A.    It is a crime.

15          Q.    In spite of the fact that there is a  
16 flagrant crime, you are telling me now that police  
17 intervention was not warranted, only dialogue;  
18 correct?

19          A.    The circumstances that underlie the crimes  
20 in this type of acts have a cause. That's why we from  
21 the Peruvian state continued to be aware that dialogue  
22 is the best mechanism to maintain social peace in a

1 given area.

2 Q. As a matter of fact, and to conclude,  
3 Mr. León, there was a need to talk to drug traffickers  
4 and individuals branding weapons; that's what you are  
5 telling us; right? That's what you are telling the  
6 people here?

7 A. No, that is not correct.

8 Q. They were not armed?

9 A. We did not have a report from the OGGS.  
10 There was no documentation from the company verifying  
11 what you are just saying, the issue of the weapons and  
12 illicit drug trafficking.

13 Q. I apologize, but you drafted a document on  
14 February 20 confirming that they had arms, weapons.

15 A. The document that you are referring to is a  
16 study of the actors of the circumstances that were  
17 presented at a specific point in time. And also as  
18 part of a dialogue, we cannot, from the point of view  
19 of the State, stop from mentioning those acts, but it  
20 is also true that as OGGS, we assess if that act or  
21 that fact may have any impact on the conflict.

22 And we were right in that it was not,



1 because the company did not tell us "this is the  
2 complaint by the company before the office of the  
3 prosecutor." That was not the case. It was not.  
4 [They never said] "I have this statement before the  
5 police." They never gave us that. Therefore, we knew  
6 that the issue of drug trafficking and weapons was not  
7 something impacting the conflict.

8           The conflict eventually fell on both sides,  
9 on both sides. Even though it is true that both  
10 accused each other of noncompliance, we as social  
11 management were always there encouraging the dialogue.  
12 We were also--the company also blamed the company for  
13 noncompliance, but we were there. We encouraged  
14 dialogue as the best option after the incursion.  
15 After the invasion, we continued to talk about the  
16 dialogue and the importance, and that has been a  
17 constant conduct.

18       Q.     Mr. León, if there is a person that attacks  
19 your house, the person comes with weapons, takes all  
20 of your possessions, and remains there during nine  
21 months, according to you, there shouldn't be any  
22 police intervention, just talking to that person,

1 having a dialogue, and attempting to have an  
2 agreement, even though they are armed and they are  
3 drug dealers; is that what are you telling the members  
4 of the Tribunal?

5 A. Are you talking about weapons because of the  
6 weapons the company had?

7 Q. No. Answer my question.

8 If a drug trafficker goes into your home and  
9 stays in your home for nine months--

10 MR. GRANÉ: (Overlapping speaker with  
11 translation.)

12 I don't know if this is cross-examination,  
13 but he is now putting to a fact witness hypotheticals  
14 on an issue that is not within this witness's  
15 competence which is how you deal with a situation  
16 through the use of force, PNP.

17 We're not in a situation where someone goes  
18 into someone's house armed and stays during nine  
19 months. It's a hypothetical, and the witness should  
20 not be put in the situation having to answer that  
21 question.

22 MR. GALLEGO: I respectfully disagree,

1 Mr. President.

2 PRESIDENT CROOK: I think that the Tribunal  
3 can sort of anticipate if the question were put, what  
4 the nature of the answer that we would receive. And  
5 so I think, given that, it might not be the optimum  
6 use of time.

7 I know the Tribunal has a number of  
8 questions it would like to put to this witness, so we  
9 hope we could have some time for that, and we do have  
10 yet the need for the redirect.

11 MR. GALLEGO: Thank you, Mr. President.  
12 That concludes my cross-examination.

13 PRESIDENT CROOK: Okay.  
14 Redirect?

15 MR. GRANÉ: No, thank you.

16 PRESIDENT CROOK: All right. I have some  
17 questions. Let me check with my colleagues. All  
18 right. Let's start with...

19 QUESTIONS BY THE TRIBUNAL

20 ARBITRATOR GRIFFITH: Are you aware,  
21 Mr. León, that there's a police report that at about  
22 mid-day on the 15th of May, several members of the

1 community disarmed some of the red guards, and shortly  
2 after, one of those guards was shot and died?

3 Are you aware of that report?

4 THE WITNESS: I do not know, sir.

5 Could you please show me the document you  
6 are referring to?

7 ARBITRATOR GRIFFITH: It's Paragraph 25 on  
8 Exhibit C-640.

9 But before we do that, are you saying that  
10 you haven't heard of a report that on the 15th of May,  
11 one of the red guards was intercepted by a few of the  
12 Parán Community, and shortly after was shot and died.

13 Have you not heard of that?

14 THE WITNESS: No, Mr. Griffith, no. I don't  
15 know of that report, per se. I have not seen that  
16 report.

17 ARBITRATOR GRIFFITH: You were closely  
18 involved with the community, including in May 2019,  
19 were you not?

20 THE WITNESS: Yes, in 2019.

21 ARBITRATOR GRIFFITH: Were you aware--

22 (Clarification requested by the Realtime

1 Stenographer.)

2 ARBITRATOR GRIFFITH: Were you closely  
3 involved with issues concerning establishing dialogue  
4 with the community in May 2019? That's a yes or no.

5 THE WITNESS: That's correct.

6 ARBITRATOR GRIFFITH: Are you indicating  
7 that you're unaware of the fact which is reported in  
8 the police report, C-640, that on the 15th of May,  
9 members of the Parán Community intercepted some of the  
10 red guards, and shortly after, one of them was shot  
11 and died; are you aware of that incident?

12 THE WITNESS: I don't know of the document.  
13 I know of the fact, the event.

14 ARBITRATOR GRIFFITH: Okay. I'm not asking  
15 you about the document. I'm asking you about the  
16 fact. Don't prevaricate.

17 Do you know of an incident on the 15th of  
18 May whereby it is asserted that members of the Parán  
19 Community disarmed and then shot one of the red guards  
20 who subsequently died the same afternoon; do you know  
21 about that or not?

22 THE WITNESS: Yes. I knew that there was a

1 confrontation and that one person died.

2 ARBITRATOR GRIFFITH: Well, arising from  
3 that incident, would you regard that incident, which  
4 might be described as murder, as being a matter over  
5 which dialogue should have priority in its  
6 investigation?

7 What's your view of that? Which is the more  
8 important, dialogue or investigation of a murder?

9 THE WITNESS: The investigation of the  
10 murder was not within my authority, within my  
11 jurisdiction. There are other entities such as the  
12 national police of Perú or the prosecutor's office.

13 At the OGGS, what we did was engage in  
14 dialogue.

15 ARBITRATOR GRIFFITH: So you don't regard  
16 that as a relevant matter? Of the dialogue.

17 THE WITNESS: From the government, when we  
18 found out about the event that you have just relayed  
19 to me, well, we held a meeting with the  
20 representatives of the company. We wanted them to see  
21 that these kinds of attitudes didn't really help  
22 dialogue.

1           We in the government responded that  
2 incident, we continued, sir, on insisting that the  
3 dialogue was the best way to do things.

4           After the incident, we held meetings in  
5 Sayán, and this event transpired in May. Our latest  
6 action there as OGGS was in September. We continued  
7 having to deal with these negative attitudes, but we  
8 were very aware that from the level of the government,  
9 we were always open to dialogue. We were supporting  
10 dialogue. It was very difficult, sir, that us, as the  
11 government, should not lose credibility.

12           A few days before we had had meetings with  
13 the Parán Community, and we said that we were going to  
14 sit down and discuss, and try to do away with our  
15 differences. But, the company--but the community,  
16 rather, did not want the dialogue. They didn't want  
17 dialogue. They felt that they had been deceived by  
18 the State. We attended a number of meetings, however.

19           ARBITRATOR GRIFFITH: Thank you. No further  
20 questions.

21           PRESIDENT CROOK: I have two or three  
22 questions, sir. First, early in your statement, you

1 referred to how in road closure cases, your  
2 organization always asks for lifting of the blockade.

3 Do you recall saying that?

4 THE WITNESS: Yes, Mr. President.

5 PRESIDENT CROOK: Have you personally been  
6 involved in multiple road closure cases?

7 THE WITNESS: Yes, Mr. President.

8 PRESIDENT CROOK: Can you estimate how many?

9 THE WITNESS: Four.

10 PRESIDENT CROOK: In any of those, was there  
11 ever any intervention by the police?

12 THE WITNESS: There was support by the  
13 police for security purposes, safety purposes, in  
14 connection with some entities of the State.

15 PRESIDENT CROOK: All right. So in the four  
16 cases that you were involved in, there was some role  
17 played by the police; is that right?

18 THE WITNESS: It provided security.

19 PRESIDENT CROOK: I see. It would be  
20 interesting to examine those four cases, but I'm  
21 afraid we don't have time to pursue that. But  
22 certainly in your experience, there have been



1 situations where police participation in the  
2 resolution of a situation made a contribution; is that  
3 right?

4 THE WITNESS: Yes. Again, Mr. President,  
5 the police provided support to us in those critical  
6 events, specifically, when there are situations that  
7 are quite important, such as the blockade of a  
8 roadway.

9 But we, at the OGGS, we were the leaders of  
10 the dialogue.

11 PRESIDENT CROOK: All right.

12 Now, you have made very clear in your  
13 testimony, and in the memoranda you sent up the chain  
14 that we have read, essentially that you agreed with  
15 Parán's interpretation of the agreement, and held the  
16 mining company responsible for its breakdown.

17 Is that an accurate assessment? Do you  
18 understand my question?

19 THE WITNESS: Could you please repeat the  
20 question, sir?

21 PRESIDENT CROOK: There are two parts.

22 Do you agree that under the February 26

1 agreement, there was no obligation to remove the road  
2 blockade? You did not require that the blockade be  
3 removed?

4 Do you agree with that statement?

5 THE WITNESS: The agreement had to do with  
6 the blockade--

7 PRESIDENT CROOK: Please, if you would  
8 answer my question.

9 Do you agree with the statement that the 26  
10 February agreement did not require removing the  
11 blockade by Parán?

12 THE WITNESS: That's correct.

13 PRESIDENT CROOK: So it did not require  
14 removing the blockade.

15 All right, let's turn to the survey.

16 Your understanding is that there was an  
17 agreement for a survey to redesign the road; is that  
18 your understanding? It was a road survey.

19 THE WITNESS: Yes.

20 PRESIDENT CROOK: Now, are you aware of  
21 Mr. Bravo's testimony that that was not what was  
22 agreed, that he has a different understanding of

1 that--the purpose of that survey?

2 Are you aware of that position?

3 THE WITNESS: On the basis of the witness  
4 statements, yes.

5 PRESIDENT CROOK: All right.

6 So you think that the witness is not  
7 speaking truthfully when he said that was their  
8 concern?

9 THE WITNESS: If you allow me to put this in  
10 context in 30 seconds.

11 PRESIDENT CROOK: We have very little time.

12 Did you ever speak directly to Mr. Bravo  
13 about this issue? The issue of the purpose of the  
14 survey.

15 THE WITNESS: It had to do with the access  
16 road to the Parán Community, and consequently, to the  
17 mining unit.

18 PRESIDENT CROOK: I understand, but my  
19 question was did you ever discuss Mr. Bravo's concern  
20 directly with him?

21 THE WITNESS: During the meeting of 26  
22 February, yes.

1           PRESIDENT CROOK: Okay. On the 26th of  
2 February, you did discuss with him his belief that the  
3 survey was for purposes of identifying affected land,  
4 and not for purposes of a road; is that right?

5           THE WITNESS: That's not correct.

6           PRESIDENT CROOK: Well, I understood that's  
7 what you said.

8           Have you ever discussed directly with  
9 Mr. Bravo his understanding of what the language of  
10 the agreement was supposed to mean?

11          THE WITNESS: No.

12          PRESIDENT CROOK: Okay.

13          Now, I'm looking at your memo, the one we  
14 were just looking at, C-576, and it's captioned,  
15 "protest over the mining company's failure to comply  
16 for the payment of the services of a topographer."

17          So in your understanding, the only issue was  
18 money, and not the scope of the survey; is that right?

19          THE WITNESS: Yes.

20          PRESIDENT CROOK: The scope of the survey  
21 had nothing to do with it?

22          THE WITNESS: No.

1           PRESIDENT CROOK: Now, let me ask you one  
2 last question. I'm sorry to press you, but we really  
3 are short on time. No, I'm sorry. Have a couple of  
4 questions.

5           Are you aware of current situation at the  
6 mine site? Is the mine operating, and if so, who is  
7 operating it? Do you have any knowledge of that?

8           THE WITNESS: I've heard that up until four  
9 months ago, there was activity, illegal activity  
10 there.

11          PRESIDENT CROOK: Do you know what happened  
12 four months ago?

13          THE WITNESS: There was illegal mining  
14 activities there.

15          PRESIDENT CROOK: Up until four months ago,  
16 suggesting that something happened four months ago, or  
17 that's the date of your information?

18          THE WITNESS: That was the date in which we  
19 gained knowledge at the office that activities were  
20 being carried out.

21          PRESIDENT CROOK: Okay. Are you currently  
22 in any sort of regular contact with the Parán

1 Community?

2 THE WITNESS: Because of the fact that we  
3 work closely with them, and with Invicta, yes, we have  
4 communications with all of the communities in which we  
5 have had an involvement.

6 Yeah, there is a link of communications,  
7 just to say how they're doing, just very simple  
8 issues.

9 PRESIDENT CROOK: All right. My last  
10 question. I have the sense from your papers, and tell  
11 me if I'm wrong, that you regarded the February 26  
12 agreement as a significant accomplishment; is that  
13 right?

14 THE WITNESS: That's correct. Yes, sir.

15 PRESIDENT CROOK: Did you find yourself  
16 personally distressed that it did not succeed?

17 THE WITNESS: No, Mr. President. We know  
18 and we understand that this is part of the dialogue  
19 process.

20 PRESIDENT CROOK: Okay.

21 Well, thank you, sir, for your testimony.

22 I think we may have another question from

1 Arbitrator Garibaldi. Thank you.

2 ARBITRATOR GARIBALDI: Mr. León, in  
3 connection with the 26 February agreement, did you  
4 understand that that was mandatory for the parties, it  
5 was a mandatory agreement for the parties? That was  
6 your understanding?

7 THE WITNESS: Agreements are made to be  
8 complied with.

9 ARBITRATOR GARIBALDI: So it was compulsory?

10 THE WITNESS: Yes.

11 ARBITRATOR GARIBALDI: Legally binding?

12 THE WITNESS: Well, we have these dialogue  
13 forums, you have highs and lows in them. All  
14 agreements can be perfected, can be made more perfect.

15 ARBITRATOR GARIBALDI: Okay. They can be  
16 made more perfect; that's what you are saying?

17 THE WITNESS: Yes.

18 ARBITRATOR GARIBALDI: But is it binding  
19 while it is being perfected?

20 THE WITNESS: Yes. Both parties need to  
21 abide by the commitments made. These are commitments.  
22 These agreements are commitments by both parties in

1 the framework of the course of dialogue.

2 ARBITRATOR GARIBALDI: Are they legal  
3 commitments?

4 THE WITNESS: They are social commitments.

5 ARBITRATOR GARIBALDI: Are they legal or  
6 not? What is it that makes these agreements binding?

7 THE WITNESS: The binding nature has to do  
8 with the fact that the government guarantees a  
9 follow-up of the agreements made and evidenced in the  
10 meeting minutes.

11 ARBITRATOR GARIBALDI: Thank you.

12 PRESIDENT CROOK: I'm sorry. I thought I  
13 was done, but you just said the government plays a  
14 role in seeing these are followed up on.

15 I thought I remembered someplace in your  
16 testimony or the testimony of one of your colleagues  
17 that that was not the government's role.

18 Do I misremember that?

19 THE WITNESS: Mr. President, when you begin  
20 a process of dialogue, when you have the first  
21 dialogue measure, and that is--the first thing that  
22 we're looking for is for the blockade to be lifted,



1 and that's an achievement for us.

2 When there is an agreement, we do have an  
3 office that follows up--follows up on the agreements.

4 But we're talking about framework  
5 agreements, more. When we are dealing with a more--

6 PRESIDENT CROOK: (Overlapping speaker with  
7 translation.)

8 I think that clarifies the situation.

9 So I--again, I don't want to be rude to you,  
10 but we have a great deal we have to do yet this  
11 afternoon, and a limited time to do it.

12 So unless there are any further questions  
13 from my colleagues, I thank you for your testimony.  
14 You are now relieved. You can begin to have  
15 conversations with the rest of humanity, and we thank  
16 you for your testimony.

17 THE WITNESS: Thank you very much,  
18 Mr. President. Members of the Tribunal. Thank you.

19 PRESIDENT CROOK: Welcome, ma'am. Can you  
20 introduce yourself--I take it you will be testifying  
21 in English.

22 THE WITNESS: I prefer to speak in Spanish,

1 but I can understand English, so I will be hearing in  
2 English, if that is okay with you.

3 PRESIDENT CROOK: It's okay with me. It's a  
4 question of how it works for purposes of the  
5 transcription.

6 Is that an issue?

7 SECRETARY: No, sir. It's not an issue.

8 PRESIDENT CROOK: Okay. I'm informed that  
9 that will work fine. So we'll see how it goes.

10 Can I ask you to identify yourself for  
11 purposes of the record, please.

12 THE EXPERT: Yes, sure. My name is Miyanou  
13 Dufour von Gordon.

14 MIYANOU DUFOUR VON GORDON,  
15 RESPONDENT, EXPERT, CALLED

16 PRESIDENT CROOK: All right. You are, I'm  
17 sure, familiar with the procedure that's going to be  
18 followed here.

19 THE EXPERT: Yes.

20 PRESIDENT CROOK: You should have before you  
21 a declaration as an expert. Do you have that?

22 THE EXPERT: Yes.

1           PRESIDENT CROOK: Could you make that  
2 declaration, please.

3           THE EXPERT: I solemnly declare upon my  
4 honor and conscience that my statement will be in  
5 accordance with my sincere belief.

6           PRESIDENT CROOK: All right. Thank you.  
7 I'm sure that will be the case.

8           Now, are you aware that earlier this week,  
9 the Tribunal made a ruling with respect to portions of  
10 your report. Are you aware of that?

11          THE EXPERT: Yes. I'm aware and bearing  
12 into mind that, I have modified my presentation.

13          PRESIDENT CROOK: All right. That's very  
14 good. I appreciate that. I just wanted to make sure  
15 we were good on that.

16          THE EXPERT: Yes.

17          PRESIDENT CROOK: All right. I think, then,  
18 if there are no further administrative matters to deal  
19 with, I understand from counsel that you will be  
20 giving us an introductory report; is that right?  
21 Within the agreed 30-minute limit.

