

**ARBITRATION UNDER THE RULES OF THE  
INTERNATIONAL CENTRE FOR SETTLEMENT OF  
INVESTMENT DISPUTES**

**ICSID CASE NO. ARB/20/46**

**LUPAKA GOLD CORP.**

Claimant

**VS.**

**REPUBLIC OF PERU**

Respondent

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**SECOND WITNESS STATEMENT OF  
LUIS FELIPE BRAVO GARCÍA**

23 September 2022

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## 1 INTRODUCTION

- 1 I, Luis Felipe Bravo García, provide a second statement in the arbitration between Lupaka Gold Corp (“**Lupaka**”) and the Republic of Peru (“**Peru**”). I do so after having read the statements of Mr Luis Miguel Incháustegui Zevallos dated 6 March 2022, Mr Esteban Saavedra Mendoza dated 15 March 2022, Mr Andrés Fernando Trigoso Alca dated 11 March 2022, Mr Nilton César León Huerta dated 22 March 2022. Such statements contain inaccuracies which I feel compelled to address.<sup>1</sup>
- 2 Unless stated otherwise, I adopt the definitions from my first statement.

## 2 SOCIAL CONFLICTS IN PERU

- 3 Peru argues that Lupaka should have been aware of the difficulties regarding social conflicts over mines in Peru when it invested in 2012 and that it was therefore to be expected that a social conflict would not be resolved rapidly.<sup>2</sup>
- 4 Specifically, Mr Incháustegui refers to the long history of social conflict in the mining sector in Peru which allegedly reached a turning point in 2009 with the Bagua case which involved indigenous peoples of the Amazon setting up a roadblock as a measure of protest against the future mining and extraction activities. The ensuing intervention of the Police with the assistance of the Peruvian army resulted in several deaths. After this case, according to Mr Incháustegui, the State has preferred dialogue over the use of force in the face of conflict with a community.<sup>3</sup> Mr Incháustegui also states that in his experience “the use of force in social conflicts with rural or country communities is not a solution but may exacerbate opposition and violence and prolong the conflict.”<sup>4</sup>

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<sup>1</sup> Unless stated otherwise, I adopt for the purposes of this second witness statement the definitions set out in my first statement.

<sup>2</sup> Counter-Memorial, 24/03/2022, p. 73 *et seq.* (Part II, Section C.3.d(i)).

<sup>3</sup> Witness Statement of Luis Miguel Incháustegui Zevallos, 06/03/2022, p. 12 *et seq.* (paras. 35-37).

<sup>4</sup> Witness Statement of Luis Miguel Incháustegui Zevallos, 06/03/2022, p. 14 (para. 38).

- 5 I discuss below how it is inaccurate to allege that Peru has ceased intervening in social conflicts since the Bagua case in 2009 and provide some examples of how the Police and the Army have intervened in mining conflicts, even very recently.
- 6 The Bagua case was indeed a tragedy which was widely reported. More than anything, in my view it was an example of bad planning and execution by the Police and the armed forces. Adequate planning in the use of force is what the State should have learned from the Bagua incident. Accordingly, where communities seek to enforce their interests using violence, the State should react by using the minimum force necessary in such circumstances in a well-planned manner, instead of refusing to use force altogether as Mr Inchaústegui seems to suggest. The Bagua incident did not lead to the use of dialogue instead of resorting to police intervention in the face of illegality, as Mr Inchaústegui is suggesting. There have been a great number of instances in Peru of police intervention as a result of illegal actions by local communities since the Bagua incident of 2009, whether in the mining industry or otherwise. The change that came about with the Bagua case is that the State tried to promote dialogue as a preventive measure as long as illegal actions were not being committed.
- 7 The firm but adequate use of force in the face of Parán's illegal actions is what we always wanted at Invicta. What is more, our coordination with the Police demonstrated that the intervention had been planned carefully. Unfortunately, that intervention was disallowed by the MININTER, as I will explain below. Obviously, we did not wish to experience a repetition of the State's botched intervention at Bagua and there is no reason why the State could not have followed through in its intervention at Invicta in a manner that was commensurate with our democratic principles and with regard for the safety of all involved. This would have stopped the Parán Community from using violence against us on land that was not theirs, allowed us to reengage in dialogue with Parán authorities in more serene and less extortionate conditions, and enabled us to proceed with our business as we were entitled to do under Peruvian law. It is not acceptable for Mr Inchaústegui to state that such a type of intervention, where the Police are simply upholding the law, would exacerbate a conflict.

- 8 My direct experience with the reaction of the authorities to social conflicts in Peru does not conform with Peru's arguments or the statements of its witnesses. As I have stated, the Bagua case of 2009 led the State to use dialogue as a preventive measure. However, the Police continued to intervene forcefully in the face of illegality by a community, particularly until March 2018. At such time, Mr Martín Vizcarra assumed the presidency. His government, which lasted until November 2020, was very weak and resorted to increasing populism. It was precisely during this time that we needed the State to uphold the law the most, yet it failed to do so. The current government led by Mr Castillo is also populist but is opportunistic, and it has chosen to intervene when convenient, as in the case of Las Bambas. I will comment on this latter case below. Before doing so I will refer to other examples of the intervention by the State in the face of community conflict in the mining industry since the Bagua case.
- 9 As I noted in my first statement, I worked for Century Mining Perú S.A.C. from 2006 to 2017. This company exploited a gold mine in the department of Arequipa. We had an agreement with the local community to employ community members as mine workers and provide several services to the population. From 2010, they tried to obtain through protest better conditions than the company had agreed with them. This occurred approximately once a year after 2010. The Police did not hesitate to use force every time against the protesters after only a few hours where the protest was illegal (such as by blocking a public road).<sup>5</sup> The use of police force served to defuse the protests. We coordinated with the General in charge of the Arequipa region and the police interventions would usually involve between 20 and 30 policemen. These interventions were invariably successful.
- 10 I have also been aware through the press and through my contacts in the industry, of many occasions when the State took the same stance in relation to other mining projects **after** the Bagua case of 2009 referred to by Mr Incháustegui. For example, in May 2016,<sup>6</sup> the Police dislodged 100

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<sup>5</sup> See e.g., "Arequipa: with pellets they try to evict protesters from the Plaza de Armas", *Diario Correo* (SPA), 14/08/2016, at **Exhibit C-304**.

<sup>6</sup> "Pasco: Police evicted invaders from private land of a mining company", *Andina* (SPA), 23/05/2016, at **Exhibit C-305**.

community members who invaded a mining company's land and had started to install tents. The Police first ordered the community members to evacuate the area. When it became clear that the protestors were to defend their positions, the Police removed the protestors and the tents and arrested some of the protestors. As noted by the prosecutor in the press article, the Police would also arrest the organizer of the invasion "as he is the subject of a criminal complaint for the misappropriation of land".<sup>7</sup> I note the very similar circumstances faced by Lupaka without the same police intervention.

- 11 The conflicts led by various communities in the Ayacucho region against mining companies starting on 28 October 2019 is another example. The local communities stated that mining activity resulted in the contamination of their water, even though there was no evidence at all, as far as I understand, to substantiate their claims. Around 500 community members entered one of the mining companies' camps (Apumayo – where I am the director of corporate affairs since March 2022) and burned offices, vehicles and the processing plant, and stole assets including explosives, leading to the flight of the personnel. Other violent assaults followed in relation to other mining companies in the area.<sup>8</sup> These illegal actions were met with a strong response by the Police which was coordinated with the prosecutor, leading to arrests and the recovery of the stolen goods.<sup>9</sup>
- 12 Mr Incháustegui refers to the Las Bambas project as an example where a social conflict between the mining company and the local community has been resolved without resorting to the Police or the Army.<sup>10</sup> This is inaccurate, as I will explain. The mining operation in Las Bambas has been in the press for quite some time and especially this year. It is the largest copper project in Peru and one of the largest in the world and is operated by MMG, a Chinese company. It has been subject to recurring

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<sup>7</sup> "Pasco: Police evicted invaders from private land of a mining company", *Andina* (SPA), 23/05/2016, at **Exhibit C-305**, p. 2.