22          THE EXPERT: That's correct.

1           PRESIDENT CROOK: Okay. We look for your  
2 report, then.

3           THE EXPERT: Excellent.

4           One second, please, because I have a  
5 PowerPoint.

6           PRESIDENT CROOK: While we're waiting for  
7 the technology, I should mention that if, at any  
8 point, you feel that we should--need to leave the  
9 room, let us know and we will certainly accommodate.

10          THE EXPERT: Excellent. Thank you.

11          PRESIDENT CROOK: Are we set with the  
12 technology now? I see nodding of heads. Very good.  
13 All right. Please.

14          DIRECT PRESENTATION BY RESPONDENT'S EXPERT

15          THE EXPERT: I only want to check if  
16 it's--perfect. Excellent.

17          Good afternoon, Mr. President, members of  
18 the Tribunal. Good afternoon to everyone. My name is  
19 Miyanou Dufour, and I am a lawyer from the Pontificia  
20 Universidad Católica del Perú. I have more than 16  
21 years' experience in regulatory, legal, social, and  
22 environmental matters in the mining sector.

1           For the past 16 years, what I have done is  
2 to provide advice in connection with the development  
3 of the strategy for permitting matters for mining  
4 companies in exploration projects and operations  
5 projects. Rio Tinto, Lumina, Gold Fields, and others  
6 that work in Perú, those are my clients.

7           As I indicated initially, I have adapted my  
8 presentation to the ruling made by the Tribunal  
9 yesterday, so I'm going to speak only about the  
10 licensees that were included in the Memorial by the  
11 Republic of Perú, the Counter-Memorial.

12           We have two parts in my presentation. The  
13 first part has to do with a regulatory analysis of the  
14 requirements in Perú, and the second one, we're going  
15 to speak about social license matters.

16           First, we are going to talk about the  
17 regulations in Perú. The first thing I'm going to  
18 talk about, the permits that are needed in Perú for  
19 mining activities to be conducted.

20           I'm also going to talk about the Invicta  
21 project, and I'm going to describe it on the basis of  
22 the documents on file, and on the basis of that

1 information, I'm going to examine the insufficiency of  
2 the permits for mining and for processing.

3 First, as you can see in my presentation at  
4 number 1, I have included here the most important  
5 purposes that are required for mining activities to be  
6 conducted.

7 First, we have a group of permits that have  
8 to do with environmental certification--we have  
9 discussed this at length in the past few days--for  
10 mining and processing activities to be carried out,  
11 and for that, in Perú, you need an Environmental  
12 Impact Assessment, EIA.

13 If I want to change my mining project, I  
14 have to amend the EIA.

15 As at 2018, the date we're interested in,  
16 there were two methods to do this. You could  
17 ordinarily modify the EIA, or you could have an ITS.  
18 An ITS, the technical report, is an easier processing.  
19 It takes fewer--less time, and also in general, in  
20 connection with the ITS, the amendments shouldn't  
21 really be adversely impacting the environment  
22 significantly.

1           MR. FODEN: Sorry to interrupt, truly, but I  
2 think that the presentation has not, frankly, complied  
3 with yesterday's order.

4           There's discussions of beneficiation, which  
5 is not raised in the Respondent's Counter-Memorial.

6           Similarly, with respect to water sources and  
7 the need for permitting for an alternative water  
8 source, not the water system, but a water source.  
9 Yet, we still see these in the presentation.

10          PRESIDENT CROOK: So let's consider as we  
11 go. So far, we have heard about the EIA. We know  
12 about that. We know that it was subject to  
13 modification. We have heard about the ITS, which is  
14 not is not--is hardly new. Next item, the mine  
15 closure plan. That certainly has been in play.

16          The stages for the mining operating permit,  
17 that has previously been in play.

18          When we get to water use, we may begin to  
19 have some issues, so let's not confront our problems  
20 until we come to them, but at least of I think in the  
21 first portion, it looks relatively consistent with all  
22 that went before.

1           MR. FODEN: Happy to play it as it lays, but  
2 I think we will have an issue when it comes to  
3 processing.

4           PRESIDENT CROOK: Let's confront our  
5 problems when we confront them.

6           THE WITNESS: Thank you very much.

7           As I was saying, in the group of  
8 environmental certifications, we have the mine closure  
9 plan, and I'm not going to address it here because I  
10 don't think it's part of the critical path.

11           As the second group, we have spoken first of  
12 the environmental certification. As the second group,  
13 we have the mining permits. Here we have two  
14 important groups for the mining and the processing of  
15 ore.

16           One, the mining authorization, which at that  
17 time had two stages. One was construction, and the  
18 second was operation. The second permit related to  
19 processing, which is the permit that one must obtain  
20 to be able to process the ore.

21           Finally, there are, in mining activities,  
22 other activities or components that require permits



1 and that are regulated that are independent, the  
2 environmental certification, and independent of the  
3 mining permit.

4           On this point, I want to specify three  
5 aspects that have been discussed this week. The first  
6 with respect to the ITS, Mr. Bravo said that the ITS  
7 is a voluntary instrument, which is not so.

8           For the ITS is compulsory when it is  
9 presented, because that is how one can modify the  
10 document.

11           The second point that I wanted to note is in  
12 Mr. Castañeda's statement, he said that the  
13 environmental management instrument was a  
14 responsibility of the environmental consulting  
15 company.

16           Here what I want to say is that in effect an  
17 environmental consulting company draws up the record  
18 or the report, but it is the mining title holder who  
19 is responsible for it and for what's established, and  
20 is the one who is subject to inspection and oversight.

21           As the third point, Mr. Bravo said that  
22 after the inspection of the mining permit, what one

1 would get would be a COM. This is not the permit that  
2 one gets. It is the permit that one seeks  
3 independently so as to be able to have explosives.  
4 What's obtained after the inspection is the mining  
5 permit.

6 I think it's important that we all be on top  
7 of the same information so we can have it when  
8 rendering the evaluation.

9 Another important point is when I have  
10 calculated the time frames, I have calculated  
11 real--average, real time frames, and I must say, as  
12 you have seen in my report, that this is the common  
13 practice in the mining industry.

14 In the 16 years that I've been working on  
15 this, I have never presented a timetable with the  
16 legal time frames, with those that are established in  
17 the law and regulations.

18 What I do and what my mining clients always  
19 ask me for is for me to give them predictable,  
20 reasonable time frames so that on that basis they have  
21 the corresponding milestones at the moments  
22 established.

1           But it is important to note that this topic  
2 has been discussed, there are time frames that are  
3 established in the law, that is true. But those time  
4 frames don't mean that once it comes--the deadline  
5 comes, I get the permit. That's not what it means.  
6 What it means is that you follow that--if you follow  
7 that time frame, then the administered party, the  
8 mining title holder, what they can consider as a  
9 relief is that they've been denied the permit. That's  
10 what they can do.

11           And they can then submit a challenge motion  
12 so that the next level can evaluate it.

13           In my experience, in the few, the very few  
14 cases in which some clients have applied for this  
15 relief, the time frame has been much longer than the  
16 average times.

17           I wanted to mention this because on the  
18 first day--

19           PRESIDENT CROOK: This relief, which relief  
20 are we talking about?

21           THE EXPERT: (In English.)

22           It's an appeal. You can consider if you--

1           PRESIDENT CROOK: We're talking about an  
2 appeal of a denial. Is that right?

3           THE EXPERT: Exactly, yes.

4           Yes, exactly. I say this because on the  
5 first day of this hearing, what was said was that  
6 illegal time frames had been used, and that is not so.

7           What I have used are the time frames which  
8 in regular practice are used, and as I indicate, the  
9 other time frames are time frames that are established  
10 in the law, which you can appeal. But they don't give  
11 you the option to consider it approved, except for a  
12 couple of cases of positive administrative silence  
13 where it's clearly not--does not apply to the  
14 environmental certification or the mining license, or  
15 mining permit, what they have to be considered as  
16 denied.

17           Now, getting into the description of the  
18 project, and also for the benefit of the request, and  
19 the rule that you have established, I have noted the  
20 paragraphs of the Counter-Memorial for you to verify  
21 that this was covered in the Counter-Memorial, and  
22 that is why I'm touching upon it in my presentation.

1           To be able to come up with a permitting  
2 strategy, I need to become familiar with the project,  
3 and in this case, as has been established by the  
4 Claimant, an underground mine had been considered with  
5 a capacity of 400 metric tons per day, and water use  
6 was considered.

7           The water use is necessary for mining  
8 activity. Without using water, it's not possible to  
9 carry out mining activity. That is why the EIA of  
10 2009, which is introduced in the claim suggests that  
11 one must use water. That's why I'm touching upon it.

12           And as regards the processing of ore, once  
13 again, this topic has been touched upon in the  
14 Counter-Memorial because it's in the Memorial. What  
15 the Memorial indicates is that the processing will be  
16 done outside, and there are some options for doing so.

17           Based on this description and the law, I  
18 have proceeded to undertake an evaluation as of  
19 October of 2018 what permits did the project have, and  
20 which ones were lacking for them to legally initiate  
21 exploitation of the mine. There are three, the  
22 environmental certification. As we know, that has

1 been touched on quite a bit here, the mining permit to  
2 carry out the mining, and the water use, which as I  
3 say is in the initial document, in the Memorial.

4           Now, as regards the environmental  
5 certification that has been a matter of discussion, as  
6 of 2018, there were three instruments that had been  
7 approved for the Invicta project. The original EIA of  
8 2009, which had a large project. Then, an ITS was  
9 submitted in 2015, which reduced the scope of the  
10 project, and converted it into only an underground  
11 mining project, with the capacity of 400 metric tons  
12 per day, and it withdrew many components, including a  
13 processing plant.

14           Initially, they had a plant within, and now  
15 they removed it.

16           And they had a second ITS which is a minor  
17 change having to do with a ventilation system inside  
18 the mine.

19           There's a third ITS that was submitted in  
20 August 2018. This ITS, as you know, and as has been  
21 discussed, was rejected by SENACE which is the  
22 authority that evaluates such permits.

1           Why this permit--well, it includes an  
2 alternative system for water management at the mine.  
3 This system--just so that we're all on the same page,  
4 when you have an underground mine, you have  
5 perforated, you have created a mine opening, and at  
6 that time, if it were by an aquifer, water is going to  
7 begin to come out, naturally.

8           As was verified by the OEFA, that is what  
9 happened. The ministry, when it grants the permit for  
10 construction also identifies it. What it tells the  
11 company is, okay, I'm going to authorize you to  
12 construct--to build the mine, but water is going to  
13 come out. Undertake a study of how much water is  
14 going to come out and present me a system as to what  
15 you are going to do with that water. Are you going to  
16 treat it, are you going to discharge it, are you going  
17 to reuse it.

18           Since it is precisely a component of the  
19 mine, before beginning to operate the mine, before  
20 beginning exploitation, are you going to have to  
21 certify this vis-a-vis the authority. You are going  
22 to have to secure an environmental certification.

1 That is precisely what Invicta did when it included  
2 this in the third ITS. It included it to have it  
3 approved and to get a--an environmental certification.

4 Now, here I would like to note something.  
5 On the first day, what Mr. Velarde said was that this  
6 alternative system had been done at the request of the  
7 OEFA.

8 Now, it's true that the OEFA made a request  
9 for corrective measure, but it did so in October of  
10 2018. In August, the system had already been built.  
11 So it's not at the request of the OEFA, but rather at  
12 the request of the ministry in 2015, that the request  
13 of this system be built.

14 Now, what happens here. When you present a  
15 study, the authority assesses it, and if it has  
16 technical shortcomings or problems, it asks that  
17 information be corrected. That's what is known as  
18 observations.

19 As you will realize, they asked that 49  
20 points be corrected in the instrument. 23 of them  
21 were resolved, and the other half were not, and I want  
22 to highlight one of them, which I think is very



1 important here, which is precisely from the  
2 alternative system for water management inside that  
3 mine.

4           What the SENACE verified in the evaluation  
5 is that this system was already built.

6           In Perú the rule that exists precisely to  
7 avoid and prevent environmental impacts is that before  
8 building a component and starting it and operating it,  
9 you need to apply for environmental certification.

10 That is the rule that exists.

11           Now, in this case, there is a clear  
12 provision in the law that notes that if the authority  
13 verifies when it is assessing an instrument that  
14 something's already built, then the authority is under  
15 the obligation to declare it improper. That means  
16 that it must not environmentally certify that  
17 component, and that is precisely what happened in this  
18 case.

19           That is why, as of October 2018, this system  
20 did not have environmental certification.

21           Now, in the initial presentation, it was  
22 noted that this information of not being able to build

1 without certification, which is in my report, it's not  
2 just--I know this article has been shown here as well,  
3 but I simply wanted to note that.

4           One last point on the ITSES, Mr. Castañeda  
5 said in his testimony that it struck him that the  
6 ITSES that had been--were considered--we took two  
7 months to be considered for approval, whereas his had  
8 taken less than one month.

9           Well, if you look at the record, the first  
10 one took less than one month, the second one took  
11 three months--so my calculation is more  
12 beneficial--and the third one took two-and-a-half  
13 months to be disapproved, it wasn't even approved. So  
14 the time frames that I am considering are average and  
15 they're reasonable.

16           This issue has been touched on today.  
17 That's why I included it in the presentation, which is  
18 the PAD. What Mr. Bravo said is that I can regularize  
19 with no problem my component, and he said that that  
20 was very common.

21           In effect, in Perú's history, there have  
22 been tools for regularizing components. There have

1 been two in the last ten years, not 10 or 15, as it  
2 appeared was trying to be said.

3           The PAD, this instrument, was approved in  
4 late May 2019, and it allowed the opportunity for the  
5 mining title holders to fall under this instrument.

6           Number one, according to the documentation  
7 in the record--I've looked at the exhibits--Invicta  
8 did not avail itself of the PAD or come under it. You  
9 didn't have to go to the field to do so. The first  
10 dossier that you have to submit is a very theoretical  
11 one, simply stating, in the first 30 days, I wish to  
12 avail myself of it. This is the information and then  
13 you have much more information to do so.

14           Second, I repeat, the MEM sought  
15 environmental certification, not just presenting the  
16 request, but securing the certifications. The PAD, in  
17 my experience--and I have seen three or four of  
18 them--takes about ten months for--to secure approval.

19           So this takes us to a time period much  
20 beyond what I calculated for a regular, average  
21 situation.

22           Therefore, in my opinion, what was pending

1 as of October 2018 was modifying the EIA so as to  
2 incorporate alternative system and to incorporate the  
3 water sources, and that required dismantling the  
4 system, because if it was operational--or operating,  
5 then it wasn't going to get the environmental  
6 certification.

7           The estimated time frame I gave is December  
8 2019 to March of 2020, as environmental certification,  
9 and that is going to push back the rest of the  
10 permits, because the environmental certification is  
11 the master permit for the granting of all of the  
12 others.

13           Second group: Mining permit.

14           This group we've also discussed quite a bit.  
15 An authorization for construction was sought, it was  
16 built, and it was not possible to carry out the  
17 supervision, and it was suspended on several  
18 occasions.

19           With respect to this point, what I want to  
20 say is the following: Mr. Castañeda said, I went to  
21 the ministry and immediately they would give me my  
22 authorization. Well, that is not so.

1           What the authority does is it goes up, it  
2 verifies that everything has been built in keeping  
3 with what was approved, and in this case it was going  
4 to verify that there was a change, the whole  
5 alternative system because it was in-mine, and then  
6 they ask for any number of documents, documents which  
7 are not in the record, whether Invicta--it's not clear  
8 whether Invicta had them or not. One of these is the  
9 guarantee.

10           In my report, I assumed that Invicta had the  
11 guarantee of the mine closure plan, which is a  
12 requirement, but from the record, it's not--doesn't  
13 appear that they had that.

14           Now, mindful of that, another permit that  
15 was pending was precisely the mining permit, which is  
16 what enables you to extract the ore from the deposit.

17           Now, for this, one of the requirements  
18 finally was to have the environmental certification,  
19 because as I've said, the very Ministry of Energy and  
20 Mines, what they said was, you have to have the  
21 environmental certification for the alternative system  
22 before you begin exploitation. It is a requirement

1 imposed by the authority, and that requirement was not  
2 called into question by Invicta at any time over these  
3 years.

4 Now, based on this, this permit--well, my  
5 view is that it could be secured between December of  
6 2019 and March of 2020.

7 And as the final point in terms of the  
8 permits necessary for mining is water use.

9 As I said, the first EIA notes that there is  
10 use of water from a well.

11 MR. FODEN: The water usage is not one of  
12 the items set out in the Counter-Memorial as requiring  
13 an additional permit.

14 PRESIDENT CROOK: We will have to consult  
15 the Counter-Memorial. I wonder if Respondent has a  
16 quick reaction on that.

17 MR. GRANÉ: Yes. My quick reaction is the  
18 Claimant is wrong. Of course--

19 PRESIDENT CROOK: You might give as you  
20 reason.

21 MR. GRANÉ: If I may--

22 PRESIDENT CROOK: Please.

1 MR. GRANÉ: --Mr. President.

2 The information that was--

3 PRESIDENT CROOK: Just as a matter of time,  
4 I think it's probably not opportune to take this  
5 discussion out of the time for the expert's report.  
6 Is that agreed?

7 THE EXPERT: Yes, please.

8 SECRETARY: I have stopped the clock, sir.

9 PRESIDENT CROOK: Well, we could...

10 MR. FODEN: I certainly wouldn't like it  
11 coming out of our time, sir.

12 PRESIDENT CROOK: Let's take a little  
13 Tribunal time for a very brief reaction to why you  
14 think this is timely.

15 Arbitrator Griffith proposes a different way  
16 of proceeding. Your view, sir.

17 ARBITRATOR GRIFFITH: I was just going to  
18 suggest that this objection is raised and denied, why  
19 not the time risk be on the party that is unsuccessful  
20 on the issue?

21 MR. FODEN: That's certainly fine by me.

22 PRESIDENT CROOK: I think we have a problem

1 with the--

2 (Clarification requested by the Realtime  
3 Stenographer.)

4 ARBITRATOR GRIFFITH: I'll say it again.  
5 Why shouldn't the time risk be on the party that's  
6 unsuccessful on that issue, whether it's in or out?

7 PRESIDENT CROOK: The party is agreeable to  
8 that?

9 MR. FODEN: Perfectly suitable to me, sir.

10 PRESIDENT CROOK: All right.

11 So let's hear the Respondent.

12 MR. GRANÉ: Thank you very much,  
13 Mr. President.

14 The matter in which the project was  
15 presented in the Memorial, of course, it included, as  
16 part of the documents that they had submitted to the  
17 government, a water system. The source of that water  
18 that would be used in the mining project is what  
19 changed with the submission of the Reply.