<sup>8</sup> "This was the invasion and burning of the Apumayo gold mine in Ayacucho", *El Comercio* (SPA), 30/10/2021, at **Exhibit C-306**; "Ayacucho: Apumayo mining camp and machinery were set on fire", *Noticias SER* (SPA), 30/10/2021, at **Exhibit C-307**.

<sup>9</sup> "They capture agitators who stole equipment from a mining company", *Expreso* (SPA), 06/11/2021, at **Exhibit C-308**.

<sup>10</sup> Witness Statement of Luis Miguel Incháustegui Zevallos, 06/03/2022, p. 17 (para. 45).

violent attacks and prolonged blockades by the local population despite the population having been lifted out of poverty and provided with an entirely new modern town as has been reported in the news.<sup>11</sup> The authorities have reacted forcefully to such violence on numerous occasions. For example, following a strong police intervention in March 2019, the authorities decreed a State of emergency in the area. Later, in October of that same year, the Peruvian government issued a decree authorising the intervention of the armed forces and the Police to unblock access to the Las Bambas project site. Regarding this measure, the Minister of Internal Affairs declared that “[w]e are committed to dialogue, but this cannot be confused with weakness. **We are going to do our job**”.<sup>12</sup> It should be recalled that this was a very long time after the Bagua case of 2009 referred to by Mr Incháustegui as the supposed turning point away from the use of force and in addition also after 2017 when a more non-interventionist approach was taken.

- 13 In September 2021, the Police again dispelled the at Las Bambas.<sup>13</sup> Most recently, on 14 April 2022, the local communities invaded the site once again and settled inside the mine, preventing the continuation of further works on 20 April 2022.<sup>14</sup> The community in this instance claimed that they sought the return of ancestral lands and more benefits. The mining company requested help from the Police to remove the invaders from the site. 676 police officers intervened on 28 April 2022 and the invaders and their tents were removed.<sup>15</sup> The officers remained at the site defending the

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<sup>11</sup> “Luxuries and modern houses, this is how the community members of Nueva Fuerabamba live”, *24 horas* (Video) (SPA), 28/03/2019, at **Exhibit C-309**; “Luxuries and modern houses, this is how the community members of Nueva Fuerabamba live”, *24 horas* (Transcript) (SPA), 28/03/2019, at **Exhibit C-310**.

<sup>12</sup> “Government Authorizes Armed Forces to Stop Protest Against Las Bambas Copper Mine”, *Reuters* (SPA), 16/10/2019, at **Exhibit C-311**, p. 1; “Peruvian security forces unlock access to Las Bambas copper mine”, *Minería en Línea* (SPA), 17/10/2019, at **Exhibit C-312**.

<sup>13</sup> See e.g. “Las Bambas: all the blockades that were reported this year in the mining corridor”, *El Comercio* (SPA), 28/09/2019, at **Exhibit C-313**.

<sup>14</sup> “Peruvian police carry out a new eviction of an indigenous community in the Las Bambas mine”, *Euronews* (SPA), 28/04/2022, at **Exhibit C-314**, p. 1 *et seq.*

<sup>15</sup> “Peruvian police evicts communities in Las Bambas mining”, *teleSURtv* (SPA), 28/04/2022, at **Exhibit C-315**, p. 2 *et seq.*; “Police eviction in Peruvian mine leaves three injured and 11 arrested”, *DW* (SPA), 28/04/2022, at **Exhibit C-316**, p. 1 *et seq.*; “Peruvian police carry out a



project, and were joined by a security company employed by the mining company, even if there were then further assaults from the local population.<sup>16</sup> Notably, the Government took no exception and appreciated the involvement of the private security contractors. The central government simultaneously decreed a State of emergency in the area for 30 days in order to allow the Police and the armed forces to totally control the area.<sup>17</sup>

- 14 Sadly, since then the government has let the local populations block operations again and has refused to enforce the law; the leader of the protesters, Edison Vargas, represents the same party as the current president, Mr Pedro Castillo.<sup>18</sup> In other words, it seems that political considerations are now taking precedence over the enforcement of the law. Even so, in June this year, the Police stated that they were assessing the best moment to evict the community members manning the blockade.<sup>19</sup> These interventions that Mr Incháustegui's statements as to the supposed abandonment of police action in favour of dialogue are incorrect. Today the conflict remains unresolved because of a refusal to deploy reasonable force.
- 15 The events at Las Bambas and other mines discussed above reflect the disparate treatment afforded Lupaka. In March 2019, at precisely the time of the Police and Army's forceful intervention at Las Bambas, State officials told us, without any conviction, to continue to dialogue with

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new eviction of an indigenous community in the Las Bambas mine", *Euronews* (SPA), 28/04/2022, at **Exhibit C-314**; "Las Bambas: clashes between the police and community members left 14 injured and 11 detained", *Infobae* (SPA), 28/04/2022, at **Exhibit C-317**, p. 3.

<sup>16</sup> "Las Bambas: mining conflict gets out of control and the crisis worsens due to attacks by community members", *Instituto de Ingenieros de Minas del Perú* (SPA), 29/04/2022, at **Exhibit C-318**; "Las Bambas: they ask that assault and attempted rape of security personnel not go unpunished", *Instituto de Ingenieros de Minas del Perú* (SPA), 02/05/2022, at **Exhibit C-319**.

<sup>17</sup> "Peruvian government calls for dialogue in conflict over Las Bambas mine", *DW* (SPA), 30/04/2022, at **Exhibit C-320**.

<sup>18</sup> "Las Bambas: workers of the mining company started marches and hunger strike", *Instituto de Ingenieros de Minas del Perú* (SPA), 18/05/2022, at **Exhibit C-321**; "Las Bambas is politicised with candidates from Peru Libre", *Instituto de Ingenieros de Minas del Perú* (SPA), 16/05/2022, at **Exhibit C-322**.

<sup>19</sup> "Las Bambas: Apurimac police chief warns that force will be used to evict community members 'if there is intransigence'", *RPP NOTICIAS* (SPA), 07/06/2022, at **Exhibit C-323**.

Parán's representatives as I will refer to below. The events in Las Bambas in September 2021 where a very strong police contingent entered the Site with a private security company hired by the miner was also the kind of operation we had planned should take place at Invicta. Yet the Police refused to support us.

### **3 IN DECEMBER 2021 THE POLICE INTERVENED AT INVICTA TO STOP PARÁN'S ILLEGAL EXPLOITATION**

- 16 Peru portrays the Parán Community as a "rural community that was concerned about the environmental, economic, and social impact of the mining project on the Community's territory and people".<sup>20</sup> I disagree with this rather innocuous portrayal of the Parán Community. Rather, at the time it was clear to both the central government agencies and myself that the Parán authorities were moved by interests that were far different from any legitimate social or environmental concerns. Specifically, the central authorities knew that the Parán Community wanted to protect its marijuana business but also that the community planned to exploit the Invicta mine for its own benefit.
- 17 Indeed, as I indicated in my first statement, the Parán Community expressly stated at our meeting on 29 January 2019 before the authorities that they would exploit the mine.<sup>21</sup> I reminded the authorities of this subsequently<sup>22</sup> and I sent the photographic evidence of the exploitation by the Parán Community to the MEM on 8 July 2019.<sup>23</sup> During my last meeting with MEM Deputy Minister, Mr Augusto Cauti, on 15 July 2019, he explained that if the Parán Community was exploiting the mine, he would call the Deputy Minister of Internal Order at the MININTER to alert him and request police intervention.<sup>24</sup> That, of course, never happened

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<sup>20</sup> Counter-Memorial, 24/03/2022, p. 3 (para. 7).

<sup>21</sup> Witness Statement of Luis F. Bravo, 01/10/2021, p. 11 *et seq.* (paras. 28 and 96-97).

<sup>22</sup> WhatsApp exchanges between Lupaka (Mr Bravo) and MININTER (Mr Saavedra), 5/02/2019-20/02/2019 (SPA), at **Exhibit C-192**, p. 3.

<sup>23</sup> See *e.g.*, Letter from IMC to MEM (SPA), 08/07/2019, at **Exhibit C-13**.

<sup>24</sup> Summary of the meeting between Deputy Minister of Mines and IMC with support of Canadian Embassy officials, 15/07/2019, at **Exhibit C-222**, p. 3.

while we owned the Project. Despite having provided this evidence in my first statement, Peru maintains that Parán's interests were legitimate.

- 18 Yet, on 14 December 2021, more than two years after we had lost the Project, the Police finally intervened with a large contingent at Invicta, as I learnt through the news as well as through ex-employees that are still in contact with the local communities. The news reported that between 270 and 400 police officers were ordered to close the mining operations.<sup>25</sup> The large contingent of police officers can be seen from the video shot on the same day just prior to the operation in the village of Sayán, close to Invicta.<sup>26</sup>
- 19 The mining operations the Police sought to close were those being carried out illegally by the Parán Community, as confirmed to me by ex-employees with good contacts on the ground.
- 20 The press reported that the operation on 14 December 2021 was unsuccessful for reasons of which I am unaware.<sup>27</sup> This notwithstanding, the Police had finally intervened. There is no reason why the Police could not have intervened while we still owned Invicta.

#### **4 EVENTS FROM JANUARY 2019 LEADING UP TO THE OBSTRUCTION OF THE OPERATIONAL PLAN BY THE MININTER IN FEBRUARY 2019**

- 21 As I noted in my first witness statement, one of the first actions I took in January 2019 after having joined as country manager was to meet with Mr Incháustegui, Deputy Minister for the MEM and Deputy Minister (Colonel) Esteban Saavedra Mendoza, then Deputy Minister for Internal

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<sup>25</sup> "National Police closes the Invicta Mine Community of Parán and Community of Lacsanga", *Radio Sol - Sayán* (Video) (SPA), 14/12/2021, at **Exhibit C-324** (minute 01:21); "National Police closes the Invicta Mine Community of Parán and Community of Lacsanga", *Radio Sol - Sayán* (Transcript) (SPA), 14/12/2021, at **Exhibit C-325**; "Clash between community members and police leaves a deceased person as a result", *DIARIO ASI* (SPA), 14/12/2021, at **Exhibit C-326**.

<sup>26</sup> "Police raid into 'Invicta' mining problems leaves a deceased person", *Radio Sol - Sayán* (SPA), 14/12/2021, at **Exhibit C-327**.

<sup>27</sup> "Police incursion into problems at the 'Invicta' mining company, leaves one person dead", *Radio Sol - Sayán* (SPA), 14/12/2021, at **Exhibit C-328**.

Order of the MININTER.<sup>28</sup> They have both provided witness statements which I comment on below.

- 22 As I will cover, by early February 2019, the Police were ready to implement the plan to evict the Parán members from the Blockade and secure the Site (the “**Operational Plan**”). The MEM’s General Office of Social Management (“**MEM-OGGS**” which is the Spanish acronym for “*Oficina General de Gestión Social*”) also agreed that this was the correct action to take. However, the MININTER blocked this intervention for its own reasons, as I already noted in my first statement.<sup>29</sup>

#### **4.1 The meeting with Mr Incháustegui, Deputy Minister of the MEM – 23 January 2019**

- 23 At the meeting with Mr Incháustegui (which was on 23 January 2019, not on 22 January 2019 as Mr Incháustegui states), we first laid out our reasons for requesting the Police’s intervention to lift the Blockade as a prerequisite to further discussions with the Parán Community and hopefully an agreement with the community. As I noted in my first statement, he understood our position but limited his commitment to ensuring that the parties continued discussions.<sup>30</sup> Mr Incháustegui confirms this in his witness statement.<sup>31</sup>
- 24 Further, at the meeting, Mr Will Ansley, Lupaka’s CEO at the time, explained that meaningful negotiation was impossible given that Parán maintained the Blockade. Mr Incháustegui agreed with this at the time. While he did not explicitly note that in the circumstances this meant that intervention by the Police should take place (which required the MININTER’s agreement in any event), this was the logical consequence of his agreement that dialogue was futile in the circumstances, even if he stated that dialogue should proceed.

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<sup>28</sup> Witness Statement of Luis F. Bravo, 01/10/2021, p. 9 (paras. 21-22).

<sup>29</sup> Witness Statement of Luis F. Bravo, 01/10/2021, p. 13 (para. 33).

<sup>30</sup> Witness Statement of Luis F. Bravo, 01/10/2021, p. 9 *et seq.* (paras. 20-22).

<sup>31</sup> Witness Statement of Luis Miguel Incháustegui Zevallos, 06/03/2022, p. 7 (para. 23).

- 25 This is why Mr Ansley then specified in his letter dated 6 February 2019 to Mr Incháustegui’s superior, Minister Ismodes, that removal by force was the first step in our plan for further engagement with the Parán Community and that this had been explained to Mr Incháustegui, followed by a request that this take place without further delay.<sup>32</sup> In his witness statement, Mr Incháustegui denies he ever agreed that police intervention was appropriate in the circumstances, and expressly states that the situation could not be resolved through force.<sup>33</sup> If he had stated this in our meeting, Mr Ansley would have said so in the 6 February 2019 letter to Minister Ismodes requesting police intervention. Although we knew that ultimately the MININTER’s agreement for police intervention was required, we were appealing to the MEM too in order to make sure that all involved institutions were aligned.
- 26 Mr Incháustegui claims the letter suggested that “up till then (*i.e.*, February 2019), the [MEM] and other State agencies had not made any effort to facilitate dialogue and negotiations between the parties.”<sup>34</sup> This is incorrect. There is no language that suggests that dialogue had not occurred with the Parán Community prior to this, contrary to Mr Incháustegui’s statement.<sup>35</sup> Rather, Mr Ansley’s letter noted that after the removal of the Parán Community, “open negotiations and dialogue with the community of Parán” would go forth, through which there would be an “attempt to come to a reasonable economic agreement with Parán, on a level consistent and reasonable with the impact on Parán by the project.”<sup>36</sup> This is what we stated at the meeting. Everybody there was clear on the fact that dialogue had been attempted many times before, including with the participation of the MEM, but that no meaningful result had been obtained.

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<sup>32</sup> Letter from Lupaka to MEM, 06/02/2019, at **Exhibit C-15**, p. 1.

<sup>33</sup> Witness Statement of Luis Miguel Incháustegui Zevallos, 06/03/2022, p. 8 (para. 25).

<sup>34</sup> Witness Statement of Luis Miguel Incháustegui Zevallos, 06/03/2022, p. 9 (para. 27).

<sup>35</sup> Witness Statement of Luis Miguel Incháustegui Zevallos, 06/03/2022, p. 9 (para. 27).