20 Initially, under the EIA, the water source  
21 was a pond in Huambo. Now, that changed with the  
22 information that was submitted in the Reply. There



1 was no way for the government of Perú to know of that  
2 change in the project of Invicta.

3           The expert has attempted to explain the  
4 information that was available at the time would not  
5 have allowed to reach that determination. The water  
6 source, the creeks that are now the source of the new  
7 project, as presented in the Reply, is an issue,  
8 again, that could not have been addressed.

9           Now, our submission is that Claimant has  
10 attempted to provide an oversimplified depiction of  
11 that change, the project, and the water sources.

12           Now, we submit that the expert is best  
13 placed to explain to the Tribunal what information was  
14 available at the Memorial stage, and what information  
15 was then provided at the Reply stage, that only then  
16 would have allowed Perú to respond.

17           So our request is that the expert be allowed  
18 to explain those technical issues that, of everyone in  
19 the room, she is best placed to address.

20           If the Tribunal afterwards determines that  
21 the explanation does not satisfy or comply with the  
22 procedural order that was issued by the Tribunal

1 yesterday, then at that moment, the Tribunal will be  
2 able to make a determination and disregard that  
3 information.

4 But such an important issue cannot be  
5 reduced to an objection, addressed in a couple of  
6 minutes, and then lead to vital information to be  
7 excluded from the record. Thank you.

8 PRESIDENT CROOK: Well, the traditional  
9 approach to this in a matter of this kind would be for  
10 the Arbitrators to go off and huddle and consult a  
11 reply, but I can see that taking a good deal of time.

12 Let me briefly consult with my colleagues  
13 how they want to--how we should proceed.

14 MR. FODEN: Mr. President, I'd like to be  
15 heard on this issue, if you don't mind.

16 PRESIDENT CROOK: Yes.

17 MR. FODEN: I can make it very brief.

18 PRESIDENT CROOK: Please.

19 MR. FODEN: Our colleague just said that an  
20 expert who submitted her report with a Reply is best  
21 placed to tell this Tribunal what information is  
22 available at the Memorial stage. That's just simply

1 wrong. That's multiple references to the Ruraycocha  
2 Creek throughout the Counter-Memorial. What they  
3 don't say is that we needed a permit to use it.

4 PRESIDENT CROOK: Well, again, we're getting  
5 to a level of detail that is a little bit difficult  
6 for the Tribunal to deal with in a few minutes' time  
7 without repairing to the Counter-Memorial and doing a  
8 word search.

9 Now, that's not entirely feasible at this  
10 point.

11 Let me pause for a moment, and consult with  
12 my colleagues.

13 MR. FODEN: Before I do, sir, I will also  
14 make clear that the section on processing falls within  
15 the ambit as well.

16 PRESIDENT CROOK: Let's deal with that when  
17 we get there. Do you mind?

18 MR. FODEN: We're in your hands, sir.

19 PRESIDENT CROOK: Okay.

20 (Pause in the proceedings.)

21 PRESIDENT CROOK: All right. The Tribunal's  
22 assessment is that we cannot in the present context

1 make an instant word search of the Reply to see the  
2 extent to which these issues may have been clarified.

3           So I think our ruling is that the expert  
4 should continue with this testimony, but the Tribunal  
5 will consider the matter--the objection that has been  
6 raised, and if we conclude on the basis of a fuller  
7 consideration, that this is out of order, we will  
8 simply not--we will not disregard it.

9           Given that we've arrived at this ambiguous  
10 outcome, our ruling is for the time required here be  
11 divided between the parties.

12           So that's where we are on that.

13           My calculation was at the point where this  
14 issue arose, we were someplace around 18 minutes into  
15 the report. Can you tell, Madam Secretary?

16           SECRETARY: Yeah. We were at 19 minutes and  
17 33, so 19 minutes and a half at presentation. I  
18 stopped her clock at the time we started the  
19 discussion, and I have the separate counts of the  
20 parties' time on the discussion.

21           PRESIDENT CROOK: Okay.

22           So you stopped her clock sounds so dramatic.

1     Okay.    So she has roughly 11 minutes; is that right?

2               SECRETARY:   That's correct, sir.

3               PRESIDENT CROOK:   Ma'am, you have heard that  
4     mechanical discussion.   You have 11 minutes.

5               THE EXPERT:   It's the same on my clock, so  
6     perfect.

7               PRESIDENT CROOK:   Brilliant.

8               THE EXPERT:   Excellent.   Thank you very much  
9     for that.

10              So I will be a little more quick now.

11              As I was saying--

12              ARBITRATOR GRIFFITH:   (Comment off  
13     microphone.)

14              THE EXPERT:   As I was saying, the original  
15     EIA, the one that was approved indicates that the  
16     water is going to be extracted from the tubular well  
17     in Huamboya, but in a document that Invicta presented  
18     to the OEFA, in a sanction-imposing proceeding where  
19     they were sanctioned, Invicta indicated that it was  
20     going to use the water from three sources, one,  
21     Ruraycocha.

22              And there I want to note for the record as

1 reports Ruraycocha, in effect it is in the Memorial,  
2 and it has also been discussed in the  
3 Counter-Memorial, and to make life easier for the  
4 Tribunal, I have noted which paragraphs.

5 Another source noted is the Tunanhuaylaba  
6 Creek, and it is noted in the Reply brief. Previously  
7 it had not been indicated, but finally, the one permit  
8 is useful for the other because it's the same thing  
9 because they can be put together.

10 Finally, the other important permit was the  
11 water that would come from inside the mine.

12 Here, parenthetically, I would note briefly,  
13 the alternative system for in-mine water is not just  
14 for treating the water. What Invicta proposed was to  
15 use that water to re-circulate it, and to use it in  
16 the process.

17 So any use of water, capture and use,  
18 surface or underwater, according to Peruvian  
19 legislation requires a license.

20 So established in the general law on water  
21 resources, and its regulation.

22 What's needed to apply for a license? Well,

1 one, the environmental certification, which we've  
2 already discussed, and second, having built the works  
3 with an authorization for hydraulic infrastructure.

4 Based on the--what I have seen, and the time  
5 frames, after the environmental certification for  
6 securing the licenses, we would be talking about some  
7 time between June and July 2020, which that is when  
8 one would have obtained all of the main permits so as  
9 to begin mining at the Invicta project.

10 Up until that--so far, I have talked about  
11 all of the permits for mining. Now I'm going to talk  
12 about processing quickly.

13 As the Claimant has indicated, there were  
14 two alternatives--

15 MR. FODEN: I have to interrupt here as  
16 well. The objection remains.

17 PRESIDENT CROOK: All right. Now, we had  
18 multiple representations from the Claimants that  
19 whatever obstacles stood in the way of processing  
20 could be readily overcome.

21 THE WITNESS: Mm-hmm.

22 PRESIDENT CROOK: It seems to me that is an

1 appropriate matter, subject to the views of my  
2 colleagues, that that is--at least arguably, a matter  
3 that is appropriate for response in the next pleading.

4 Now, you seem to disagree, so Claimant,  
5 explain your view here.

6 MR. FODEN: I do, because if we look at your  
7 ruling, Paragraph 7(b), it says the portions of  
8 Ms. Dufour's report setting out regulatory  
9 requirements affecting the ability to begin commercial  
10 production that were not referred to in the  
11 Respondent's Counter-Memorial.

12 You will not find a single statement in the  
13 Counter-Memorial saying that we needed additional  
14 permitting to do beneficiation or processing.

15 PRESIDENT CROOK: All right, but how, then,  
16 are we to consider the multiple representations by the  
17 Claimant that essentially there was no problem. We  
18 can fix the problems on the plants, and move right  
19 along?

20 Is this not, in effect, a response to that?

21 MR. FODEN: I think we have to take the  
22 Respondent at its word, and if you look at Paragraph



1 146, it sets out the three requirements that they said  
2 had to be met in order for us to begin production.  
3 That's not one of them.

4 ARBITRATOR GRIFFITH: Counter-Memorial.

5 MR. FODEN: Correct. Paragraph 146.

6 PRESIDENT CROOK: All right. Let me--let's  
7 hear briefly from the Respondent, and then we  
8 will--the Tribunal will briefly convene.

9 MR. GRANÉ: Thank you.

10 The Mallay Plant draft agreement, and of  
11 course, the Mallay Plant is one of such processing  
12 plants that have been invoked by Claimant as necessary  
13 for them to comply with their obligations under the  
14 PPF Agreement.

15 The Mallay Plant draft agreement was  
16 submitted with the Reply. That is C-287.

17 The documents related to the third-party  
18 processing plants--so, those were the other plants  
19 that the Claimant had considered were produced in  
20 response to document production, and in Castañeda's  
21 second witness statement, that's C-420, and C-421.

22 Now, those processing plants were addressed

1 by Perú, so they could not argue that they were  
2 raised for the first time in the Rejoinder. They were  
3 addressed by Perú in the Counter-Memorial, when we  
4 mentioned that there's a need for processing permits,  
5 and it's addressed in Paragraphs 290, 296, footnote  
6 68.

7 Then problems with the processing at those  
8 mills were mentioned in Paragraphs 307, 309, 716, 748,  
9 766, and 767.

10 This is not a new issue that was introduced  
11 at the Rejoinder.

12 Now, we understand Claimant's desperate  
13 attempt to suppress that evidence, but they're simply  
14 oversimplifying.

15 Thank you.

16 PRESIDENT CROOK: Let me consult again with  
17 my colleagues. Just a moment.

18 (Pause in the proceedings.)

19 PRESIDENT CROOK: All right. The Tribunal  
20 has determined that it will handle this one on the  
21 same basis.

22 We will let it in the remaining eight

1 minutes or whatever she may have, and we will then  
2 consider the various citations that have been given us  
3 to this issue in the past, to the extent that  
4 permitting has been in the past been raised. Then we  
5 will consider this evidence or not on the basis of  
6 that assessment.

7           So that's the Tribunal's decision on this  
8 matter.

9           About I think if we're going to talk about  
10 any issues here, we--strike that.

11           We'll handle this on the same basis as the  
12 other set of objections.

13           THE EXPERT: (In Spanish.)

14           Thank you very much.

15           As I was saying, now, I will be dealing with  
16 the permits for the processing activity. As you may  
17 have heard, and based on what they indicated, there  
18 were two alternatives. One was to use Mallay for  
19 processing. This is within the Mallay property that  
20 they wanted to acquire with the transfer contract with  
21 Buenaventura. The other one is through third-party  
22 alternatives for processing.

1           As to the Mallay Plant, in the Reply, we saw  
2 the draft contract, the draft contract for the  
3 transfer of the unit establishes conditions for the  
4 closing, that is the transfer of the unit, and also  
5 for the determination, that is when the transfers  
6 are--when the permits are transferred, and the last  
7 payment is made.

8           Mr. Bravo mentioned that the only  
9 requirement to be able to carry out the transfer was  
10 the assignment of the easement contract with the  
11 Mallay Community.

12           But if we look into the contract, we are  
13 going to be able to see that the closing conditions  
14 for both parties were about 10 to 12, and based on  
15 what we saw in the--on the record, the only one that  
16 is thereby analyzed is the one that has to do with the  
17 allocation, the assignment of rights for these way.

18           The second one is not addressed, and these  
19 are things that may take some time, once again, in my  
20 analysis, and also for the benefit of Invicta, I have  
21 assumed that in March 2019, everything was concluded.

22           But it is important to say that the record

1 does not have any documents that prove that.

2           In addition to this, and I think that this  
3 is the most important item that applies to this  
4 assumption, and the next one, what was going to be  
5 processed at these plants, the ore to be extracted  
6 from the Invicta project.

7           As we have indicated in the first section,  
8 with the mining permits, the closest time that I, in  
9 my opinion as an expert, independent expert, to have  
10 obtained all of the permits is July 2020. July 2020  
11 would be the earliest when the ore may be processed in  
12 Mallay, and also at third-party plants.

13           In connection with third-party plants, I am  
14 not going to go into details. This is in my report,  
15 but let me point out that based on the documents that  
16 I reviewed for three plants, Altagracia, San Juan  
17 Evangelista and Huancapeti II, there was no reason  
18 for them to have the permits, and the permits were  
19 obtained later.

20           So much so that I mentioned about a  
21 beneficiation concession and at one point this  
22 concession was only obtained in October 2019. That

1 means that they didn't have it before this date.

2           Something that was striking when I reviewed  
3 the record is that there were some sample contracts  
4 saying with the three plants saying that the three  
5 plants had the permits, but when I went to the  
6 exhibits sent to me, I went there, but there were no  
7 permits. It has been very difficult to review that  
8 all of the permits had been granted, and it basically  
9 means--based on what I saw, that they did not have the  
10 permits.

11           Now, thinking of permits, my conclusion is  
12 that mining and processing could have only been  
13 started under a conservative view, view, that is the  
14 one that I would have recommended to any of my clients  
15 in July 2020.

16           Over the last four minutes left, I will try  
17 to quickly explain the social license.

18           I know it is a complex concept. I know that  
19 it is something that has been discussed, and I would  
20 like to just gather some ideas.

21           The social license is a goal for the  
22 companies to attain, but this is not only a goal for

1 the mining companies, but this goal is met by applying  
2 certain principles and tools.

3           This second portion, and as it is explained  
4 in my report, is regulated under the Peruvian  
5 regulation, and we will be analyzing this.

6           But I would like to say that literature also  
7 establishes, in addition to legislation, that trust is  
8 a very important component. Trust and acceptance that  
9 is attained between the mining company, and the social  
10 environment for the project, and it is considered  
11 social because the project will have an impact on it.

12           General provisions in Perú, beyond the  
13 mining regulation, indicate that there are some  
14 principles to develop these tools. For example,  
15 sustainable development, citizenship participation,  
16 but the most important point has to do with the  
17 regulations of the mining framework work.

18           As I mentioned before, for mining, I do need  
19 a guideline, and that guideline does not only include  
20 the environmental aspect, but a great deal of the  
21 social aspect.

22           So it covers the direct, social influence

1 area, a baseline to determine who is included; also,  
2 identification of impacts, and a Social Management  
3 Plan that used to be called community relations plan.

4 All of the commitments are mandatory, and  
5 they need to be complied with.

6 As part of the instruments for environmental  
7 management. This is a direct, social management area  
8 that is not modified in the first or second ITS, and  
9 as part of the direct social influence, we have the  
10 Parán Community. In this drawing, map presented by  
11 the company itself, we see that there is a boundary  
12 problem between Lacsanga and Parán.

13 These are some of the ideas that do have an  
14 impact on trust. For example, the sanction-imposing  
15 proceedings that lead to damages, the noncompliance  
16 with the community relations plan, and this is one of  
17 the tools to be able to obtain the license.

18 At some point we heard that these should not  
19 be taken into account, because the project was  
20 suspended. In order to suspend the project, you also  
21 need a permit. In Perú, we do have a great deal of  
22 regulations, and we do not see that permit.



1           So within that deadline, this community  
2 relations plan had to be met.

3           The last sanction has to do with the  
4 catchment of water. Without permit, the company was  
5 obtaining the water without permit.

6           To conclude, I only have two slides left,  
7 and I would like to answer five, brief questions.

8           Was it important for Parán to participate in  
9 the project? Yes. Because it was a social influence  
10 area. It was direct influence. It was an important  
11 stakeholder. As you have seen, there were some  
12 components, and this is something that has already  
13 been discussed. Access to Parán on the territory.

14           PRESIDENT CROOK: Ma'am, your time has  
15 expired. We have disrupted you, but if you've got a  
16 minute or two to finish up, please.

17           THE EXPERT: Thank you. Thank you very  
18 much.

19           The second one is Invicta led to  
20 expectations within the community, they may have  
21 generated the expectations, in my opinion. The answer  
22 is, yes, because it was part of the influence area,

1 and it also indicates that there is an access that  
2 will be on its land.

3           Since it is the area of influence, Parán  
4 considers, and this is also regulated, that all of the  
5 benefits and commitments are thereby established will  
6 also be for them.

7           Third question, that we have already heard.  
8 Would they have entered into any kind of agreement? I  
9 have two different items. Agreements for surface  
10 lands. Here we have the appearance of a component  
11 that has to do with the land. One of them is access  
12 from the legal point of view, you need an agreement.

13           As to the social license, yes, the social  
14 license is not a document, a permit, an agreement that  
15 is signed, but as I mentioned before, there are tools,  
16 and those tools, those agreements that are being met  
17 throughout time need to be in writing so that there is  
18 a measurement of how one is doing or complying or not.

19           Did Invicta comply with their social  
20 obligations based on the information that I had access  
21 to as part of the record, it was determined that they  
22 did not comply.

1           OEFA determined that there was  
2 noncompliance. There was a late payment of an amount  
3 that was agreed in 2017. Here, Mr. Bravo also  
4 indicated that and Mr. Castañeda indicated that that  
5 payment was conditioned. There were no conditions  
6 attached. It said 45 days, but it was paid throughout  
7 the year.

8           As I said, water was obtained without a  
9 permit, and that clearly impacted the credibility and  
10 trust.

11           To conclude, I believe that in this case we  
12 see these--significant mistakes--

13           PRESIDENT CROOK: You're two minutes over.  
14 I think we can probably surmise what your conclusions  
15 might be. So it might really be best if you would end  
16 at this point.

17           THE EXPERT: Sure.

18           PRESIDENT CROOK: Okay. Thank you.

19           All right.

20           SECRETARY: Microphone, sir.

21           PRESIDENT CROOK: The usual procedure. You  
22 will now be examined by counsel for Claimants. You

1 will then have the opportunity for redirect by  
2 Respondent.

3 I turn the questioning over to counsel for  
4 the Claimants.

5 MR. FODEN: Thank you, Mr. President.

6 CROSS-EXAMINATION

7 BY MR. FODEN:

8 Q. Good afternoon, Ms. Dufour.

9 Let's begin with a ground rule. Now the  
10 Tribunal's ruling, and some of the uncertainties that  
11 have surrounded that ruling that we just explored  
12 creates a slightly tricky situation in the context of  
13 a cross-examination. Because you have adduced certain  
14 annexes to your report that discuss, shall we say,  
15 both old and new requirements.

16 I may want to ask you about components of  
17 those documents dealing with the old requirements.

18 Do you understand?

19 A. Yes, I understand, but I--

20 Q. It was just a simple question, ma'am.

21 There might be times today when I want to  
22 test the methodology--

1       A.     Okay.

2       Q.     --underlying your assembly of those annexes  
3 as a whole. But I want to make clear to the Tribunal,  
4 to the Respondent, and the record that in so doing, we  
5 are not waiving the Claimant's rights with respect to  
6 the exclusion of any of the so-called new  
7 requirements.

8             Now, Ms. Dufour, in the last paragraph of  
9 your report, you say that your report is objective,  
10 and independent, and you have no conflict.