<sup>36</sup> Letter from Lupaka to MEM, 06/02/2019, at **Exhibit C-15**, p. 1.

## **4.2 The meeting with Mr Saavedra, Deputy Minister of the MININTER – 24 January 2019**

- 27 In my first witness statement, I referred to a meeting with Mr Saavedra which I mistakenly stated took place on 22 January 2019, when in fact it took place on 24 January 2019. At that meeting, we sought to obtain his support for the Operational Plan to go ahead in order to remove the Parán invaders given the futility of the meetings with the Parán Community that had taken place in 2018. Meeting Mr Saavedra made sense since the Police is part of the MININTER, and he was one of its highest authorities. At the time, a further meeting with the Parán Community had not been confirmed (although it took place on 29 January 2019, as I will explain below).
- 28 Mr Saavedra has provided a witness statement in which he comments on this meeting and its aftermath as well as on his supposed lack of authority in relation to the Police, which he notes operates autonomously.<sup>37</sup> Many of the statements he makes are inaccurate. I discuss these inaccuracies as I go through the chronology of events. As is clear from my correspondence with him, he seemed to be on the brink of approving the Operational Plan in the days following our meeting. Only on 15 February 2019 did he decide that dialogue should prevail and that the Operational Plan should not be implemented.
- 29 At the time of the meeting with Mr Saavedra on 24 January 2019, we knew that the Police had been seriously considering the Operational Plan since October 2018.<sup>38</sup> We also knew that the plan was gaining further momentum. Indeed, both our Mr Jorge Arévalo (a.k.a. “Coco”) and Mr Marco Estrada, were communicating constantly with the Police on the

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<sup>37</sup> See Witness Statement of Esteban Saavedra Mendoza, 15/03/2022, p. 8 *et seq.* (paras. 22 and 25 (d)).

<sup>38</sup> Report on meeting between IMC, the Parán Community, the MEM and the Mayor of the District of Leoncio Prado (SPA), 24/10/2018, at **Exhibit C-173**, p. 4 (“The PNP Major, Andrés Rosales, has received the order to prepare the Police Operation Order for regaining access to the mine and Paran’s eviction. Within this police operation order, the presence of 60 police officers (50 from the Lima DINOES and 10 from the Huacho USE) will be considered. Over the next few days, the National Police will deliver a letter to Invicta, confirming the approval of the Police Operation; with the signature of this document acknowledging receipt Invicta will be notified of the approval of its request (for Police Support)”).

implementation of the plan.<sup>39</sup> The communication with the police forces was open and collaborative so we often had access to internal police documents and information which confirmed this.

- 30 For example, the recently appointed CPO Soria (in Sayán) issued a request dated 23 January 2019 to his superiors for intervention by the Police to lift the Blockade.<sup>40</sup> I do not recall seeing this document at the time specifically (IMC's Mr Raúl Arrarte was the recipient as the document states). However, I was aware of its content. As the document notes, this request followed CPO Soria's visit on 19 January 2019 to the site of the Blockade where he found some 30 Parán members who had placed boulders on the road. During CPO Soria's visit, Parán members refused to identify themselves and tried to attack a Lacsanga member, although the Police came to his aid. We also received videos of the visit carried out by CPO Soria to the Blockade on 19 January 2019 shortly thereafter, which I do recall seeing at the time, where the aggression of Parán's members against the Police is plain.<sup>41</sup> As is reflected in CPO Soria's report, in the early hours of 20 January 2019, CPO Soria received a call informing him that another Lacsanga member had been shot by a Parán community member within Lacsanga territory and taken to hospital.<sup>42</sup> As a result, CPO Soria requested the intervention of the special forces. Specifically, the document states:

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<sup>39</sup> See *e.g.*, IMC, Expense report for Mr Marco A. Estrada, January 2019 (SPA), at **Exhibit C-329** (referring to coordination with intelligence units of the police, receipt of confidential documents from the police, meeting with the CPO of Sayán as well as Colonel in Huacho); LAVETA, Invoice for January 2019, at **Exhibit C-330**, p. 2 (many activities related to this) and LAVETA, Invoice for December 2018, at **Exhibit C-331**, p. 2 ("Follow up with Lima Police (7ma region) with respect [to] the actualization of the operational plan"; "Follow up with Sayan Police and Huacho with respect [to] the actualization of the operational plan").

<sup>40</sup> Huacho DIVPOL, Report No. 004-2019-REGPOL.LIMA/DIVPOL-H-CS.SEC. (SPA), 23/01/2019, at **Exhibit C-332**.

<sup>41</sup> Sayán Police, CPO Soria's visit to the Blockade site (Video, 02:50 minutes) (SPA), 23/01/2019, at **Exhibit C-333**; Sayán Police, CPO Soria's visit to the Blockade site (Video Transcript, 02:50 minutes) (SPA), 23/01/2019, at **Exhibit C-334**; Sayán Police, CPO Soria's visit to the Blockade site (Video, 01:17 minutes) (SPA), 23/01/2019, at **Exhibit C-335**; Sayán Police, CPO Soria's visit to the Blockade site (Video Transcript, 01:17 minutes) (SPA), 23/01/2019, at **Exhibit C-336**.

<sup>42</sup> Huacho DIVPOL, Report No. 004-2019-REGPOL.LIMA/DIVPOL-H-CS.SEC. (SPA), 23/01/2019, at **Exhibit C-332**, p. 2.

“Due to the events that have been occurring in the jurisdiction of this police sub-unit, it is necessary to obtain the support of the personnel of the special forces in order to guarantee the maintenance and re-establishment of internal order, public order and public safety, as well as to guarantee compliance with the laws and the security of public and private property and free transit.”<sup>43</sup>

31 To add to this, the information that we had already in January 2019 was that the Operational Plan foresaw the intervention of 200 police officers, but required the approval of additional authorities, as I said in my first witness statement.<sup>44</sup> Therefore, when I entered the meeting with Mr Saavedra on 24 January 2019, I knew that there was police support for intervention. The meeting with Mr Saavedra was instigated precisely to gain the support needed from the MININTER to trigger the implementation of the plan.

32 Mr Saavedra notes in his witness statement that the Deputy Minister for Internal Order at the MININTER does not revise or approve Police operational plans. Specifically, he notes that the Police:

“has administrative and functional autonomy and therefore does not have to and does not consult the Vice Minister for Internal Order on the execution of a plan or an order for operations and nor does the latter have authority over the PNP by law.”<sup>45</sup>

33 Mr Saavedra also states that he had never seen the drafted Operational Plan dated 9 February 2019 before this arbitration<sup>46</sup> and that operational plans generally are prepared preventatively in case there is an absolute need for police intervention and that they are often not implemented.<sup>47</sup> He further notes that the document reflecting the Operational Plan is drafted in

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<sup>43</sup> Huacho DIVPOL, Report No. 004-2019-REGPOL.LIMA/DIVPOL-H-CS.SEC. (SPA), 23/01/2019, at **Exhibit C-332**, p. 2 (para. 6).

<sup>44</sup> Witness Statement of Luis F. Bravo, 01/10/2021, p. 8 *et seq.* (paras. 17 and 19).

<sup>45</sup> Witness Statement of Esteban Saavedra Mendoza, 15/03/2022, p. 10 (para. 25.d).

<sup>46</sup> Witness Statement of Esteban Saavedra Mendoza, 15/03/2022, p. 10 *et seq.* (paras. 25.d, 32 and 33).

<sup>47</sup> Witness Statement of Esteban Saavedra Mendoza, 15/03/2022, p. 13 (para. 31).



conditional language thereby allegedly indicating that “the risk situation was still being assessed and evaluated.”<sup>48</sup>

- 34 If Mr Saavedra is correct that no approval by the MININTER was required for the Operational Plan to go ahead because the Police operate autonomously, then the Operational Plan would have been implemented. Indeed, contrary to Mr Saavedra’s statements as to the contingent nature of the Operational Plan, we received clear confirmation that it had been approved by the police authorities, as I develop below. Yet, in this instance and in other instances of which I have personal knowledge, it is clear that the approval of the higher instances within the MININTER was also required for a police intervention of this size, once all the approvals by the police authorities had been obtained. This is clear in this instance from my dealings with Mr Saavedra, including through my WhatsApp exchanges with him which I provided in my first witness statement and which I will further comment on below.<sup>49</sup>
- 35 Our meeting on 24 January 2019 was two hours long, during which we explained the Blockade situation to substantiate our request for intervention by the Police. Contrary to Mr Saavedra’s statements during these proceedings, he did not state or suggest that he was not competent to order the implementation of the Operational Plan.
- 36 Rather, in his statement, Mr Saavedra claims to have told us that further dialogue was a priority over intervention by the Police.<sup>50</sup> This is not a correct representation of what Mr Saavedra communicated. He recognised that further dialogue with the Parán Community, in the circumstances where its members were not pressured by law enforcement agents, was a waste of time since the Parán Community was very unlikely to yield to our requests. Further, Mr Saavedra confirmed that he knew that growing marijuana was an important part of the Parán Community’s livelihood. While he did state that, from a political perspective, the State gave priority to dialogue with the community, he also made it clear that intervention by the Police was probably needed in the circumstances, and he facilitated a

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<sup>48</sup> Witness Statement of Esteban Saavedra Mendoza, 15/03/2022, p. 13 (para. 33).

<sup>49</sup> Witness Statement of Luis F. Bravo, 01/10/2021, p. 11 *et seq.* (paras. 29 and 33-34).

<sup>50</sup> Witness Statement of Esteban Saavedra Mendoza, 15/03/2022, p. 8 (para. 23).

meeting with General Arata, the Lima Chief of Police, the same day precisely to coordinate the details for the implementation of the Police Operation Plan, as I will comment on below.

- 37 As I have noted, Mr Saavedra did eventually tell me through WhatsApp on 15 February 2019 (over three weeks later) that the Operational Plan could not proceed and that dialogue with the Parán Community should be taken forward despite the Blockade. However, it is worth revisiting the chronology of events until that time (see Sections 4.3 to 4.5 below), as it shows that by 15 February 2019, the Police had approved for the Operational Plan to go ahead. In addition, the MEM-OGGS believed the implementation of the Operational Plan was the correct solution, as despite many months of fruitlessly mediating dialogue with the Parán Community, the latter continued to act defiantly. The events also make clear that the MININTER's approval was required for the Operational Plan to be implemented, and that on 15 February 2019 Mr Saavedra informed me that the MININTER was not ready to approve it for no good reason. Indeed, the MININTER's decision was capricious and arbitrary.

#### **4.3 The Police hierarchy approved of the use of force to remove the Blockade**

- 38 As noted, Mr Saavedra portrays in his witness statement that it was clear that dialogue with the Parán Community should prevail in the circumstances rather than the implementation of the Operational Plan and that in any event he was not empowered to decide on the implementation of the Operational Plan. For example, he notes:

“Mr. Bravo requested my support to authorize the execution of a police operational plan, whereby PNP officers would use force to remove the Community members from the road. Agreeing to that request not only exceeded the scope of my competence as Vice Minister for Internal Order, but was also contrary to the dialogue and consultation process in progress to promote a solution to the conflict.”<sup>51</sup>

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<sup>51</sup> Witness Statement of Esteban Saavedra Mendoza, 15/03/2022, p. 8 (para. 22).

- 39 However, as I have noted, it was only on 15 February 2019 that Mr Saavedra showed his opposition to the implementation of the Operational Plan. As I will demonstrate below, the information I had before that time shows that, contrary to his statement, Mr Saavedra, as Deputy Minister of the MININTER, was the person who ultimately had to approve of the Operational Plan. In addition, the discussions I had with State officials, including Mr Saavedra, showed that the Operational Plan was on the verge of going ahead because it had been approved by the Police hierarchy and a date for its implementation had been set.
- 40 Indeed, Mr Ansley and Mr Arévalo had discussions with General Arata at a meeting on 24 January 2019. This meeting followed our discussion with Mr Saavedra and it concerned the coordination of the logistics and date for implementation of the Operational Plan.<sup>52</sup> Mr Saavedra facilitated the two-hour meeting, as I have noted.
- 41 On 25 January 2019, General Arata received a request from the Huacho Police Division, requesting that his team confiscate the Parán Community's rural guards ("*ronderos*" in Spanish) firearms.<sup>53</sup> I received the first page of this request from my personnel on the ground. The request explains that the Peruvian army provided these firearms to the community members to integrate the self-defence committees. The request further reasoned that the *ronderos* had been using the arms "inappropriately." Specifically, Parán members had threatened and attacked Lacsanga community members, causing serious injuries. The request then referred to the Blockade, implying that the fact that the community members were armed and dangerous in the face of the conflict with IMC was a serious concern. This document further indicates that the Police intended to unarm the Parán *ronderos*. I note that Mr Saavedra alleges that the Directorate of Rural Patrols ("*Dirección de Rondas Campesinas*" in Spanish) was

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<sup>52</sup> Email from LAVETA to Lupaka (SPA), 01/02/2019, at **Exhibit C-337**, referring to the meeting by stating "*REUNION - SETIMA REGION - PNP -GENERAL MARIO ARATA seguimiento y coordinaciones de cómo iba avanzando el plan operativo y búsqueda de fecha tentativa*". LAVETA, Invoice for January 2019, at **Exhibit C-330**, confirms that the meeting took place on 24 January 2019.

<sup>53</sup> Letter from Huacho Police to Chief of Lima Region Police (SPA), 25/01/2019, at **Exhibit C-338**.

directly under his office.<sup>54</sup> This made him ultimately responsible for the *ronderos*' deployment of military-grade weapons provided by the Peruvian military and also for their disarmament. Unfortunately, the Parán Community was not disarmed while we held the Invicta concession, but the letter of 25 January 2019 was highly encouraging at the time I saw it.

- 42 Then on 30 January 2019, we obtained internal police information that the formal request from IMC for intervention dated 7 December 2018 had been processed favourably through various higher instances of the Police.<sup>55</sup> It seemed as though the Operational Plan was being considered and advanced by the highest authorities within the Police. This was not signalling to us that the State was prioritizing dialogue, contrary to Mr Saavedra's portrayal today.
- 43 In January and February 2019, Mr Arévalo coordinated closely with the Police to push for the implementation of the Operational Plan. The Police continued to express belief in the Operational Plan while sharing information with him, including on the field and logistics. Indeed, Mr Arévalo obtained and shared with me a copy of the letter dated 4 February 2019 signed by Colonel Arbulú, Chief of Police Division in Huacho, to CPO Soria in Sayán.<sup>56</sup> This letter stated that CPO Soria was requested to immediately prepare an Operational Plan, in order for it to be returned and approved by the Lima Regional Department (*i.e.*, headed by General Arata).
- 44 I was frustrated at the slow progress on the approval of the Operational Plan by the police hierarchy. I coordinated with Mr Saavedra through WhatsApp exchanges in relation to the Police's intervention. On 5 February 2019, I told Mr Saavedra that "despite the steps taken with [General]. Arata and [Colonel] Arbul[ú] in Huacho, we have not been able to advance with the [Operational Plan] to regain control of the operation".<sup>57</sup>

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<sup>54</sup> Witness Statement of Esteban Saavedra Mendoza, 15/03/2022, p. 4 (para. 16).