11            Is that correct?

12       A.     Yeah. That's correct.

13       Q.     You have been a partner at Hernandez & Cía  
14 since 2018; correct?

15       A.     Correct.

16       Q.     Presumably, your partnership shares profits  
17 like any other law firm; correct?

18       A.     Correct.

19            SECRETARY: I'm sorry to interrupt. I know  
20 this is going to be an issue because the witness is  
21 listening to you in English, and then she's answering  
22 in Spanish, and when that happens, we need a pause

1 between the two of you, because the interpreters  
2 cannot catch up.

3 MR. FODEN: I think it would be easier,  
4 then, if perhaps the witness listened to me in English  
5 on the headphones.

6 MR. GRANÉ: She can decide for herself what  
7 she is going to listen to, Mr. President.

8 MR. FODEN: It's for the benefit of the  
9 interpreters, Mr. Grané.

10 MR. GRANÉ: I suggest you make a pause,  
11 then.

12 PRESIDENT CROOK: All right. How best do we  
13 solve the mechanical problem that we have here.  
14 What's your suggestion?

15 THE INTERPRETER: They just need to make a  
16 small pause.

17 SECRETARY: When Mr. Di Rosa was  
18 cross-examining earlier--there are ways. So if  
19 Ms. Dufour, for example, looks at the transcript in  
20 the language in which she's not listening, then she  
21 will know when the interpreters have stopped.

22 The same for Mr.--

1 MR. FODEN: Foden. That's all right.

2 SECRETARY: I'm sorry. Mr. Foden.

3 PRESIDENT CROOK: All right. So everyone  
4 will keep an eye on the transcript and will not begin  
5 their next answer or question until the transcript  
6 stops rolling.

7 Is that agreeable all around?

8 MR. FODEN: Sure.

9 THE EXPERT: Excellent.

10 BY MR. FODEN:

11 Q. So if a partner, for instance in your firm's  
12 banking and finance department brings in a big mandate  
13 that generates significant fees, all of the partners  
14 are going to share in those fees; correct?

15 A. Yes, but I was hired.

16 (Clarification requested by the Spanish  
17 court reporter.)

18 THE EXPERT: What I was saying is that in  
19 this case, I have been hired as an independent expert  
20 on a personal basis.

21 Q. How did your partners react to that?

22 A. They have not had any issues because I have

1 explained to them that it was an important opportunity  
2 for me, and usually, I have worked this outside my  
3 business hours.

4 Q. So you can make profits for yourself that  
5 you don't contribute to the partners applying your  
6 legal expertise?

7 A. Yes. [For example, also within the legal  
8 firm], there are persons who are [act as] arbitrators  
9 and have direct income [from those activities].

10 (Clarification requested by the Spanish  
11 court reporter.)

12 THE INTERPRETER: Interpreters are two  
13 seconds behind her, so she continues to answer at the  
14 same speed. I mean she answers directly we do not  
15 have the two seconds we need for us to finish. We can  
16 finish but the court reporters cannot transcribe what  
17 we are saying. We are occupying the channel that they  
18 need to write on.

19 PRESIDENT CROOK: We are again having the  
20 same problem. We have--let's keep an eye on the  
21 transcript, and do not begin to speak until the  
22 transcript stops rolling.



1           Let's see if we can make that work.

2           SECRETARY: Ma'am, because you are speaking  
3 in Spanish, you would need to look at the English  
4 transcript. When that stops rolling, that's when you  
5 would start answering.

6           THE EXPERT: Thank you.

7           BY MR. FODEN:

8           Q. Ms. Dufour, your law firm has a procedure in  
9 place for running conflicts checks; correct?

10          A. Correct.

11          Q. And you are recognized in Chambers Partners  
12 and Legal 500 for both mining and environment;  
13 correct?

14          A. Yes. That is public information.

15          Q. I don't have the Legal 500 on record, but I  
16 looked at it.

17           SECRETARY: Sorry, Mr. Foden. I can see the  
18 interpreters. Let me see. Count one, two, three,  
19 once Mr. Foden finishes the question, you have to  
20 count one, two, three in your head before you start  
21 because it's just overlapping, and then the  
22 record--neither the audio or neither the transcript is

1 going to be able to reflect that if we keep  
2 overlapping.

3 I apologize.

4 BY MR. FODEN:

5 Q. We don't have the Legal 500 on record. I  
6 looked it up. I looked up your firm's profile, and I  
7 can't help but notice that the Republic of Perú is  
8 listed as a key client of your firm in two different  
9 locations; correct?

10 A. I am not certain. I know that the law firm  
11 has advised the Republic, but I would like to state  
12 that to date, there is another partner that is an  
13 independent expert against the Republic.

14 Q. Now, according to the Legal 500, your firm's  
15 mandates for Perú include advising it on a \$5 billion  
16 sovereign bond issue, in both the US and European  
17 markets, and handling two ICSID cases.

18 Were you aware of those engagements when you  
19 prepared your expert report?

20 A. I know that the law firm has advised local  
21 counsel, the Republic of Perú. I do not have the  
22 details on that case because I have not participated,

1 and I have not been part of that--of the area--and the  
2 area that I lead has not been part of that, and that  
3 is the mining area.

4 Q. What about the bond issue?

5 A. Not that, either. I have no knowledge.

6 Q. You didn't know that your law firm was  
7 handling the issuance of a \$5 billion sovereign bond.  
8 One, two, three.

9 A. (In English.)

10 Thank you, Mr. Foden.

11 (In Spanish.)

12 Is what I have said is that I know that the  
13 law firm has been local counsel of the Republic, and I  
14 have also said that I do not have the details. This  
15 is the second time I say the same thing.

16 Q. Respectfully, ma'am. It's not. I'm not  
17 talking about acting as local counsel in ICSID cases.  
18 I think you need to listen to the question.

19 The question was about the bond issue, which  
20 was from 2021. While you were a partner at the law  
21 firm, how many partners are there in your law firm?

22 A. 20.

1       Q.     So you're going to tell me that you didn't  
2 know that two years ago one of those 20 partners was  
3 handling a bond issue of that magnitude?

4       A.     Yes, that is what I'm telling you.

5       Q.     You realize that the two cases that you  
6 referenced, the ICSID cases, are currently pending?

7       A.     I did not refer to them. You mentioned to  
8 them, and no, I do not know about the status of those  
9 cases.

10      Q.     Ms. Dufour, how did those three engagements  
11 manifest themselves when you ran the conflicts check  
12 for this mandate as an expert?

13      A.     When I did the consultation to be an  
14 independent expert, there was a comment that there  
15 were some cases, and it was verified by means of the  
16 conflict committee. I'm not a member of that conflict  
17 committee, that in this case there was an independent  
18 expert on a regulatory issue.

19             To be an independent expert on a regulatory  
20 issue would not mean a conflict.

21      Q.     Did you review Procedural Order Number 1 as  
22 part of your mandate?

1       A.     Could you please show it to me to review?

2       Q.     No. I asked you a question if you reviewed  
3 it.

4       A.     I do not know what rule you are referring  
5 to. That's why I'm asking you to see it to be able to  
6 confirm.

7       Q.     Well, I'll tell you that Article 15 of our  
8 Procedural Order Number 1 incorporates the IBA rules  
9 of the taking of evidence in international arbitration  
10 as guidelines. Are you familiar with those rules?

11      A.     Would you please show me that to review.

12      Q.     Are you aware of the existence of the IBA  
13 Guidelines. It's a question of existence, not text.

14      A.     I am aware that they exist. I am not very  
15 aware of the contents. This is the first time that I  
16 participate in an international arbitration.

17      Q.     But you say in your CV that you have  
18 experience in the mining sector relevant to the  
19 potential position for participation as a mining  
20 expert in international arbitration.

21             Does that mean that this part of your CV was  
22 simply aspirational?

1       A.     Would you please show me that portion.

2       Q.     I'll have to come back to it. One of my  
3 colleagues will certainly pull it up.

4             But in the meantime, I'll come back to the  
5 guidelines.

6       A.     Okay.

7       Q.     On--

8             (Comment off microphone.)

9       Q.     Does this expression simply mean that you  
10 were aspiring to be an expert?

11      A.     No, no, no.

12             (In Spanish.)

13             No. Would you please show me the Spanish  
14 version. There is a problem here with the written  
15 translation.

16             It says, experience in the mining sector  
17 relevant to the potential commissioning for  
18 participation as a mining expert in international  
19 arbitration.

20             Here I was asked to issue a regulatory  
21 opinion. Then what I am including here is my  
22 experience, regulatory experience in Perú to see if

1 that qualified to be able to have this task.

2 Here, I'm sorry, I'm not saying that I am an  
3 expert in international arbitration.

4 Q. No one said you were an expert in  
5 international arbitration, and the translation,  
6 despite the fact that I don't speak Spanish, says  
7 effectively exactly what I asked you.

8 Is that part of your CV simply  
9 aspirational--

10 A. Yes.

11 Q. Wait until I finish asking the question.

12 Is that part of your CV simply aspirational?

13 A. No, it's not aspirational.

14 Here I'm saying what my experience is as to  
15 regulatory issues in Perú to see if I can comply with  
16 this request or not.

17 I do not understand the doubt here.

18 Q. What request are you talking about?

19 A. I did not understand your question.

20 Q. (Overlapping speaker with translation.)

21 Have you ever served as an expert in  
22 international arbitration before?

1           A.     No.

2           Q.     (Overlapping speaker with translation.)

3                   So then why do you have that on your CV?

4           A.     Mr. Foden, here it says experience in the  
5 mining sector relevant to a potential--potential  
6 participation. I was asked whether I had regulatory  
7 experience in Perú.

8           Q.     (Overlapping speaker with translation.)

9                   So Perú asked you to include that in your  
10 CV, then?

11          A.     I do not understand why you're putting words  
12 in my mouth. No. The answer is no.

13          Q.     (Overlapping speaker with translation.)

14                   Well, ma'am, the translation says that you  
15 were asked whether you had regulatory experience  
16 relevant to arbitration.

17                   Who asked you?

18          A.     No. Okay. Let me read this again to see if  
19 we are able to understand each other.

20                   Could you please show this Spanish version  
21 and of this version, please.

22                   ARBITRATOR GRIFFITH: I'm the only--



1 MR. FODEN: I'd love some help, please.

2 ARBITRATOR GRIFFITH: I'm the only  
3 non-Spanish speaker, but I do speak the English  
4 language, but I think you can rely upon the Tribunal  
5 to look at the point that you obviously are making--

6 MR. FODEN: Certainly.

7 ARBITRATOR GRIFFITH: --to form the view as  
8 to the proper interpretation, and it's our view on  
9 interpretation that counts rather than this witness's.

10 MR. FODEN: Indeed.

11 BY MR. FODEN:

12 Q. So Ms. Dufour, perhaps if you haven't served  
13 as an expert before, I can tell you that there are  
14 these things called the IBA rules on the taking of  
15 evidence in international arbitration, and they serve  
16 as guidelines under the procedure of these  
17 proceedings.

18 They're not rules, but they're guidelines.

19 A. Okay.

20 Q. Do you understand?

21 Pursuant to Article--I'll read these rules  
22 to you. If my colleagues across the room want to tell

1 me that I got them wrong, they can come do that, but  
2 I'm not going to pull the document up. It's not part  
3 of record. It's incorporated by reference.

4 Pursuant to Article 5.2(a) of the IBA rules,  
5 an expert is required to present a statement regarding  
6 a present and past relationship with one of the  
7 parties.

8 But you made no disclosure in these  
9 proceedings of your present and past relationship with  
10 Perú, did you?

11 A. That is correct. Because I have not had a  
12 present nor a past relationship with Perú.

13 As you indicated very well, at any rate,  
14 Hernandez is the one that has had it, and I was the  
15 one hired. I had never provided services for the  
16 State in the past.

17 As I said, this is the first time that I  
18 have participated in international arbitration.

19 Q. So in your presentation, the second line is  
20 that you're a partner at Hernandez & Cía. You have  
21 already told me that you share profits with your  
22 partners in that law firm, and that law firm has

1 represented or is representing Perú in three different  
2 engagements.

3 Now you're going to tell me that you have no  
4 relationship with the Republic of Perú.

5 How do we get there?

6 A. I do not have it. I do not have any  
7 relationship with the Republic of Perú.

8 Q. Do you get profits from Mr. Hernandez's fees  
9 generated and paid by the Republic of Perú?

10 Do you share in those profits?

11 A. What I receive are the proceedings for my  
12 participation in Hernandez. That's what I receive,  
13 those profits.

14 Q. And you don't think that forms a  
15 relationship with you and the government?

16 A. No, because otherwise I would have relations  
17 with all of my clients, and that's not the case.

18 Q. They're firm clients, ma'am. You're part of  
19 the firm. You're part of the partnership.

20 A. Mm-hmm.

21 Q. I need a verbal answer.

22 A. I am a partner of the law firm, indeed. I

1 do have a stake there. That does not mean that I have  
2 a relationship with each one of the clients of the law  
3 firm.

4 Again, in this case, the engagement was done  
5 in my personal capacity as Ms. Dufour.

6 Q. In Perú, does a lawyer have a professional,  
7 ethical obligation to act on behalf of a firm's--on  
8 behalf of a firm client's best interest?

9 A. Ethically, of course, yes.

10 Q. And you also have a duty of independence to  
11 this Tribunal, don't you?

12 A. I do have a duty of independence vis-a-vis  
13 everyone here because the engagement has been as an  
14 independent expert.

15 If you had hired me to--

16 Q. (Overlapping speaker with translation.)

17 --you had a duty to the Tribunal--

18 A. (In English.)

19 Sorry, can I finish my answer.

20 Q. No, I'd like to ask my next question, which  
21 is do you not see--

22 MR. GRANÉ: Mr. President, the expert is

1 asking for an opportunity to respond. I respectfully  
2 request that the Tribunal make a decision whether she  
3 is allowed to respond.

4 PRESIDENT CROOK: I suggest, gentlemen, that  
5 this kind of sparring on this sort of matter is not  
6 very helpful in this context.

7 Let me just clarify.

8 Ma'am, how do you view your relationship to  
9 this Tribunal?

10 THE EXPERT: Independent and also  
11 independent with all of the parties.

12 If I had drafted this report for Invicta, I  
13 would have put every, exact word.

14 PRESIDENT CROOK: All right. So your  
15 testimony is that the fact that your partner--a  
16 partner in your law firm may act for Perú, in your  
17 assessment, has no effect on your independence or your  
18 report; is that correct?

19 THE EXPERT: That is correct. That is my  
20 answer.

21 PRESIDENT CROOK: So it's for the Tribunal  
22 to assess whether we accept that or not.

1 THE EXPERT: Exactly.

2 PRESIDENT CROOK: All right. Why don't we  
3 move on.

4 BY MR. FODEN:

5 Q. I'd liking to ask you about the instructions  
6 that you were given for your report.

7 Now, we've talked about those IBA Rules, and  
8 Section 5.2(b) of those rules requires you, in your  
9 report, to include a description of the instructions  
10 pursuant to which you're providing your opinions. You  
11 didn't include a discussion of any such instructions  
12 in your report, did you?

13 A. (In Spanish.)

14 Let me review. Paragraph 2 of my report,  
15 this report, this legal report is divided into two  
16 sections. The first section analyzes regulatory  
17 aspects.

18 Paragraph 3, the second section is an  
19 analysis of the social license.

20 That is the engagement that I have had.

21 Q. Is that what Perú instructed you to opine  
22 on?

1       A.       The request that I received from Arnold &  
2 Porter was to prepare an independent expert report  
3 that analyzes regulatory aspects of the Invicta  
4 project and the social license. That is the request I  
5 got from A&P.

6       Q.       You're aware, ma'am, that Perú relies on  
7 your report to show that, absent the blockade, my  
8 client would not have been ready--and I'm quoting from  
9 the Rejoinder here, Paragraph 311, "...would not have  
10 been ready for lawful commercial exploitation until,  
11 italics, July 2020, more than a year-and-a-half after  
12 the start date of the Claimant's repayment obligations  
13 to PLI Huaura."

14               My question is: Did you know that this was  
15 the purpose for which Perú was going to utilize your  
16 report?

17               THE INTERPRETER: She needs to start again.

18               BY MR. FODEN:

19       Q.       You have to start again. You really have to  
20 take a pause after I ask you a question.

21               PRESIDENT CROOK: Ma'am, we had an  
22 interpretation overlap issue there. So we need to

1 have a little pause, and do you need the question  
2 repeated?

3 THE EXPERT: (In English.)

4 No.

5 PRESIDENT CROOK: Let's give your answer  
6 again, please.

7 THE EXPERT: (In Spanish.)

8 When I was hired by A&P, I know that I was  
9 not the only Peruvian lawyer that was contacted. A  
10 number of lawyers were contacted and were assessed to  
11 see whether we could do this engagement.

12 What I was asked to do in a very objective  
13 manner, was the following: Can you examine the  
14 regulatory situation in this case, and can you examine  
15 this concept of social licensing.

16 That's the only information that I received,  
17 and a number of documents were provided to me. At the  
18 time I did not have a lot of information about this  
19 case. We held a conference call with A&P, and with  
20 the information that I had, I made general comments,  
21 and I said, okay, I was suitable to conduct a  
22 regulatory evaluation, because that was part of my



1 expertise.

2           Also, I could assess the social license,  
3 because that's also part of my expertise.

4           And that was what was told to me, and that  
5 was the basis of my engagement, and on the basis of  
6 that, I prepared my report.

7           BY MR. FODEN:

8           Q.   We'll certainly come to that on the social  
9 license.

10           But I wanted to know--at Paragraph 144 of  
11 your report--actually, I think that's in the Spanish.  
12 It's Paragraph 143 in my English, you make reference  
13 to a footnote in a document. It's a draft of the PPF  
14 Agreement with Pandion, and it's in Tab--but I happen  
15 to notice that you don't actually cite that document  
16 in your list of Annexes.

17           A.   Let's see--

18           Q.   (Overlapping speaker with translation.)

19           --ask a question, which was a poor question,  
20 admittedly.

21           Now, you refer to the draft agreement of the  
22 PPF, but not the actual agreement.

1           Did you at any point see the PPF Agreement?

2           A.     I have seen the document later on. In  
3 connection with the draft, I am citing the portion  
4 that I review is the annex on permits. Unfortunately,  
5 in the case file, we didn't have a lot of information  
6 of the permits that Invicta has had and which ones  
7 were lacking.

8           Here at Annex H, you can see the ones that  
9 were obtained to date and the ones that were lacking  
10 and which ones were relevant for regulatory issues.

11          Q.     Just asked if you had seen the amendment.

12           Can I now take you to Tab 5 in your bundle,  
13 please. When you looked at that PPF Agreement, did  
14 you only look at the sections dealing with regulatory  
15 approvals, or did you look at the time scales for  
16 repayment?

17           What we have here on the screen--I'll just  
18 let you know what this is--this is a slide from the  
19 opening. You were present for that opening; correct?