<sup>55</sup> MININTER, Approval roadmap for police intervention (SPA), 10/12/2019, at **Exhibit C-339**.

<sup>56</sup> Huacho DIVPOL, Decree No. 47-2019-REGIÓN POLICIAL LIMA/DIVPOL-H-OFIPO (SPA), 04/02/2019, at **Exhibit C-340**.

<sup>57</sup> WhatsApp exchanges between Lupaka (Mr Bravo) and MININTER (Mr Saavedra), 5/02/2019-20/02/2019 (SPA), at **Exhibit C-192**, p. 1.

I was making that statement because we knew that General Arata and Coronel Arbulú were in favour of the implementation of the Operational Plan, further to our discussions with them, although the MININTER's green light was needed for it to go ahead. Through WhatsApp, I asked Mr Saavedra to coordinate with General Arata and to communicate with other forces of the Police. On 6 February 2019, Mr Saavedra wrote back that he had just spoken to General Arata, to understand the situation. He relayed the conversation to me through WhatsApp. It is clear from the message he sent to me that Mr Saavedra and General Arata were highly concerned that the access of Parán's members to the explosives' magazine at the Site could lead to serious damage, which is why they both considered it was very important for the State to verify whether the explosives had been stolen:

“[6/02/19 10:53:07 p. m.] Esteban Saavedra: Luis Felipe [...] I just spoke with General Arata who outlines the following for me:

1. The Colonel is working on the issue and is going to the area but sometimes there are problems due to the rainy weather which does not make access easy.
2. The [C]olonel [Arbulú] with the Prosecutor, an official from [General Office of Public Order] (Mininter) and a leader from the Parán Community will enter the mine on Friday 8 February to check the existence of dynamite.
3. That [Colonel Arbulú] has no proof whether or not there is dynamite in the mine's explosive magazine and that is why it is important that the [P]rosecutor and the [PNP] verify this.
4. That on Saturday 9 General Arata will have a report on the situation, which will serve as input for the next decision.

[6/02/19 10:55:33 p. m.] Luis Felipe: Esteban, thank you very much for your answer.

[6/02/19 10:58:21 p. m.] Luis Felipe: However, Colonel Arbulú tried to go up to the mine today but on the road that goes directly to Parán, which is in very bad condition and is risky because of the rain. He was led and taken by the President of Parán and they had to turn back. I had a long conversation with him on Tuesday and

alerted him of this, but he listened to those from Parán and nothing could be done.

[6/02/19 10:59:42 p. m.] Luis Felipe: It is important that our people go up there to be able to verify and provide information on the inventory and location of the explosives since [Parán's member] can say anything and evade the [P]olice and prosecutor's inspection.

[6/02/19 11:09:08 p. m.] Esteban Saavedra: I don't think there is any issue for someone from the company to go, it's a matter of coordinating so that they go together.

[6/02/19 11:10:41 pm] Luis Felipe: Tomorrow I will call Colonel Arbul[ú] to coordinate with him but a call from the General to reinforce is important. Thanks a million.

[7/02/19 7:05:36 a. m.] Esteban Saavedra: Ok I'm going to call the [C]olonel and the General again".<sup>58</sup>

- 45 As is clear from the foregoing exchange, this verification was to be done by the Police, a MININTER representative and the prosecutor. Mr Saavedra also authorised for one of our personnel to go to the Site with the State forces and he coordinated with Colonel Arbulú and with General Arata to allow for this.<sup>59</sup>
- 46 Again, this exchange does not square with Mr Saavedra's statement in these proceedings that the Police were operating autonomously from the MININTER and that "police intervention would not be the appropriate way to try to resolve the conflict."<sup>60</sup>
- 47 On 9 February 2019, the prosecutor and Colonel Arbulú went to the Site together with IMC personnel (namely Mr Estrada) to verify the status of the camp and the explosives magazine. As I reported to the CEO, the

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<sup>58</sup> WhatsApp exchanges between Lupaka (Mr Bravo) and MININTER (Mr Saavedra), 5/02/2019-20/02/2019 (SPA), at **Exhibit C-192 (corrected translation)**, p. 1 *et seq.*

<sup>59</sup> WhatsApp exchanges between Lupaka (Mr Bravo) and MININTER (Mr Saavedra), 5/02/2019-20/02/2019 (SPA), at **Exhibit C-192 (corrected translation)**, p. 2.

<sup>60</sup> Witness Statement of Esteban Saavedra Mendoza, 15/03/2022, p. 9 (para. 24).

minutes of the inspection that I saw did not say much about the missing explosives “due to Par[á]n[] people[’s] threa[t]s. Need to file a criminal complaint for this issue[]”.<sup>61</sup> Mr Estrada filed a criminal complaint in this regard a few days later in which he explained what he had seen.<sup>62</sup> He declared that the prosecutor was only allowed a short inspection of the Site and the explosives magazine given the Parán Community members’ aggressiveness. However, it was enough to verify that there had been an illegal entry. Yet, the prosecutor was only able to partially account for the explosives’ accessories and there had been no time to take stock of the explosives. Such defiant conduct by the Parán Community could only have weighed in favour of police intervention.

- 48 As a further show of the authorities’ conviction that an intervention should go ahead, around that time I received the fully drafted Operational Plan which had been prepared by the Sayán police authorities.<sup>63</sup> The Operational Plan referred to the intervention of 280 police officers.<sup>64</sup> I referred to this document in my first statement.<sup>65</sup>
- 49 On 11 February 2019, Mr Estrada sent me a copy of CPO Soria’s official approval of the document laying out the Operational Plan (dated 9 February 2019) through a letter directed to his superior in Huacho, Colonel Arbulú.<sup>66</sup> This again was highly encouraging; it seemed that we were on the cusp of the implementation of the Operational Plan.
- 50 Given all these events, I find it troubling that Mr Saavedra states the following:

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<sup>61</sup> Email from Lupaka to LAVETA with attachment, 13/02/2019, at **Exhibit C-341**; this document refers to the inspection occurring on 8 February 2019, although it occurred on 9 February 2019.

<sup>62</sup> IMC, Criminal complaint for aggravated theft and illegal possession of explosives (SPA), 20/02/2019, at **Exhibit C-342**. Although this document is unsigned, I understand that this is the complaint that was filed.

<sup>63</sup> Police Operational Plan to lift the Blockade (SPA), 09/02/2019, at **Exhibit C-193**.

<sup>64</sup> Police Operational Plan to lift the Blockade (SPA), 09/02/2019, at **Exhibit C-193**, p. 39.

<sup>65</sup> Witness Statement of Luis F. Bravo, 01/10/2021, p. 8 (para. 17).

<sup>66</sup> Approval by Mayor Soria of the Police Operational Plan to lift the Blockade (SPA), 09/02/2019, at **Exhibit C-195**.

“Based on my communications with Mr. Bravo, my impression is that he did not understand or accept that the PNP could not intervene with the use of force in the circumstances of the case, much less when talks and negotiations were taking place, and, also, that the PNP had protocols it had to follow to intervene with the use of force (actually, he had trouble understanding this reasoning).”<sup>67</sup>

- 51 As shown above, not only was Mr Saavedra coordinating with the Police in relation to Parán’s conduct, but the police authorities had practically finalised their detailed plans to intervene. I will refer to the further steps which were taken by the Police below in preparation for the intervention. Before I do so, however, I would like to address the following statement by Peru:

“[...] the mere fact that an operational plan was drafted did not mean that it necessarily would be implemented if doing so would not be appropriate under the circumstances. The PNP generally drafts operational plans in anticipation of the potential need for action, as a way to get organized and be prepared, should a need to intervene eventually be triggered in accordance with Peruvian legislation and international standards. For that reason, although an Operational Plan in this case was drafted, it did not have any scheduled effective date of execution. The PNP took no position at that time on whether that particular Operational Plan should or would be implemented, or, if it were implemented, when that would occur.”<sup>68</sup>

- 52 I disagree with this statement for five reasons:
- 53 First, while the Operational Plan did not set a specific timeframe for its execution, the date was confirmed subsequently by Mr Arévalo (who was closely coordinating with the Police). Indeed, on 13 February 2019, I was

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<sup>67</sup> Witness Statement of Esteban Saavedra Mendoza, 15/03/2022, p. 11 *et seq.* (para. 28).

<sup>68</sup> Counter-Memorial, 24/03/2022, p. 131 (para. 256).



informed that the Operational Plan was to take place on 19 February 2019 at 9 a.m., as I told Mr Saavedra through WhatsApp.<sup>69</sup>

- 54 Second, and further contradicting Peru's argument that the Operational Plan was prepared on a contingency basis, a mere review of the document shows that the plan had been finalised and ready for implementation including because it annexed a report by the intelligence services dated 6 February 2019. The Police would not have gone to such lengths if its implementation was not imminent.
- 55 Third, the document referred to the support we were to provide the Police through our vehicles,<sup>70</sup> accommodation and food for the officers during their stay once the Site had been recovered<sup>71</sup> and coordination with our personnel during critical parts of the plan.<sup>72</sup> This had all been coordinated with the Police beforehand, which of course had taken time which would not have been expended by the authorities on the outside possibility that an intervention may be needed.

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<sup>69</sup> WhatsApp exchanges between Lupaka (Mr Bravo) and MININTER (Mr Saavedra), 5/02/2019-20/02/2019 (SPA), at **Exhibit C-192**, p. 3.

<sup>70</sup> Police Operational Plan to lift the Blockade (SPA), 09/02/2019, at **Exhibit C-193**, p. 19 ("Commanded by Sub-lieutenant PNP Richard Angel RAMON TALAVERA, in command of FORTY (40) PNP troopers from Divinrap-Santa Rosa and DIVSERESP-LIMA&tB, with [o]ne (1) mobile unit provided by the Mining Company."); Police Operational Plan to lift the Blockade (SPA), 09/02/2019, at **Exhibit C-193**, p. 23 ("The belongings and material seized from the persons involved in the intervention and/or detained will be recorded in the respective minutes that must be formulated "IN-SITU" in accordance with the legal formalities and in the presence of the representative of the Public Prosecutor's Office, and the persons will be transferred by police personnel in police vehicles and/or vehicles of the Mining Company.").

<sup>71</sup> Police Operational Plan to lift the Blockade (SPA), 09/02/2019, at **Exhibit C-193**, p. 23 ("The Commanding Officer will be responsible for coordinating with the Works Manager of the Invicta Mining Corp. SAC, regarding the accommodation and food of police personnel during their stay in said facilities, and for informing the DIVPOL-HUACHO of this coordination.")

<sup>72</sup> Police Operational Plan to lift the Blockade (SPA), 09/02/2019, at **Exhibit C-193**, p. 24 ("The Commanding Officer will communicate to the General Command and Operational Command by the fastest means via HUACHO CEOPOL, the most important news, in order to adopt the pertinent measures, on the support and/or reinforcement to the Sub-Units if necessary for the maintenance and/or restoration of Public Law and Order, before coordinating with the Manager of the Invicta Mining Corp. SAC.")

- 56 Fourth, as I have noted, CPO Soria had approved the Plan. He would not have done so if this was a mere draft or just for purposes of “preparation”. Coronel Arbulu also signed off on the Operational Plan.
- 57 Indeed, after receiving the Operational Plan, I did what I could to ensure it was approved by the remaining police hierarchy and then implemented. On 12 February 2019, I drove to Huacho to meet with Colonel Arbulú.<sup>73</sup> While at that time the Police had not yet set up an execution date for the Operational Plan (it occurred the next day as I have noted), Colonel Arbulú was convinced of the need of carrying it out “because he has seen how these people act” and that they clearly were refusing to come to a peaceful resolution of the situation, as I reported internally.<sup>74</sup> I was referring here to the 8 February 2019 failed inspection of the explosives magazine in which he had participated; he also of course knew of the failed meeting with the Parán Community on 29 January 2019 even if he had not participated and was also very aware of the illegal marijuana plantations that were an important part of Parán’s livelihood. On 14 February 2019, I was further informed that Colonel Arbulú had also signed off on the Operational Plan and that the hard copy had been sent to Lima for final approval (with an email copy sent in advance).
- 58 Fifth, also on 14 February 2019 at 7 p.m., I met with CPO Soria in Lima (together with Mr Arévalo and Mr Estrada) to iron out the final details for the implementation of the Operational Plan, including the steps following the recovery of the mine Site. As I noted above, CPO Soria was fairly new to the job in Sayán, so we wished to avoid any misunderstanding. He confirmed to me that the Operational Plan had been fully approved by all the police hierarchy and that this was why the logistical fine-tuning was being undertaken.
- 59 For all these reasons it does not make sense for Peru to state that the Police had not taken a position as to the implementation of the Operational Plan.

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<sup>73</sup> IMC, Expenses report for Mr Luis Felipe Bravo, February 2019 (SPA), at **Exhibit C-343**.

<sup>74</sup> Email from Lupaka to LAVETA with attachment, 13/02/2019, at **Exhibit C-341**, p. 2.

#### 4.4 The MEM-OGGS's approval of the use of force

- 60 I was coordinating with the MEM-OGGS in parallel to these events. I note that Mr León states that the MEM-OGGS had learned after the 29 January 2019 meeting that we had been coordinating with the MININTER to request that the Police intervene and that they were worried by this course of action as it would not resolve the situation.<sup>75</sup> I would note two points on this.
- 61 First, although Mr León now seems to allege that we were somehow hiding our coordination with the law enforcement authorities including the MININTER, in truth the MEM-OGGS was fully aware of them. Indeed, Mr León agrees that I made it clear at the 25 January 2019 meeting with him that our priority was for the Operational Plan to proceed<sup>76</sup> and he knew that we had been coordinating with the MININTER to this effect.
- 62 Second, the MEM-OGGS positively agreed that dialogue was no longer viable after the failed 29 January 2019 meeting with the Parán authorities and that the Police should intervene as a priority. I therefore find it strange that Mr León states that “I recall informing Mr. Bravo that his position was contradictory and showed a lack of good faith in the negotiations.”<sup>77</sup> This is false just as Mr León’s statement that “[he] also indicated that [police intervention] was not an option that would enable a long-term solution to be achieved or contribute to the negotiations.”<sup>78</sup>
- 63 Indeed, at the meeting on 13 February 2019 that I held with MEM-OGGS officials, Messrs Trigos and César Ulloa, they both agreed that the Operational Plan should go ahead and that they would try to reinstate dialogue with Parán representatives in parallel, as I reported internally.<sup>79</sup> We of course agreed with that strategy; it reflected our long-held position.

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<sup>75</sup> Witness Statement of Nilton César León Huerta, 22/03/2022, p. 11 (para. 36).

<sup>76</sup> Witness Statement of Nilton César León Huerta, 22/03/2022, p. 10 (para. 34).