20          A.     (In English.)

21           Yes.

22          Q.     Now, my question is, when you looked at the

1 PPF amendment, did you look at the time scales for  
2 repayment or did you focus only on the regulatory  
3 section?

4 A. I have looked at a number of permits--I have  
5 looked at a number of documents, excuse me.

6 I have seen these documents and these  
7 timelines, but this has had no impact on my report or  
8 any relationship with my report.

9 Q. I didn't ask you about its impact on your  
10 report.

11 Sorry, I haven't asked a question yet. I  
12 just asked you if you had looked at the time scales  
13 for repayment under the PPF Agreement.

14 Have you?

15 A. (In English.)

16 Yes.

17 Q. Now, if you look at the screen, on the next  
18 page, you can see that the draft amendment to the PPF  
19 agreement anticipated that the Mallay transaction  
20 would be completed in November 2018, and the first  
21 gold repayment to Pandion would take place in  
22 September '19, after a nine-month grace period.

1 Do you see that?

2 A. Yes, but--

3 (In Spanish.)

4 --I hadn't seen this before.

5 Q. You were here on Monday; correct?

6 A. Yes.

7 Q. So you weren't looking at the screen when  
8 this was up there?

9 A. I'm referring to the documents, the drafts.  
10 This I had not seen.

11 Q. Ma'am, you rely on this document in your  
12 report. Not this slide, the underlying document.

13 A. I think my report is very clear when it says  
14 that I have relied on Annex H, and no other sections.

15 Q. Where does it say that?

16 A. 144.

17 That's the most recent statement by Invicta  
18 that identified the documents of the case in  
19 connection with this component, hydrocarbons, is the  
20 one in Schedule H of the draft that we are speaking  
21 of.

22 Q. So did you look at the whole draft

1 amendment, or did someone from Perú's legal team just  
2 hand you that Section H?

3 A. No. I had access to the whole document, but  
4 I focused on Schedule H.

5 Q. So you didn't see the schedule for  
6 repayment, then?

7 A. No. I do not recall having seen it. I  
8 focused on permit-related matters.

9 Q. So, if we look at the nine-month grace  
10 period in line with that, since Lupaka obtained  
11 Mallay's Community consent to proceed with the Mallay  
12 transaction in March 2019, would you agree with me  
13 that the first repayment obligation would have been  
14 due in January 2020?

15 It's on the table. I can represent to you  
16 that's what it says. Do you see that?

17 A. Mm-hmm.

18 Q. Now, again, I'm not sure what your  
19 calculation of the time frames are following the  
20 Tribunal's ruling, but at Paragraph 189 of your  
21 report, you refer to what you call an optimistic  
22 scenario for the start of mining as early as December

1 2019, and the start for processing activities as early  
2 as January 2020; correct?

3 A. Excuse me, Mr. Foden. I did not answer the  
4 question you asked me.

5 Q. You said mm-hmm.

6 A. That's when you asked me whether I was  
7 looking at the document. I said, yes, I'm looking at  
8 the document, but I haven't responded to your  
9 question.

10 Q. Okay. We'll go back.

11 Did you--

12 A. Gracias.

13 Q. Do you see on that table in front of you,  
14 when the first repayments are due?

15 A. Yes. But I think that here this is based on  
16 an incorrect premise.

17 Here, it is said in March of 2019--

18 Q. You saw them.

19 PRESIDENT CROOK: I believe she was giving  
20 an answer, was she not?

21 THE Expert: Thank you.

22 (In Spanish.)

1           As I was saying, I think that this document  
2 is based on an incorrect premise. Here it is said  
3 that in March 2019, the consent would be received. As  
4 I explained in my presentation, the assignment of the  
5 contract with the community was a requirement for the  
6 closing, but there were other requirements that have  
7 not been assessed or evidenced in the file.

8           I don't know if this is another document or  
9 not. I cannot talk about a presumption that doesn't  
10 have any kind of merit.

11           Excuse me.

12           BY MR. FODEN:

13           Q.    Ma'am, we all know what your case is on the  
14 permits, and we will come to them. Trust me.

15           For now, I'm just establishing that the  
16 document set out a repayment deadline--first repayment  
17 deadline of January 2020.

18           Can we agree that the Mallay consent came in  
19 March of 2019?

20           A.    No. What happened in March 2019 was just  
21 the assignment of the servitude of the easement of the  
22 Mallay Community. That it was only the assignment of

1 the easement of the Mallay Community. That was the  
2 only thing.

3 Q. Well, that's--frankly, that is not an issue  
4 that's been in dispute so far as I'm aware, that the  
5 consent was given in March of 2019.

6 But it doesn't matter.

7 For purposes of our discussion, I just want  
8 to establish that your optimistic scenario has the  
9 start of mining activities in December 2019, and the  
10 start of processing activities in January 2020; right?

11 A. That optimistic scenario, as stated in my  
12 report, does not consider the water use permits of the  
13 stream that Invicta needed for mining purposes.

14 Consequently, the conservative timeline, the  
15 real timeline, would be between June and July 2020.  
16 That's what I said in my report, and it is clear that  
17 Invicta needed to use the water, so much so that it  
18 was using the water without a permit.

19 Q. I understand your submission, Ms. Dufour.

20 So let's take your optimistic time frame.  
21 We don't need to talk about your conservative time  
22 frame. We know you do want to talk about it.



1           But on that optimistic time frame, and  
2 looking at the table that we had out, the repayment  
3 obligations would have been made, maybe with a month  
4 lag time, on your optimistic scenario.

5           Do you agree?

6           A.     I agree. But without any use of water.  
7 There wouldn't be any use of water.

8           Q.     You know that Pandion is a lender, because I  
9 know you work in commercial actions as well--as a  
10 rational, economic actor, they'd wait a month or two,  
11 and provide forbearance and maybe provide penalties  
12 and interest if we were perhaps a month late making  
13 those repayment obligations?

14          A.     That is not part of my report. I have not  
15 looked at that information in detail. Consequently, I  
16 cannot give you an answer to your question.

17          Q.     Fair enough.

18                 Now, I want to start our discussion about  
19 the regulatory process with a general chat about the  
20 various approaches that you take to regulatory  
21 deadlines, and then we're going to come to what we  
22 consider to be the three outstanding matters.

1           At Paragraph 22, you refer--and I heard you  
2 say this in your presentation--to the difference  
3 between the legal time frame and the real time frame  
4 that's required to modify relevant permits; correct?

5           A.     Correct.

6           Q.     You explain that the legal time frame, and  
7 I'm using the English here, is the term that the  
8 regulation establishes for the procedure of the  
9 permit; whereas the real timeframe is the term that in  
10 practice, i.e., the time in reality that it takes to a  
11 carry out this procedure; correct?

12          A.     That's correct.

13          Q.     Ms. Dufour, would you agree with me that the  
14 administrative procedure in Perú as a general matter  
15 is governed by the law on general administrative  
16 procedures, Number 27444?

17          A.     That's correct.

18          Q.     You make no reference to that law anywhere  
19 in your report; correct?

20          A.     I should look at it.

21          Q.     I can represent to you that you do not and  
22 on redirect, my colleague might want to take you to

1 it.

2 Now, I'm curious, though, taking my  
3 representation, why would you provide a legal opinion  
4 on Peruvian regulatory law without making reference to  
5 the administrative lex generalis. Doesn't it make  
6 sense to start at the wider area, and then narrow down  
7 on the specific?

8 A. Let me explain.

9 We have specific laws in Perú in connection  
10 with certain matters. In this case I have relied on  
11 specific legislation. When the lex specialis doesn't  
12 really have regulations that are applicable, you  
13 supplementarily apply the more general rule.

14 What I have done is to apply the one that  
15 imposes no problems, and is within the legal  
16 framework.

17 Q. So I'm going to read out some provisions  
18 because you didn't include the general administrative  
19 law as an attachment to your report.

20 You can tell me if you think I've gotten  
21 them wrong.

22 So Article 66 deals with the right of the

1 administered. It says, "The following are the rights  
2 of the administered with respect to administrative  
3 procedure." At Subsection 7 it says, "The deadline  
4 set for each service or administrative act to be  
5 complied with and to demand compliance from the  
6 authorities."

7 The next one that I will read is Article  
8 142, which says the mandatory nature of deadlines and  
9 terms.

10 At 142.2, it says, "All authorities must  
11 comply with the terms and deadlines under their  
12 responsibility as well as supervise that subordinates  
13 comply with those at their own level."

14 At 142.3, "It is the right of the  
15 administered to demand compliance with set deadlines  
16 and terms for each service."

17 So, my question to you is very specific,  
18 Ms. Dufour.

19 Does my unofficial translation reflect what  
20 the law says, in essence?

21 A. What you have read is correct. I also have  
22 to say that as I explained in my presentation, if the

1 deadlines are not complied with, the administered  
2 party has a remedy, which is to put forth a challenge.  
3 I have looked at all of the permits in the Invicta  
4 file. A lot of them have gone over the deadline, and  
5 I have never seen Invicta issue a complaint or some  
6 kind of challenge. In all of the cases, it has waited  
7 for the authority to rule on this, and it has gone  
8 beyond the deadlines included or provided for in the  
9 law.

10 Q. I accept your submission, ma'am.

11 But the provisions that I just read are  
12 mandatory for every administrative deadline that  
13 you've described in your report; correct?

14 A. That's correct, but like I said, in the  
15 case, the administered party is the one that has the  
16 possibility of applying for a remedy.

17 The administered party is the one that can  
18 do it, or wait until the authority rules on this, as  
19 Invicta did in connection with all of the prior  
20 permits that it processed.

21 Q. So when you talk about your, quote,  
22 real-time estimates, you're referring to the fact that

1 the Peruvian agencies frequently do not meet their own  
2 legal requirements under the general administrative  
3 law; correct?

4 A. That is correct.

5 What I've said is that I have used deadlines  
6 and general practices as used by the mining industry,  
7 and that in my experience, that's the correct thing to  
8 do when you are trying to establish a permits  
9 strategy.

10 Q. So effectively then, the time frames that  
11 you refer to as real are just as accurately, illegal  
12 time frames.

13 So what I want to know is when a foreign  
14 mining investor goes to raise funds or makes an  
15 investment, enters into a local agreement, you're  
16 saying that they don't have the right to look at the  
17 law to determine what those deadlines should be  
18 relevant to that agreement; is that your submission?

19 A. I have to clarify two things here I think.  
20 This is the second time in this arbitration that I  
21 hear people saying that the deadlines I've used are  
22 illegal. That's incorrect.

1           I have used average deadlines, and I have  
2 said that there are certain deadlines provided for in  
3 the law, and if they're not complied with, the  
4 administered party has the possibility to deem that  
5 permit as rejected, and therefore, bring an appeal.  
6 That's important to state.

7           These are not illegal deadlines.

8           Please repeat the second part of your  
9 question.

10          Q.     So effectively, if a foreign investor  
11 invests in Perú, and they want to know how long it's  
12 going to take them to get a certain permit, they have  
13 to hire you to know what the deadline is going to be?

14          A.     Not exactly.

15                 They could also go ahead and verify the  
16 deadlines. The approval of permits, that's public  
17 information. You can go to the web pages of the  
18 different agencies, and see how long the agencies take  
19 to approve the permits.

20                 Yes, in general, many of the mining  
21 companies, the foreign mining companies come into  
22 Perú, and hire a lawyer, but many of them work

1 in-house, and what they do is to verify, on average,  
2 how long these things take.

3 Then on the basis of this, they conduct  
4 their programming, and that is what I would recommend  
5 an investor to do.

6 Q. Now, I hope you will indulge me for a  
7 moment, Ms. Dufour, and we explore the timelines that  
8 you say shouldn't apply, the legal time frames.

9 But if you are wrong, and Perú could be  
10 trusted to abide by its own laws, I want to talk about  
11 what the deadlines would have been for this project.

12 Can we agree to proceed on that basis?

13 A. If the legal deadline is used, it's not that  
14 the permit is deemed approved. In that case, the  
15 administered party may present an appeal for  
16 challenge. That takes time. Then to submit that  
17 challenge to the same level, there would be a  
18 reconsideration, and then new evidence should be  
19 submitted, or it could issue an appeal, or rather,  
20 bring an appeal to go to the higher level.

21 In my experience, that takes longer than the  
22 average timelines.



1           If you are asking me to take the  
2 consolidated text deadlines, and to take those  
3 deadlines as compliance, that would be illegal.  
4 Because like I said, the administered party may deem  
5 that the permit has been rejected, and not granted.

6           Q.     Ms. Dufour, I know that you're a Professor  
7 of the faculty of law in the University of Perú, but  
8 we don't need a lecture on the process.

9           The question I asked was much more simple.  
10 Could you and I go through an exercise where I ask you  
11 about deadlines under the law?

12          A.     I think that exercise cannot be done,  
13 because it would be completely and absolutely  
14 hypothetical.

15                You are asking me to assume a number of  
16 hypotheticals, to take a legal deadline, and then to  
17 see how long the company would take to prepare  
18 documents to lodge an appeal, and then to go and do  
19 another hypothetical to see how long the higher  
20 authorities would have taken to solve that issue.

21                I think that what you are asking me to do is  
22 a hypothetical on a hypothetical. I don't think that

1 this adds anything in this case.

2 Q. That's very clear.

3 But let's look at the slide--the  
4 second--excuse me, the first slide that's at Tab 5.

5 So what I need to understand from you is  
6 that maximum legal time frame. Those just have  
7 absolutely no relevance, except for the few times in  
8 your report where you do say they actually meet  
9 reality; is that right?

10 A. What I'm saying, once again, is that one  
11 reaches this deadline established in the law. The  
12 administered party may decide to consider the permit  
13 denied, and can then appeal. It cannot consider it as  
14 approved.

15 Q. Right.

16 So basically, it's not the deadline, because  
17 you always have to add an appeal, and you have to wait  
18 for the appeal to be heard, and then that would be the  
19 real timeline, basically, if you were to abide by the  
20 law?

21 A. If you want to follow the rules that are  
22 established in the law, if there is negative silence,

1 as in these cases, and if you get to the maximum term,  
2 then what you can do is file an appeal.

3 This is not--I'm--just the last year, two  
4 years, these are the general rules that exist for a  
5 long time.

6 And it's one of the first issues that  
7 investors who come to Perú check on. What are the  
8 applicable rules when it comes to permit approval. As  
9 I say, this maximum time does not mean that the permit  
10 is approved. It means that the administered party  
11 has--may assume that the permit is denied, and then  
12 move on to the next level.

13 PRESIDENT CROOK: Let me interject here for  
14 a moment, if I may.

15 I think it's going to be necessary for us to  
16 take our ten-minute break.

17 Let me also observe that heretofore for this  
18 hearing has been conducted with a high level of  
19 courtesy and professionalism, although we've certainly  
20 had our moments, but I think generally it's been  
21 conducted at a very high plane, and I hope we would be  
22 able to bring it to a conclusion on that note.

1           Let's reconvene. We'll be back in ten  
2 minutes.

3           (Whereupon, there was a recess in the  
4 proceedings, 4:02 p.m. - 4:15 p.m.)

5           PRESIDENT CROOK: All right. Let's return  
6 to the cross-examination.

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

8           BY MR. FODEN:

9           Q. I just have one final question, Ms. Dufour,  
10 on the legal time frames.

11           Your view of them--let me make sure I have  
12 this right--assumes that there's either no response,  
13 or there's a rejection. So an appeal is always going  
14 to be necessary; therefore, it's better to just wait  
15 until you get a first instance decision.

16           Is that my understanding of your position?  
17 Is that correct?

18           A. (In English.)

19           It's almost correct.

20           Q. Okay. But after that deadline passes, the  
21 applicant is effectively just waiting for some  
22 arbitrary period that, unless they have consulted you

1 and your crystal ball, they aren't going to be able to  
2 know when they will actually get clarity from the  
3 relevant administrative authority; is that right?

4 A. (In English.)

5 No, that's not right because--

6 (In Spanish)--the average times that I have  
7 considered are not arbitrary times, they are times  
8 that have been obtained mindful of how long it has  
9 taken the authority in similar procedures, and what  
10 has been arrived at as an average.

11 Even when it comes to modifying the EIA, I  
12 consider a term of seven months, even though the last  
13 two experiences I've had, one mine in Cajamarca and  
14 another in the south have had longer terms.

15 But what I have done is to have an average  
16 time between 2017-2019, and the approvals that have  
17 happened.

18 So it's not arbitrary. It's something that  
19 I've constructed based on available information.

20 Q. Let's talk about the methodology behind that  
21 construction.

22 At Paragraph 23 of your report, you explain

1 that the basis for the determination of what you call  
2 the real-time estimates is a review that you undertook  
3 of administrative procedures for similar permits  
4 obtained by similar permit holders between 2017 and  
5 2019.

6           So my first question is: Are we to  
7 understand that MD-0002 is a review of all  
8 administrative procedures for similar permits across  
9 the entire country of Perú during that time?

10         A.     No. What you are saying is not correct.

11           What I am saying is that I have worked on  
12 all the records to which I've had access.

13         Q.     So these time frames are based on cases that  
14 you handled personally?

15         A.     No.

16         Q.     Sorry. The transcript just said, "What I am  
17 saying is that I've worked on all the records to which  
18 I've had access," so that's where my confusion comes  
19 from.

20         A.     No problem. What I said in Spanish is that  
21 I have taken into account the procedures to which I  
22 have had access, because they have been a matter of

1 public information.

2           And in addition to that, what I've done is  
3 check, based on my experience, those--whether those  
4 times are reasonable.

5           As I say, in many cases, the average, based  
6 on this exercise, which is not a statistical exercise,  
7 are less than the authority has taken of late, and  
8 that it has taken even in the Invicta case.

9           There, I cited the example of the ITS. I  
10 considered an average time of two months; nonetheless,  
11 of the three ITSes that have been considered, one took  
12 a month, another three months, and the other  
13 two-and-a-half months. Even taking into account just  
14 the average of the ITSes in the case of Invicta, we  
15 would have a time longer than what I considered.

16       Q.     (Overlapping speaker with translation.)

17           --that's a recitation of the methodology.

18           But you would agree with me that you don't  
19 set out in your report the criteria upon which you  
20 pick the permissions that constitute your Exhibit  
21 MD-002?

22       A.     Let me check quickly, please.

1           MR. FODEN: The Exhibit is at 7,  
2 Mr. Garibaldi.

3           A. Mr. Foden, could you tell me the paragraph  
4 you're looking at to make my review simpler and  
5 quicker?

6           BY MR FODEN:

7           Q. I can't, because I couldn't find the  
8 criteria in your report, ma'am, and that's what I'm  
9 asking you.

10           You told me--

11           A. It's right here.

12           Q. --sorry--it's not a statistical exercise,  
13 and I'm trying to understand the nature of the  
14 exercise.

15           What criteria did you apply in selecting the  
16 permits that populate these 14 categories?

17           A. Can I read the relevant part?

18           It's Paragraph 23. The last two sentences  
19 note the real times for the--getting permits in this  
20 report have been calculated based on the review of  
21 administrative procedures of similar permits obtained  
22 by titleholders from 2017 to 2019. The result of this



1 review is found in Annex MD-0002.

2 I also included a footnote where I note that  
3 on an exceptional basis, for the permit on water  
4 availability I have taken a longer period, because in  
5 the period analyzed, there were permits with very  
6 lengthy times, which made the average to be higher  
7 than what in my experience, which would have gone  
8 against the timeline for evaluation.

9 Q. I'm glad you brought that up because I did  
10 want to come to that. But I have to start with the  
11 question that I asked you.

12 Is it your evidence in front of this  
13 Tribunal that the criteria that I asked you for is the  
14 word "similar"? You just looked for something  
15 similar, but you don't define what is meant by  
16 "similar" here, do you?

17 A. Similar in Spanish means that it's the same.  
18 Therefore for an EIA modification I have sought other  
19 EIA modifications.

20 In the ITS, I have taken other ITS  
21 approvals, and so on.

22 Q. But not all of the ITS approvals that are

1 publicly available across the nation during that time  
2 period. That's what you told me; right?

3 A. What I said was that the ones that I've had  
4 access to are the ones that I've taken into account.

5 And I would like to add, as I said at the  
6 outset, I work in planning and permits for the last 16  
7 years. I have quite a bit of experience in terms of  
8 how long these procedures take.

9 As I say, in those situations that I saw  
10 where there may have been some sort of irregularity in  
11 that the time was much longer than regular, what I  
12 have done is to remove them so as not to have a  
13 negative impact on the timeline for Invicta.

14 Q. It would be fair to say, then, that the  
15 criteria that you apply is your experience and your  
16 judgment?

17 A. I would say that that is the main criterion,  
18 but that in this case, in addition to not be the only  
19 one, I supported it with a benchmarking of the permits  
20 during that time, and the permits to which I had  
21 access.

22 Q. But there's no sort of national survey of

1 these time frames that you could rely on?

2 A. Let's see. Most of the agencies do have a  
3 unified registry. For example, the ITS's, in theory,  
4 should be found in the same system. It's not that  
5 they're separated out by region.

6 So the ones that have been available are the  
7 ones that I reviewed. That's why I was saying that if  
8 you look at this annex, you are going to see that  
9 there's a project in Arequipa, just as there's also a  
10 project in Cajamarca.

11 Q. So coming back to your footnote 12, you say,  
12 "Exceptionally in the case of water availability  
13 permit, I have considered a longer time frame" on the  
14 basis that you could not find many permits that had a  
15 fairly extended period.

16 Now, I wonder, Ms. Dufour, can you tell the  
17 Tribunal how many administrative resolutions you  
18 excluded from your sample on the basis that they  
19 didn't meet this so-called fairly extended period?

20 A. One.

21 Q. One. But you don't state that in your  
22 report.

1           A.       (Overlapping speaker with translation.)

2                   No. But that's what I'm answering right now,  
3 one, and also if the Tribunal would like, I could make  
4 a copy so that you can see that in this case, the time  
5 was extended a great deal with--in relation to the  
6 average for similar procedures.

7                   That's why, for the benefit of Invicta, and  
8 to make this evaluation as objective as possible, I  
9 removed it so that there would not be an impact on the  
10 time table.

11          Q.       You don't define fairly extended term, but  
12 that's the criteria that you applied for lengthening  
13 the time scale; correct?

14          A.       No. To reduce it. To reduce the time  
15 scale.

16          Q.       So you increased the time scale from 2017 to  
17 2021. That's what you say, and you do that because  
18 you only found a few that didn't have a "fairly  
19 extended term." But at no point do you explain what  
20 is meant by a fairly extended term, nor do you say why  
21 that should have any impact on the range of decisions  
22 that you've considered, do you?

1       A.     If you turn to point 8 of the Annex, which  
2 is this permit, there you see the details on the  
3 resolutions.

4             Had I taken into account only 2018 and 2019,  
5 I would have had only three permits, and the time  
6 would have been much longer.

7             So, what I have taken are resolutions from  
8 2020, 2021, and 2022, and what that has done has been  
9 to finally reduce the average, and bring it closer to  
10 what I, in my experience, have seen, in such  
11 procedures.

12       Q.     So let's look at Item 8. You include eight  
13 administrative decisions in Item 8; correct?

14       A.     Correct.

15       Q.     Whereas in Item 10, you include only two  
16 administrative decisions.

17             Now, my question is, why were you satisfied  
18 that two administrative decisions was representative  
19 of that category whilst you needed eight to be  
20 representative of the accreditation of water  
21 availability?

22       A.     Well, yes, no problem. I can answer that

1 question.

2 In the case of water availability, as I say,  
3 it wasn't necessarily because of a number in the  
4 sample, but rather, the procedures that were in that  
5 sample were not representative. And they would extend  
6 the period.

7 Whereas in the case of water use license, on  
8 the other hand, this--these resolutions of 2018 and  
9 2019 coincide with the times that it generally takes  
10 to get to the last stage of water use, which is the  
11 license.

12 Once again, I repeat: The main criterion  
13 that I have used is my experience.

14 Q. But there's no description of that sort of  
15 delineation that you just provided in MD-002, is  
16 there?

17 A. No, there's no greater detail.

18 (Overlapping speaker with translation.)

19 SECRETARY: I'm sorry, sir, we didn't catch  
20 the answer, so we need the pause.

21 THE EXPERT: No, no greater detail.

22 BY MR FODEN:

1       Q.     You don't define what is meant by a "fairly  
2 extended term"; correct?

3       A.     Correct. But as I have offered, if  
4 necessary, I can present the resolution to the  
5 Tribunal so that it can make the comparison of the  
6 extended time that that resolution had.

7       Q.     Now, I think you mentioned this earlier, and  
8 you said that at footnote 5, you explain that the  
9 actual average for the now-irrelevant item number 9 is  
10 four months, but then you generously, towards my  
11 client, adopted a two-month average period instead;  
12 correct?

13      A.     Can you repeat which footnote you're  
14 referring to, please?

15      Q.     5.

16      A.     Of the document, not the report?

17      Q.     You just read it, I believe.

18      A.     No, I did not read it.

19             Correct.

20      Q.     Now, I appreciate that you're being generous  
21 to my client with that particular category, but the  
22 approach there seems to be that you selected a subset

1 of three licenses, and then excluded a third of them  
2 based on an undefined notion of unrepresentative;  
3 correct?

4 A. Once again, in this case, when I say it's  
5 not representative, what it means is that it has a  
6 much longer time than what I have seen in my  
7 experience.

8 Q. Now, you also attach a Gantt chart to your  
9 report at MD-00032. It's at Tab 8, but I think it's  
10 probably more helpful for you to look on the screen  
11 because unfortunately, we didn't print this out in  
12 color. I wanted to ask you a few questions about it.

13 Now, this table has been drafted using your  
14 real-time estimates; correct?

15 A. MD-30--

16 Q. You can look on the screen.

17 A. (In English.)

18 No. I have it printed.

19 Q. You brought your own exhibits?

20 A. (In English.)

21 I brought the same exhibits.

22 Q. Let me just ask the question again.



1           This is based on your--your real-time  
2 estimates; correct?

3           A.     Correct.

4           Q.     If I checked the metadata in this Gantt  
5 chart, who would tell me assembled it?

6           A.     With certainty, I am the author. And I am  
7 the one who presented it.

8           Q.     What's the name of the software program you  
9 used to prepare it?

10          A.     Again?

11          Q.     What's the name of the software program that  
12 you used to assemble it?

13          A.     (In English) Project.

14          Q.     What construction expert did you consult  
15 when you determined the construction time frames that  
16 are set out in green?

17          A.     Once again, in this case, I used the  
18 experience, for example, how long it takes to build  
19 certain components. If you take a look, I considered  
20 on approximate time for construction mining  
21 facilities, again based on my experience.

22                 Could it take longer? Yes, correct, I could

1 have delayed, but these are the time periods I  
2 generally use when I do this type of Gantt.

3 Q. But you're not an expert in mine  
4 construction; correct?

5 A. Correct.

6 Q. Now, there are some other areas where you  
7 give opinions on matters that I thought perhaps  
8 weren't necessarily legal.

9 So if we turn to Paragraph 163 of your first  
10 report, I'll read as you catch up.

11 You say, "Even if production had started in  
12 October 2018, with the material mined during  
13 development and preparation, such material would not  
14 have been sufficient to supply the processing plants  
15 for more than one month."

16 Now, I'm curious, why would a regulatory  
17 expert make an observation about how long IMC could  
18 process ore for, Ms. Dufour?

19 A. (In English.)

20 Sorry--

21 (In Spanish) --163 of the Spanish version  
22 says something else.

1 Q. I think it's on 357.

2 A. Yes.

3 Q. Paragraph 163, in the English. Excuse me.

4 ARBITRATOR GARIBALDI: (Inaudible.)

5 (Comment off microphone.)

6 MR. FODEN: Yeah, in Spanish, it's 163 as

7 well.

8 THE EXPERT: Page 52.

9 BY MR. FODEN:

10 Q. So my question is: Why would a regulatory  
11 expert provide any observation about how long IMC  
12 could process its ore for?

13 A. Let me elaborate a little bit on this.

14 Those of us who work in this mining and in  
15 the regulatory area, as time goes by, we start having  
16 some experience not only in legal issues, but also in  
17 some technical issues. I wouldn't say at the level of  
18 an expert, but, we get to know the same way I gave you  
19 the example about the aquifer, and the mine access.  
20 It is the same situation here.

21 So I am--I considered that my statement here  
22 is not beyond what I could say in a report, or is not

1 irregular.

2 Q. We have limited time here.

3 A. Sure.

4 Q. I realize my questions are not always very  
5 articulate, but I'd be really grateful if in respect  
6 of that limited time, if you can keep your answer to  
7 what I have actually asked you.

8 What I asked you there is why did you  
9 include it in your report? Not whether you have the  
10 ability to comment on processing times because frankly  
11 speaking, it's not the most complicated maths, but it  
12 has nothing to do with what you told me your  
13 instructions were.

14 Why would you comment on whether IMC could  
15 continue to supply ore to Malla?

16 A. I thank you for the specificity.

17 I mis--I don't think I understood the  
18 question very well at the outset.

19 As you said, I had to look into regulatory  
20 issues, and as part of the documents that I received,  
21 I received a report that was issued by Micon, and this  
22 report is of a technical nature, but it is based on

1 some regulatory premises.

2 One of those premises that Micon poses is  
3 that it would have been possible to initiate  
4 exploitation in September 2018, and they also say that  
5 there was stored material to begin processing.

6 Now, the paragraph that I mention here that  
7 has to be read in connection also with the previous  
8 one that refers to Micon, and also the premises, it  
9 also refers to that; that is, the permits were not  
10 available in the material that was stored, if there  
11 was a plant, the maximum was for just the processing  
12 of a month-worth of work. So this is based on the  
13 premises in Micon's report, the ones that I assessed.

14 Q. I understand that. I have one last question  
15 on this point.

16 We both agree you comment on whether they  
17 could have used that stockpiled ore for commercial  
18 production. You say from a regulatory perspective,  
19 they could not. That's in 162.

20 A. Mm-hmm.

21 Q. But then for a reason that I still can't  
22 understand, you go a step further, and talk about how

1 long they could have supplied the Mallay Plant for.

2 Can we just agree that's opinion that  
3 probably should be left to the likes of Micon rather  
4 than a regulatory expert?

5 A. No, because it is exactly a comment on  
6 Micon's premise on a regulatory issue. I do not  
7 understand why I wouldn't be able to say something. I  
8 actually did.

9 Q. I'm aware.

10 Okay. Let's get into the regulatory  
11 milestones, okay?

12 First of all, mine closure plan. Now, the  
13 Respondent said in the Counter-Memorial that we hadn't  
14 fulfilled that obligation. I think you've said in  
15 your report that we effectively did, and you  
16 mention--I notice that you don't bring it up in your  
17 presentation.

18 So can we just strike the mine closure plan  
19 off the list?

20 A. We can remove the closure plan. But what I  
21 said is that there is no support that it was  
22 presented. That is to say that the guarantee

1 supporting the closure plan was presented.

2 Q. Understood.

3 On the mine inspection, you accept at  
4 Paragraph 120 of your report that on the 7th of  
5 September, 2018, IMC communicated to the DGM that it  
6 had completed development and preparation activities  
7 and had requested an inspection; correct?

8 A. Correct.

9 Q. And you further accept at Paragraph 120 that  
10 it had requested the suspension of the inspection on  
11 the 17th of October, 2018, owing to the blockade;  
12 correct?

13 A. That's what is stated in the communication,  
14 correct.

15 Q. Then you accept at Paragraph 122 that IMC  
16 provided the requested documents, because they had  
17 been--requested some documents that they requested a  
18 week earlier--and a week earlier, they had requested  
19 that the inspection take place; correct?

20 A. Correct.

21 Q. And you even accept at 123 that the DGM  
22 actually planned to carry out the final inspection

1 between the 23rd and 25th of January 2019; correct?

2 A. Correct.

3 Q. But of course, we can agree that the  
4 blockade was--

5 SECRETARY: Sorry, sir.

6 Again, we're speaking too fast, and the  
7 problem is the audio is not catching your answer in  
8 Spanish, so we're not going to have an audio of it.

9 MR. FODEN: Actually, I think this is  
10 probably my fault this time. Excuse me, I'm going too  
11 fast.

12 BY MR. FODEN:

13 Q. So from the 23rd to the 25th of January,  
14 there had been some arrangements made to do the  
15 inspection; correct?

16 A. A document was issued by the ministry to  
17 schedule the meeting in January, and as part of the  
18 scheduling, there was a request for documents that had  
19 to be available during the inspection. Yes, that is  
20 correct.

21 Q. We can agree that the blockade was in place  
22 during that entire period; correct?



1       A.     Based on what I heard throughout these days,  
2     yes, in January, there was a blockade.

3       Q.     Therefore, no inspection could take place,  
4     and that's why IMC again requested a suspension on the  
5     22nd of January 2019. Is that your understanding?

6       A.     Yes, correct.

7       Q.     But if the inspection had been able to take  
8     place at the time of the request, 7 September 2018,  
9     and even allowing for an additional week to supply the  
10    as-built drawings, the inspection authorization  
11    process, and all of the other documents, the  
12    inspection authorization process would have been  
13    completed within 25 days on the legal basis or, using  
14    your deadlines, 64 calendar days from September;  
15    correct?

16      A.     Would you please repeat the last portion of  
17    your question. I want to understand if the deadline  
18    you are mentioning is just to carry out the inspection  
19    or is it to consider that the inspection has been  
20    complied with?

21      Q.     So what I've done--let's just take your real  
22    examples.

1 I've taken your 24 calendar days to  
2 schedule, and I've added the 40 calendar days for  
3 authorization that you mention, coming out to a total  
4 of 64 calendar days from September 2018.

5 Does that sound about right to you?

6 A. No. That is not correct. It wouldn't be as  
7 of September, because even there were some documents  
8 that had not been presented up to December, and there  
9 is an additional comment here.

10 Those 40 days that you just mentioned to  
11 issue finally resolution had to be supported with the  
12 environmental certification for water treatment, and  
13 that was not available.

14 So we could take those days, but the permit  
15 would not have been approved.

16 Q. We're going to come to the water inspection.  
17 Everyone loves talking about that underground water.  
18 We'll come to that. But right now, I'm just talking  
19 about the inspection.

20 On the inspection, taking your 64-day time  
21 frame, it would run from September, because the  
22 blockade was in place; correct? That's what delayed

1 the process?

2 A. No. It would have been impossible to do the  
3 inspection in September or October, November or  
4 December, up to the 21st, because it was only then  
5 when Invicta presented the documents requested by the  
6 ministry.

7 Q. Ma'am, you're excluding the time period  
8 during which the Invicta had requested that the  
9 proceedings be suspended.

10 A. Yes, but suspension doesn't imply that it  
11 can be carried out if it is not--if the documents are  
12 not ready.

13 I don't think I'm following you. You can  
14 restate your question, but as of September, you could  
15 not have that deadline running.

16 Q. Let's take it in stages.

17 The request comes in September. Then the  
18 time frame's running. There's a mine invasion in  
19 October, and a blockade set up.

20 Now, I respect that you say that the  
21 timeline has to run from December because that's when  
22 the request for clarification came, but that request

1 for clarification came only when my client thought the  
2 blockade had been ended, and it requested to  
3 un-suspend the proceedings.

4 A. Let me see. When one requests the second  
5 stage of this permit, one needs to produce certain  
6 documents. Those documents include the quality  
7 assurance certificate.

8 So if the submission is not complete, the  
9 deadline does not run. The time frame does not run.  
10 The certificates requested by the ministry are not  
11 related to a field task. These are tasks that are  
12 done at the desk-level, maybe in Lima. So it would be  
13 incorrect for the time frame to start running at that  
14 date.

15 Q. Ma'am, you've explained and accepted the  
16 fact that a week after they asked for, in December,  
17 that the proceedings be reinstated, they got this  
18 request for three additional documents; correct?

19 A. No. That is not exactly the case.

20 In December, it was scheduled, but there was  
21 a longer list of documents that was attached to it.

22 Q. And they provided them a week later;

1 correct?

2 A. The only thing that they presented on  
3 December 21st were the quality assurance certificates.

4 At that point in time, the ministry issued  
5 the scheduling for January, and they also attached a  
6 document requesting further information for the  
7 inspection.

8 And the record does not show any support  
9 that Invicta had this information.

10 Q. Ma'am, that's not what you said--

11 ARBITRATOR GARIBALDI: Excuse me.

12 Do you have the date of that quality  
13 assurance certificate?

14 THE EXPERT: Yes. It was presented on  
15 December 21st, 2018. That is the submission date.

16 ARBITRATOR GARIBALDI: Is that a document  
17 that already existed or was it prepared at that point  
18 in time?

19 THE EXPERT: I do not have that information  
20 because, I apologize, the attachments are not there.  
21 So they only attach the letter whereby Invicta is  
22 sending the ministry the quality assurance

1 certificates. These are quite voluminous documents,  
2 and I imagine that's the reason why they were not  
3 attached.

4 But when the inspection was scheduled, so  
5 the inspection was requested with the submission of  
6 certain documents. The ministry verified the first  
7 preliminary stage, and says, okay, fine, now I can  
8 schedule. Now they issue a document with additional  
9 requirements that need to be available for the  
10 inspection.

11 Those documents are not part of the file,  
12 because the final--the inspection finally did not take  
13 place, and I think it is very important to highlight,  
14 to underscore that the inspection, Mr. Garibaldi, that  
15 inspection verified the construction of the mine as  
16 approved.

17 It is likely that in this inspection, the  
18 authority that is the Ministry of Energy and Mines,  
19 saw a significant modification inside the mine, and  
20 that is the alternative system that was explained on  
21 the first day as quite a significant component. I  
22 didn't have that much information, because I heard

1 that there was digging in the rocks with some ditches,  
2 so...

3 ARBITRATOR GARIBALDI: The Tribunal is aware  
4 of all of that. We shouldn't waste our time on that.

5 THE EXPERT: Excellent.

6 Please go ahead.

7 BY MR. FODEN:

8 Q. So they suspended proceedings on the 14th of  
9 October. The request for that--I'm reading from your  
10 Paragraph 120 and 121.

11 The request was answered on the 23rd of  
12 October, and in the report, the DGM said, you still  
13 have to submit three things: Quality assurance, as  
14 well as a final work report, and as-built maps.

15 You don't say they only provided one of the  
16 three. You said that they, December 21st, attached  
17 the requirements demanded by the DGM.

18 But I think it's relevant to that exercise  
19 to include the fact that just the week before my  
20 client had actually asked to reinstate the  
21 proceedings.

22 So my point to you is, why would they have

1 sent all of that stuff in if they didn't think the  
2 inspection could take place because the blockade was  
3 in place?

4 A. I understand the confusion now between us  
5 when we're looking at this.

6 These three requirements that you mention  
7 indeed were presented. Those three documents are only  
8 to schedule the inspection. To be able to carry out  
9 the inspection, you need a broader listing, a wider  
10 listing of documents, and the file does not reflect  
11 compliance with that list.

12 That's what I'm saying.

13 Q. But they scheduled the inspection; correct?

14 A. Because to schedule the inspection, you need  
15 those three documents requested. Yes.

16 Q. And they were provided, and they scheduled  
17 the inspection?

18 A. Correct.

19 Q. But in the intervening two months between  
20 the point at which they had originally asked for the  
21 inspection, and then they supplied the documents,  
22 there was a blockade prohibiting anyone from going up



1 to inspect the mine; correct?

2 A. Correct.

3 Q. Okay.

4 You don't take account of those two months  
5 when you say that the inspection and the time frames  
6 that relate to it, including the water license and the  
7 water inspection, could only run from December 21,  
8 2018; correct?

9 A. Once again, we have a confusion with the  
10 permits.

11 What I am saying here is that in--the  
12 inspection for the mining permit could only take place  
13 in December because it was only then when the  
14 documents would have been available to schedule the  
15 mining--the mine inspection.

16 ARBITRATOR GARIBALDI: I still don't  
17 understand that.

18 THE EXPERT: Mm-hmm.

19 ARBITRATOR GARIBALDI: If they ask me--if I  
20 have applied for some administrative proceeding, and  
21 one of the requirements is that I present my birth  
22 certificate, and that proceeding is suspended for

1 whatever reason, and then I present my birth  
2 certificate three months later, it doesn't mean that I  
3 didn't have my birth certificate at the original time.

4 So we--I have a consensual problem with  
5 this, that we--that the Tribunal has to look at this  
6 as a but-for scenario, and you are--if I understand  
7 your report correctly, you are constraining the  
8 but-for scenario on the basis of the real world.

9 I have conceptual problems with that. Can  
10 you comment?

11 THE EXPERT: Of course, and I deeply thank  
12 you for the question.

13 I agree that presenting it in December does  
14 not imply that you didn't have them earlier, but that  
15 gives some doubt--some doubt gives room for some  
16 doubt.

17 If they presented the request in September,  
18 and they had the documents, why didn't they submit  
19 them. They knew it was a requirement.

20 Why did they submit an incomplete file that  
21 would only have the times just take longer?

22 So this is just a hypothetical situation,

1 but what we saw here is, okay, December 14th, they  
2 presented their request and not even then were the  
3 documents presented to support it. They were only  
4 presented a week after.

5           So here, my recommendation would have been  
6 if you would like for the time frame to be complied  
7 with, please do produce the full file because it is  
8 important. Sometimes permits do take time because the  
9 quality of the file is not good enough, and in this  
10 case, the history tells us that they presented five  
11 ITS, three of them were not approved due to technical  
12 deficiencies.

13           So I do understand the difficulty to  
14 understand the actual time frames, et cetera, but  
15 sometimes that goes hand in hand with the quality of  
16 the technical material that is presented to the  
17 authorities.

18           As I just mentioned in this case, and this  
19 is my personal opinion, I would have presented--if I  
20 am short of time--I would have presented full  
21 information so as not to delay the inspection.

22           PRESIDENT CROOK: Let me interject here just

1 to let the parties know that we are about 45 minutes  
2 out from our scheduled rising time, and I don't know  
3 how that fits with the expectations for the continuing  
4 cross-examination and any recross.

5 But we do have a time bar racing up on us.

6 MR. FODEN: Sir, I will do my best to finish  
7 in the allotted time.

8 PRESIDENT CROOK: Will there be any time for  
9 recross, should Respondent desire it?

10 MR. FODEN: I'll do my best.

11 I did take the break to try to cut down.

12 PRESIDENT CROOK: Yeah, I appreciate that.  
13 But I'm just alerting you that time schedules around  
14 here are real.

15 MR. FODEN: I believe that. I will be  
16 judicious, sir.

17 BY MR. FODEN:

18 Q. So let's talk about the ITS. Everyone's  
19 favorite topic.

20 We're agreed that on the 12th of November  
21 2018, the DGM rejected the third ITS because it had  
22 constructed the component before the environmental

1 assessment; correct?

2 A. That was one of the observations that was  
3 not cured; correct.

4 Q. You've set out in your 104 that the IMC had  
5 to dismantle the alternative water management system,  
6 and then reply for the permit, and build it all again,  
7 because I think you say, that the use of an ITS was  
8 likely a gray area.

9 Is that roughly your view?

10 A. You're mixing two topics here in your  
11 question. They are completely different.

12 Q. Okay.

13 Let's come to the point--you don't cite to  
14 any examples in your report of other instances in  
15 which a company had to take an entire facet of a mine  
16 down, and then get the permit, and then reply;  
17 correct?

18 A. Correct, but in Invicta's own documents, if  
19 my memory serves me right, there was a request to  
20 dismantle a component that was built without a permit.

21 But going back to your question, it is true,  
22 but at the same time it could be, as we said it in the

1 regulation, if it is built without an approval, it  
2 won't be approved.

3           Invicta needed to have approval to be able  
4 to have the authorization for exploitation.

5       Q.     If I may, just again in the interest of the  
6 time warning I just received, the question was: Do  
7 you provide examples in your report, and I believe the  
8 answer was no.

9           Do I have that correct?

10       A.     (In English.)

11           Yes.

12       Q.     Okay. Clearly and presumably you were here  
13 and disagree with Mr. Bravo's statement that often,  
14 you can tear something down and rebuild it, but you  
15 will get a fine.

16           But you do appreciate that Mr. Bravo works  
17 for mining companies, also has a legal background, and  
18 that's his experience.

19           You accept that that is his experience;  
20 correct?

21       A.     With due respect to Mr. Bravo, yes, indeed,  
22 I listened to him yesterday, but Mr. Bravo said

1 several things that are not in this accordance with  
2 the legal regulatory system in Perú. Based on the  
3 experience that he mentioned, indeed, he has worked  
4 with the mining companies, and working with a mining  
5 company does not imply that one has the regulatory  
6 expertise.

7           Even being an attorney for a mining company  
8 does not imply having the mining regulatory. Most of  
9 the companies that I work with, the regulatory area is  
10 very well-defined, and separated, for example, from  
11 the legal manager who sees more of procedural labor  
12 issues.

13           The regulatory sector is quite specialized,  
14 and with due respect, I consider that he did not have  
15 complete information on the permits.

16       Q.     Okay.

17           Now, I appreciate that sometimes legal  
18 deadlines are real, and sometimes they're legal, but  
19 you'd also understand that sometimes regulations,  
20 companies will ask for forgiveness rather than  
21 permission, and that's his experience.

22           Do you accept that that ever happens in

1 Perú?

2 A. I agree that it happens, but in this case,  
3 the issue was not for them to be fined. The issue was  
4 that Invicta needed to certify the system. If they  
5 had the component built, the authority could not  
6 certify it.

7 So this is not accepting a fine or not.  
8 This has to do with the fact that as long as the  
9 component was there, it was impossible to certify it.

10 If it couldn't be certified, it was  
11 impossible to have authorization for exploitation, and  
12 if they exploited, it would have been an illegal  
13 miner.

14 Q. Let's talk about the MTD and the PAD.

15 You noted earlier that the MTD, which is  
16 sort of embodies this idea of forgiveness rather than  
17 permission, was created in 2014; correct?

18 A. Correct.

19 Q. For a limited period, right?

20 A. Correct.

21 Q. And you--then the PAD procedure was created  
22 in May of 2019; correct?



1       A.     Correct.

2       Q.     You discard the PAD procedure on that basis,  
3 because it was not available as of October 2018;  
4 correct?

5       A.     No, that's not correct.

6             I discard it because of three reasons.

7             First, because, indeed, in 2014, it was not  
8 available, so we couldn't really apply in this case.

9             Let us move ahead in time, May 2019.

10            May 2019 comes, and the company must apply  
11 this.

12            The most evident point in my opinion that  
13 makes this inapplicable is that in the case file,  
14 nothing is said about the application, and then in May  
15 2019, I understand that the dialogue roundtables were  
16 there, and they were in a position to present it.

17            What has happened, I think, is what  
18 Mr. Bravo said yesterday. He said that he was focused  
19 on lifting the blockade, and that he was not focused  
20 on permits. Yes, this existed, the PADs existed, but  
21 Invicta did not apply to it.

22            Let's go one step further. Let's imagine

1 that Invicta had applied to the PAD. I'm sure that  
2 you were going to ask me that next.

3 If it had applied, what would have happened  
4 in that case is that perhaps it could have operated,  
5 but the environmental certification, which is what the  
6 MEM requires for providing the exploitation  
7 authorization, that would have come only with the  
8 approval of the PAD, and that approval would have been  
9 obtained by them, as I said in my presentation, by  
10 mid-2020, at least.

11 Taking into account those three points, I  
12 think that it is not applicable in this case.

13 My opinion is not the most evident thing.  
14 The most evident thing is that it was not applied to  
15 although it could have applied.

16 Q. I'm going to again ask you to perhaps keep  
17 the answers limited to the questions.

18 A. (In English.)

19 I answered your question.

20 Q. And then some.

21 A. It was all the answer to the question.

22 Q. Okay. I didn't ask you about what would

1 have happened if they applied, I did?

2 A. But I thought it was important.

3 Q. I gathered that.

4 ARBITRATOR GRIFFITH: Well, counsel, now  
5 we're going on to a detour.

6 PRESIDENT CROOK: Let's move on.

7 BY MR. FODEN:

8 Q. Yeah. So let me just get the timeline  
9 straight.

10 The MTD is available in 2014, and it lapses.  
11 But then in December 2017, there's issued a draft  
12 regulation announcing that they are going to make  
13 available the PAD.

14 Do you recall that?

15 A. No.

16 Q. Okay. Let's pull it up on the screen. It's  
17 Exhibit C-494, and it's at Tab 10 of your bundle.  
18 This is a resolution dated 21 December authorizing the  
19 publication of the draft supreme decree creating the  
20 PAD procedure.

21 Have you seen this document before, ma'am?

22 A. (In Spanish.)

1 I do not recall having seen it in detail.

2 Q. Okay. Then the second document I want to  
3 show is Tab 11, which is C-494, and if we can go to  
4 page 10 of this document- -495. Excuse me.

5 A. Which document, did you say?

6 Q. C-495, which is on the screen in front of  
7 you. On the right-hand side.

8 Now, my understanding is that this document  
9 is the actual supreme decree draft, and it's of the  
10 same date, 21 December 2017.

11 If you look--

12 A. Mm-hmm.

13 Q. --it has a provision on the 10th page  
14 discussing the creation of the PAD.

15 So my question is: You're aware that it was  
16 public knowledge at the time that my client had its  
17 ITS rejected that this PAD mechanism was going to be  
18 available imminently?

19 A. I do not agree with you 100 percent, because  
20 in my experience, many draft regulations were  
21 published that were not passed.

22 Perhaps in the future that could have been

1 approved. We are talking about a year-and-a-half  
2 difference, taking into account the dates you told me.

3 But my doubt is if they were so sure that  
4 the PAD was going to come out, why did they apply an  
5 ITS, trying to include a document that was not  
6 prepared when the meeting was had?

7 And the most important point is, if they  
8 were so interested in applying the PAD, why didn't  
9 they apply for the PAD?

10 So to apply for the PAD, well, the  
11 information that you have to submit is cabinet-related  
12 information, cabinet-level information.

13 So this is not an issue of suspicions. It's  
14 an issue of facts. The company did not apply for the  
15 PAD.

16 Q. We're agreed that they didn't apply for the  
17 PAD, but there were some intervening events. What I'm  
18 asking you is not why they didn't apply for a PAD.  
19 They couldn't have in 2018.

20 But at the time their ITS was rejected, the  
21 draft bill had been out for nearly a year. So  
22 wouldn't a rational company have said, well, we got

1 the ITS rejected, why don't we just wait to see if we  
2 can get a PAD.

3 That's what a rational company would do;  
4 right, Ms. Dufour?

5 A. No. A diligent company would have never  
6 planned its action on the basis of draft regulations.

7 If the question is that, it is not diligent  
8 to rely on a draft piece of regulation.

9 Q. Ma'am, that's not what I asked you. I  
10 didn't ask you if they were planning to do a PAD. I  
11 said that when they got the rejection in November,  
12 mind you, that rejection came, and you also had the  
13 intervening event of the blockade, but in that time,  
14 why don't--they could have just said, well, we'll wait  
15 for a PAD instead of applying again for the ITS. That  
16 was an option that they could have considered.

17 Whether you think they were diligent or not,  
18 I'm not asking that. Do you think that was an option  
19 that they could have considered?

20 A. It wouldn't have been an option that I would  
21 have recommended to them.

22 Q. Okay.

1           Let's move to social license.

2           Now, looking at your CV, I can't see any  
3 coursework that you've undertaken on social license  
4 issues in the CV; correct?

5           A.     To answer your question, I think I was clear  
6 when I made my presentation that the social license is  
7 not a legal concept. I also was clear that this is a  
8 goal that you have to obtain via the use of tools.  
9 For example, the compliance with commitments, also  
10 citizen participation. In my curriculum--

11           PRESIDENT CROOK: I think we have an  
12 objection. Let's hear what Mr. Foden's objection is.

13           MR. FODEN: I have very limited time. The  
14 question was just about her CV, and I'd really be  
15 appreciative if perhaps we could have an admonishment  
16 from the Tribunal to simply limit the answers to the  
17 questions that I've asked three times now.

18           PRESIDENT CROOK: I'm not really in the  
19 business of admonishing people. I prefer to encourage  
20 and persuade, but--

21           MR. FODEN: Okay.

22           PRESIDENT CROOK: --it is true that some of

1 these answers are getting a little long.

2 The question was, have you had academic  
3 training that would qualify you to--I understand that  
4 was the question, was of that order, and the answer to  
5 that, I guess, is either yes or no.

6 THE EXPERT: Not academic in nature, but  
7 yes, in the practical side of things, I have worked in  
8 many citizen participation processes, and that are  
9 part of the tool used to get social licensing.

10 And also, I have been involved in many  
11 social commitment--or social compliance audits. So I  
12 consider that I am qualified.

13 PRESIDENT CROOK: Okay. We had a statement  
14 from the witness of what she regards as her  
15 qualifications. Why don't we move on.

16 BY MR. FODEN:

17 Q. Did you conduct a site visit to Parán or  
18 interview any Parán members when you put together your  
19 report on social license?

20 A. No.

21 Q. And in your report, you cite to six academic  
22 articles on social license and the definition thereof.



1 Did you author any of them?

2 A. (In English.)

3 Did you--sorry, I didn't understand.

4 Q. Author. Did you write any of them?

5 A. No.

6 Q. I don't see on your CV that you have ever  
7 written any articles on social license?

8 A. (In Spanish.)

9 Correct.

10 Q. Okay. At Paragraph 350 of your report,  
11 there's a suggestion that the Parán Community's  
12 initial concerns about the environmental impact of the  
13 project could somehow legitimate Parán's grievances  
14 with IMC.

15 Do you agree with that interpretation of the  
16 paragraph?

17 A. Just one moment. I'm going to read it.  
18 What I'm saying in this paragraph, the first portion  
19 of it, is a fact, that indicates that OEFA has imposed  
20 sanctions on Invicta because of noncompliance with  
21 environmental and social regulations.

22 What I said is that those social and

1 environmental breaches may have an impact on the trust  
2 that the communities have in connection with the  
3 company.

4           Then what I say is that the Parán Community,  
5 on the basis of the documents that I have reviewed,  
6 had concern in connection with boundaries, land  
7 boundaries, environmental matters, social matters, and  
8 that could have created an impact on the relationships  
9 that the company had with the community.

10       Q.     Now, after Parán complained to the local  
11 water authority, the ALA, on the 10th of April, 2018,  
12 about the alleged presence of white water, and then  
13 the ALA conducted an inspection that did identify some  
14 cloudy water, are you aware that IMC sent laboratory  
15 tests to OEFA showing that the mine influence complied  
16 with the MPLs?

17       A.     You're talking about two different things.  
18 One is the ALA, and then you have talked about results  
19 sent to OEFA. What inspection are you making  
20 reference to? These are two different authorities  
21 that oversee different matters. Could you please  
22 explain that, please.

1       Q.     I don't need to explain the two different  
2 entities.  You're aware of that them.

3               I'm asking if you are aware that IMC sent  
4 lab results to OEFA showing that the mine effluents  
5 complied with the MPLs.  Are you aware of that?

6       A.     We're not talking about the ANA inspection  
7 that you indicated first.

8               Excuse me, you posed me a question, but your  
9 question was kind of mixing up things, so I need to  
10 make sure what you are asking to be able to--first,  
11 you talk about the ANA inspection.

12       Q.     Are you aware that IMC sent lab results to  
13 OEFA showing that the mine effluents complied with the  
14 MPLs?  We can look at the document if you need to.

15               PRESIDENT CROOK:  Excuse me.  For  
16 operational reasons, we may need to take a brief pause  
17 here.

18               So let's--

19               SECRETARY:  Sir, what I meant is that I know  
20 we're pressed for time, but we're really losing a lot  
21 of the audio in Spanish, so you really need to pause  
22 before you answer.

1 THE EXPERT: Agreed.

2 PRESIDENT CROOK: Be aware of saying take a  
3 pause.

4 THE EXPERT: No, I don't have any notes.

5 Can I answer?

6 PRESIDENT CROOK: Slowly, please.

7 THE EXPERT: (In English.)

8 I promise. I think I had too much coffee  
9 today, so...

10 (In Spanish.)

11 Yes, I am aware of the fact that Invicta  
12 sent some monitoring tests saying that--tests saying  
13 that they had complied with the regulations, but they  
14 sent them as a defense in connection with the  
15 sanction-imposing procedure that OEFA initiated  
16 against it because it went over the MPLs, and OEFA  
17 looked at the information, and they said, okay, when  
18 Invicta took these samples, they complied with the  
19 regulations, but when OEFA went there, they did not  
20 comply with the regulations.

21 I think they went over the MPLs by quite a  
22 lot.

1           We have seen this in the past few days. So  
2 a sanction was imposed on Invicta. Not only was a  
3 sanction imposed, but also OEFA considered that there  
4 was a risk of environmental image. It imposed a  
5 corrective measure in order for the company to  
6 implement an alternative system.

7           BY MR. FODEN:

8           Q.     With respect, that's just not correct. If  
9 we look at Paragraph 42, and again, I don't speak  
10 Spanish, unfortunately, on page 16--

11           PRESIDENT CROOK: Of what, please?

12           MR. FODEN: Sorry. Of the exhibit I called  
13 earlier, which is R-74, which can be found at Tab 19  
14 of the bundle. Page 16.

15           BY MR. FODEN:

16           Q.     As I understand it, determines that as of  
17 that date, which is the 27th of September 2018, right  
18 before the blockade, the MPLs were within--they were  
19 within the MPLs. Do you see that?

20           A.     Yes, I see that, but again, this is the  
21 sampling that Invicta sent at one point in time.

22           But if you scroll down in this resolution,

1 we're going to see that Invicta was sanctioned because  
2 it went over the MPLs.

3 Q. Then let's turn to the next tab, Tab 20, at  
4 page 10 of the English. This is Exhibit C-408. And  
5 then a different agency, the ALA, conducted an  
6 inspection of the Invicta Mine, and it reached the  
7 conclusion at Paragraph 6.3, and this document is  
8 dated the 13th of July, so it pre-dates the  
9 exoneration by OEFA, and it says that no direct impact  
10 on the water resources of the Parán Community and the  
11 surrounding areas.

12 Do you see that language, ma'am?

13 A. (In English.)

14 I see that language, but sorry, you have  
15 said--

16 (In Spanish.)

17 You have said, and I need to clarify this,  
18 that OEFA exonerated Invicta from the penalty. But in  
19 the other document you showed me, well, it clearly  
20 states that a sanction was imposed. Not only was a  
21 sanction imposed but a corrective measure was imposed  
22 as well.

1           I wanted to say that in this resolution, no  
2 exoneration exists.

3           Going back to the ANA document, yes, a  
4 control was conducted in July, and this inspection,  
5 this control, this inspection, ended with a  
6 sanction-imposing proceeding not because of an  
7 environmental matter, but because of the fact that  
8 water was used without any authorization in the  
9 Ruraycocha stream.

10           Just so you know, OEFA looks at the MPLs  
11 which is the quality of the effluents, and the ANA  
12 looks at the body of water.

13       Q.     I perhaps shouldn't have used the word  
14 exonerated. I admit that.

15       A.     (In English.)

16           You shouldn't.

17       Q.     All I asked you is whether you saw that  
18 paragraph. Okay.

19           At Paragraph 265 of your report, you say a  
20 social license is based on mutual trust; correct?

21       A.     (Overlapping speaker with translation. No  
22 interpretation.)

1       Q.     You would agree with me that there has to be  
2 reciprocity between the two counter-parties between  
3 actions that create credibility and mutual trust;  
4 correct?

5       A.     Yes, correct.

6       Q.     Now, I understand your report to say that  
7 you would agree with me that securing surface rights  
8 agreements is an important step--not the only step,  
9 but an important step in moving up the levels of  
10 social license that you identify.

11               Are we agreed?

12       A.     No.

13       Q.     Okay. At Paragraph 399, you say that  
14 surface land agreements, the latter, definitely  
15 support social license?

16       A.     That is correct. They support them but as I  
17 said in my presentation, one thing is the access to  
18 the surface rights, and a different thing is the  
19 social license with the corresponding tools.

20               Yes, that is correct.

21       Q.     Yeah. That's what I said. I said not the  
22 whole thing, but it's an important step.



1           You're aware that my client concluded  
2 surface agreements with both Lacsanga and Santo  
3 Domingo, aren't you?

4           A.     Correct.

5           Q.     Now, you're aware that--you say at Paragraph  
6 397 that IMC was required to cover several items under  
7 its EIA such as training activities, education, health  
8 support activities within the three communities;  
9 correct?

10          A.     Yes, correct.

11          Q.     In the interest of time, I have a number of  
12 documents, I can read them out for the record, but  
13 you're aware that IMC carried out a series of  
14 trainings in agricultural techniques, community  
15 management, community relations, and health campaigns  
16 in all of the relevant communities; correct?

17          A.     Yes, correct, but there are also documents  
18 in which the community relations company says that  
19 they only conducted activities in two of the three  
20 communities, and it excludes Parán from all of this.

21               PRESIDENT CROOK: I'm afraid I need to  
22 interject. I have now got a very emphatic note,

1 beginning really underscored large print. We need her  
2 to pause because there's no audio in the Spanish.

3 So we really need you to count to three,  
4 because otherwise at this stage, we don't have a  
5 complete Spanish report. So really, we need you to--

6 THE EXPERT: (In English.)

7 I'm very sorry.

8 PRESIDENT CROOK: Sorry has nothing to do  
9 with it, but please pause.

10 THE EXPERT: Okay.

11 MR. FODEN: Mr. President, can I and  
12 Mr. Grané a question about timings if you don't mind.

13 PRESIDENT CROOK: I'll be happy to ask him,  
14 Mr. Grané, what do you envision in way of redirect?

15 MR. GRANÉ: As of now, nothing. No  
16 redirect.

17 PRESIDENT CROOK: All right. Can we take  
18 that to the bank as of now?

19 MR. GRANÉ: As of now, yes.

20 PRESIDENT CROOK: All right.

21 Does that address your question?

22 MR. FODEN: It expedites things.

1           ARBITRATOR GRIFFITH: Do you have a target  
2 time to finish?

3           MR. FODEN: I believe our deadline today is  
4 5:40. Let's bang on.

5           BY MR. FODEN:

6           Q. Okay. So let's look at one of the documents  
7 that establishes what I was just talking about. We'll  
8 just look at one. Tab 25, which is Exhibit C-438.

9           This is a training plan for agricultural  
10 techniques.

11           You see that the place date and the  
12 community refers to all three.

13           Do you see that?

14           A. (In Spanish.)

15           Yes, correct.

16           Q. Okay. Now, this is one of several documents  
17 that explains these plans. They're Exhibit C-440 for  
18 the record, C-441 and C-442. You don't cite to any of  
19 these documents in your report, do you?

20           A. I would have to look, but possibly, no. I  
21 haven't cited all of the documents that were issued by  
22 community relations.

1       Q.     Did Perú's counsel provide you with those  
2 exhibits when you were assembling your report?

3       A.     He gave me access to all of the information  
4 in connection with community relations, yes, correct.

5       Q.     You didn't comment on them--you didn't feel  
6 necessary to comment on the community relations--I'll  
7 get there--community relations training documents that  
8 were put on the record?

9       A.     I have made reference to a number of  
10 documents from the CR team, but not that one, indeed.  
11 But we could ask about many others. I have not made  
12 reference to a number of documents, that's correct.

13       Q.     Now, as an expert, I'm allowed to ask you  
14 hypothetical questions, all right.

15             So I want you to accept for the moment that  
16 my client's position, that it didn't need a social  
17 license with Parán because its mine infrastructure  
18 wasn't located on Parán. Just accept that position  
19 for purposes of our discussion.

20             In that event, you haven't actually opined  
21 on whether my client obtained a social license with  
22 Santo Domingo or Lacsanga; correct?

1       A.       The fact that there are no components, that  
2 does not mean that the company shouldn't have a social  
3 license. The EIA and the ITSes clearly establish--

4               PRESIDENT CROOK: The question to you was  
5 whether in your opinion a social license had been  
6 established as to these other two communities.

7               Do you have a view as to that?

8               THE EXPERT: Yes, according to the  
9 literature that you have had access to, the social  
10 license cannot be looked at individually, or  
11 independently. It has to be looked at on the basis of  
12 the project.

13              In this case, there are three communities,  
14 assuming that there is no component in Parán, the  
15 three communities are included in the area of direct  
16 social influence on the basis of the EIA--or rather,  
17 the environmental management document.

18              So in order to assess the social license, I  
19 have to look at everything together. I cannot exclude  
20 Parán.

21              ARBITRATOR GARIBALDI: Excuse me, but that  
22 means that if a community in the area of influence

1 denies a social license, that's enough. Then there is  
2 no social license at all; is that what you're saying?

3 THE EXPERT: In that case, I consider that  
4 what the company should do is to invest more time in a  
5 dialogue to obtain the social license.

6 In my experience, I have had a number of  
7 clients that have taken years to get a social license,  
8 and they are able, then, to start or operate a  
9 project.

10 If we're talking about a community that is  
11 located in the direct influence area, both from the  
12 social and the environmental viewpoint, there has to  
13 be a good relationship with the community.

14 This is a risk that is known by the mining  
15 companies, and all of the mining companies that  
16 conduct studies in this regard identify this as one of  
17 the main risks, because the ore cannot be moved. The  
18 ore is in one location.

19 ARBITRATOR GARIBALDI: Next question: What  
20 happens if a community, in bad faith, for reasons  
21 unrelated with mining operation, decides not to grant  
22 this social license that you're making reference to;

1 what is the obligation that the company has in that  
2 case?

3 THE EXPERT: In my opinion, and what I have  
4 seen in practice in the communities, oftentimes what  
5 the companies do is wait some time. For example, they  
6 wait until there is a new governing committee, and  
7 then they can go and go deeper into the dialogue to  
8 obtain the license.

9 If there is not coexistence between the two  
10 parties, the process is not going to be fruitful  
11 because they're going to find constant opposition.

12 What has happened in many cases, if the  
13 company has had the bad luck to be faced with  
14 opposition, I have seen projects--examples when the  
15 project has not moved forward, and that has happened  
16 in Perú in some cases.

17 BY MR. FODEN:

18 Q. Is there any limit to the time and resources  
19 that a company has to put into such an effort?

20 A. It's not that it has to put it into it. If  
21 it considers that it doesn't have the time or  
22 resources, it can also decide to not go forward with

1 the project. It's a risk that is identified, not only  
2 in Perú, but in many other countries as well, and not  
3 only in mining, but also in many of the extractive  
4 industries.

5 Q. So I want to see if I can understand that  
6 point.

7 You're saying it's binary in that you either  
8 choose to wait it out, or you don't; is that correct?

9 A. Well, if you put the question in those  
10 terms, it would be wait and do nothing; wait, doing  
11 something, engaging in dialogue; or, if it is verified  
12 at the end of the day that you are not going to get a  
13 positive result, and you also have the option, for  
14 example, to sell the project or to withdraw, yes.

15 Q. Okay. Fair. But that doesn't answer my  
16 question of, is there a limit on--what if the  
17 company's publicly listed, and it's committed to that  
18 project. It's told all of its investors in Canada  
19 that it's going to drive forward with that project.

20 Is there a limit to the amount of time that  
21 you, in your expert opinion, they would have to spend  
22 before they just basically disregard that one



1 community, and say, do business with the other two?

2 Or do they have to wait ad infinitum?

3 A. Let's see.

4 What I'm saying is there's not any regulated  
5 limit. There are companies--well, I have a client who  
6 waited ten years to engage in relations up until the  
7 point the community accepted it, and I have clients  
8 who, at the end of the day, after two months, reached  
9 the conclusion that it's not worthwhile, but it's the  
10 same risk that a mining--the social license is one  
11 risk, but also the risk of finding ore, it's a high  
12 risk.

13 But it is a risk that all of the mining  
14 companies are familiar with, not only in Perú, as I  
15 say. This is a risk of the top five established in  
16 all risk assessments that there are, in mining. It's  
17 a high risk, but it is the risk that exists.

18 Q. Coming back to this discussion of mutual  
19 trust, do you consider that Parán's takeover of the  
20 mine at gunpoint, the use of--its use of firearms, and  
21 its violent conduct went further to engendering a  
22 sense of mutual trust?

1       A.     I don't feel comfortable answering this  
2 question because the premises that you have set forth,  
3 based on what I have heard in this hearing, are a  
4 matter of debate.

5             I have heard, for example, when [REDACTED]  
6 testified, that it wasn't clear whether or not there  
7 were arms, whether there was or was not violence.

8             So I don't feel comfortable answering that  
9 question, mindful that the facts aren't clear.

10            MR. FODEN:   Okay.

11            ARBITRATOR GARIBALDI:   (Speaker overlapping  
12 with interpretation.)

13             What about hypothesis?

14            THE EXPERT:   I think it's not correct.

15            ARBITRATOR GARIBALDI:   You're an expert.   As  
16 an expert, you have to respond to hypothetical  
17 questions, or questions posing hypotheticals.

18            THE EXPERT:   Very well, then.

19             If in effect there has been violence,  
20 weapons, crimes, bad conduct that is outside of the  
21 legal framework, then, yes, I would consider that  
22 that's not the correct attitude.   I would think that

1 in that case, the community is not acting correctly.

2 But I would repeat, in this case those facts  
3 are under discussion or under debate, and therefore,  
4 my answer doesn't apply to the case.

5 MR. FODEN: I finished early, Mr. President.  
6 I'll leave seven minutes there for somebody. Thank  
7 you, Ms. Dufour.

8 THE WITNESS: Thank you.

9 PRESIDENT CROOK: All right. Well, we have  
10 got--that's very admirable, thank you.

11 We have finished the direct examination. We  
12 have no recross.

13 MR. GRANÉ: (Shakes head back and forth.)

14 PRESIDENT CROOK: Do we have any questions  
15 from the Tribunal?

16 QUESTIONS BY THE TRIBUNAL

17 ARBITRATOR GARIBALDI: Let me try to  
18 establish a couple of things about social license.

19 As I understand it, let's put--let me start  
20 again.

21 Let's put aside all of these specific  
22 obligations imposed by the law in connection with the

1 environmental impact statement. I'm not saying that  
2 they are not important. I'm saying that let's put  
3 them aside for purposes of this discussion.

4 We have testimony here to the effect that  
5 the social license goes beyond those obligations.

6 Okay.

7 Do you agree with that?

8 THE EXPERT: (In English.)

9 I agree with that.

10 ARBITRATOR GARIBALDI: Okay. We also have  
11 testimony or statements to the effect that obtaining  
12 and maintaining the social license is an obligation of  
13 the company.

14 Do you agree with that?

15 THE EXPERT: It's a goal of the company.  
16 Yes, I agree with that.

17 ARBITRATOR GARIBALDI: It's a goal.

18 THE EXPERT: Yes.

19 ARBITRATOR GARIBALDI: But not an  
20 obligation?

21 THE EXPERT: Really, if you want to say it's  
22 an obligation, not a legal obligation, but yeah, it's

1 a goal because if there is no social license, it will  
2 be very difficult to execute the project.

3 ARBITRATOR GARIBALDI: Okay.

4 So you anticipated the question. It's not a  
5 legal obligation.

6 THE EXPERT: Correct.

7 ARBITRATOR GARIBALDI: Now, it is an  
8 obligation of the company, which doesn't have a  
9 reciprocal obligation on the part of the community.  
10 The community is not obligated to provide that  
11 license; right?

12 THE EXPERT: That is correct, but the  
13 community needs to have, also, a mutual respect with  
14 the company.

15 ARBITRATOR GARIBALDI: It needs to  
16 have--doesn't have to have, as I understand it.

17 THE EXPERT: Social license, no. A social  
18 license is one-way. The social license--

19 ARBITRATOR GARIBALDI: The social license is  
20 one-way.

21 THE EXPERT: Yes.

22 ARBITRATOR GARIBALDI: It's unilateral.

1           THE EXPERT:   Yes.

2           ARBITRATOR GARIBALDI:   It is permanent, so  
3 in other words, it can be revoked at any time. It's  
4 something that the company has to maintain by doing  
5 whatever it needs to do, to obtain it?

6           THE EXPERT:   Yes, because they need to have  
7 a good relationship with the communities, and that's  
8 how they can maintain the social license, yes.

9           ARBITRATOR GARIBALDI:   All right. So the  
10 way I understand it, let's conceive of this as an  
11 obligation, although not a legal obligation.

12           But if it is an obligation of the company,  
13 it is an obligation of result; right?

14           THE WITNESS:   There, I need to precise.  
15 It's an obligation of result, but you said that I need  
16 to leave aside--

17           ARBITRATOR GARIBALDI:   Yeah. Leave aside  
18 all of those things.

19           THE EXPERT:   But they are the means.

20           ARBITRATOR GARIBALDI:   That's fine. They  
21 are the means.

22           THE EXPERT:   So it results in means.

1           ARBITRATOR GARIBALDI: Fine. But there  
2 exists that extra that the company is obligated to  
3 obtain and maintain, that's a result, isn't it?

4           THE EXPERT: It's the goal, yes, to get the  
5 social license.

6           ARBITRATOR GARIBALDI: All right. Okay.  
7 I think that that's it for my purpose, thank  
8 you.

9           THE EXPERT: Thank you for the question.

10          PRESIDENT CROOK: Well, I make the  
11 observation that I always found that your suggestion  
12 that social license is a metaphor is a useful way to  
13 think about it.

14          With that gratuitous observation, I wonder,  
15 do we have any further business to transact this  
16 evening?

17          MR. FODEN: Not on the part of the Claimant.

18          PRESIDENT CROOK: Anything further on the  
19 Respondent?

20          MR. GRANÉ: (shakes head back and forth.)

21          PRESIDENT CROOK: Okay. So we will--I see  
22 we have some of our valuation experts. We will turn

1 the hearing from these Gentlemen--Or Ladies and  
2 Gentlemen, whatever we have got on Monday.

3 I thank everyone for their cooperation.  
4 It's been a busy day. And the witness is now excused.

5 We thank you for your testimony, ma'am. And  
6 I wish you all a good weekend, those who are going to  
7 be here. Safe travels for those who are going to be  
8 traveling.

9 We'll see you on Monday, the usual time.

10 THE EXPERT: Thank you very much.

11 (Whereupon, at 5:39 p.m. the Hearing on the  
12 Merits was adjourned until 9:30 a.m. on Monday, April  
13 3, 2023.)



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