<sup>77</sup> Witness Statement of Nilton César León Huerta, 22/03/2022, p. 11 (para. 36).

<sup>78</sup> Witness Statement of Nilton César León Huerta, 22/03/2022, p. 26 (para. 81).

<sup>79</sup> Email from Lupaka to LAVETA with attachment, 13/02/2019, at **Exhibit C-341**, p. 2 (“They proposed a paral[el] strategy with Par[á]n leaders pushing (only on their side, **without**

- 64 In addition, as I have noted above, by 13 February 2019 we also had confirmation that the Operational Plan was going to be implemented on 19 February 2019 at 9 a.m. which the MEM-OGGS would have known. I note that Mr Trigoso has not commented in his witness evidence on this meeting and this agreement to pursue a parallel strategy in his witness statement. However, at the time there was a clear agreement between us and the MEM-OGGS that police intervention was necessary to clear the way for an agreement to be negotiated in good faith with the Parán Community.
- 65 Additionally, I do not understand Mr Saavedra's contention that the fact that no timeframe was set in the Operational Plan meant that there was no certainty as to its execution.<sup>80</sup> This is particularly so when I had explicitly informed him on 15 February 2019 that the Operational Plan was scheduled to take place on Tuesday 19 February 2019.<sup>81</sup>
- 66 In line with this, on 18 February 2019, the MEM-OGGS's director, Mr Trigoso, issued an important letter which I referred to in my first statement and which was in line with the 13 February 2018 meeting mentioned above. On that day, the MEM-OGGS responded to an earlier letter from Parán's President dated 12 February 2019 requesting further dialogue.<sup>82</sup> I believe Parán's President sent this letter when the community got wind that the Operational Plan was likely to go forward. Prior to Mr Trigoso issuing the letter of 18 February 2019, I discussed what the response should be with Mr Trigoso. He asked if we were willing to meet with Parán again to which I answered that we were, but that they had to lift the Blockade and that this time it should be made clear that if they did not do so, they would face police intervention. Mr Trigoso agreed with this approach. As a result, Mr Trigoso stated in the letter of 18 February 2019 that a "dialogue table" ("*mesa de dialogo*" in Spanish) could be arranged **only** if the

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affecting the OP an[d] while it's implemented) trying to get Par[á]n's leade[rs] back to a dialogue table by trying to adjust the frustrated agreement on J[a]nuary 29 meeting.") (emphasis added).

<sup>80</sup> Witness Statement of Esteban Saavedra Mendoza, 15/03/2022, p. 13 (para. 33).

<sup>81</sup> WhatsApp exchanges between Lupaka (Mr Bravo) and MININTER (Mr Saavedra), 5/02/2019-20/02/2019 (SPA), at **Exhibit C-192 (corrected translation)**, p. 3.

<sup>82</sup> Official Letter No. 004 from the Parán Community (A. Torres) to MINEM (F. Ismodes), 12/02/2019, at **Exhibit R-0013**.

Blockade was lifted and there be a stop to “resistance by the local population against the company”. Crucially, it also stated:

“The time that has elapsed with the road blockade in place (more than 100 days) will compel the relevant entities in charge to perform their duties, within their powers and in accordance with public order and social peace. I hereby put you on notice for the relevant purposes.”<sup>83</sup>

- 67 Mr Trigoso’s message was very clear; they had to lift the Blockade or otherwise, the Police would use force imminently. Mr Trigoso refers to this letter in some detail in his witness statement but neither he nor Mr León<sup>84</sup> refers to this important passage and its clear warning of police intervention.<sup>85</sup> It shows that it is not correct for them to state that they were prioritizing dialogue in the circumstances.

#### **4.5 The MININTER blocked police action to remove the Blockade**

- 68 As I have noted above, Mr Saavedra in his witness statement takes the position that the State prioritised dialogue and was against police intervention and that this was communicated to me.<sup>86</sup> I have noted above in Section 4.3 how during the exchanges I had with him on 6 and 7 February 2019, which I have referred to above, he was certainly on the verge of approving police intervention at Invicta. I have also noted at Section 4.3 and 4.4 how the Police had carefully planned the intervention, had approved it within their hierarchy and had set 19 February 2019 as the date for its implementation, and how the MEM-OGGS were in favour of it.
- 69 I sent numerous messages to Mr Saavedra between 11-13 February 2019 keeping him informed of matters and asking him to approve the intervention.<sup>87</sup> When on 15 February 2019 he eventually responded to my

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<sup>83</sup> Letter from MEM to the Parán Community (SPA), 18/02/2019, at **Exhibit C-191**.

<sup>84</sup> Witness Statement of Nilton César León Huerta, 22/03/2022, p. 11-12 (para. 39).

<sup>85</sup> Witness Statement of Andrés Fernando Trigoso, 11/03/2022, p. 13 (para. 37).

<sup>86</sup> See *e.g.*, Witness Statement of Esteban Saavedra Mendoza, 15/03/2022, p. 8 (para. 22).

<sup>87</sup> WhatsApp exchanges between Lupaka (Mr Bravo) and MININTER (Mr Saavedra), 5/02/2019-20/02/2019 (SPA), at **Exhibit C-192**, p. 2.

requests for intervention by the Police, he stated that the Parán Community had sent a letter requesting dialogue and that, accordingly an intervention by the Police could not take place, and that further dialogue was required.<sup>88</sup> It is clear that Mr Saavedra was referring to Parán's letter to the MEM dated 12 February 2019 which called for a meeting on 19 February 2019.<sup>89</sup> The latter was precisely the date on which the Operational Plan had been set. I noted that:

“[15/02/19 3:58:30 p. m.] Luis Felipe: [...] [Parán's] request for dialogue has the sole intention of avoiding the police operation that they already know is scheduled for this Tuesday. That is why they asked for the meeting for Tuesday 19, precise.

[15/02/19 4:00:51 p. m.] Luis Felipe: For this reason, I would therefore ask you to go ahead with the operation scheduled for Tuesday 19, without prejudice to continuing in the search for a definitive solution to this matter.”<sup>90</sup>

- 70 Mr Saavedra did not deny that this was the case. I further noted the MEM-OGGS's position that an intervention by the Police was necessary **before** dialogue was recommenced and they were sending a letter to Parán to that effect.<sup>91</sup> When on 18 February 2019 Mr Trigoso of the MEM-OGGS' sent a letter to Parán stating that the Police would intervene unless they lifted the Blockade and that dialogue could not proceed without such a lifting, I immediately sent it to Mr Saavedra. There was no answer, hence why I

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<sup>88</sup> WhatsApp exchanges between Lupaka (Mr Bravo) and MININTER (Mr Saavedra), 5/02/2019-20/02/2019 (SPA), at **Exhibit C-192**, p. 2. (“Luis Felipe I spoke with General Mario Arata who told me that the Community has presented a letter to the MEM, agreeing to sit down and talk. They will wait for the result [...]. This is in line with the procedures that are followed in the treatment of this type of event, that is before the Police must not intervene and must respect the dialogue”).

<sup>89</sup> Official Letter No. 004 from the Parán Community (A. Torres) to MINEM (F. Ismodes), 12/02/2019, at **Exhibit R-0013**.

<sup>90</sup> WhatsApp exchanges between Lupaka (Mr Bravo) and MININTER (Mr Saavedra), 5/02/2019-20/02/2019 (SPA), at **Exhibit C-192 (corrected translation)**, p. 3 *et seq.*

<sup>91</sup> WhatsApp exchanges between Lupaka (Mr Bravo) and MININTER (Mr Saavedra), 5/02/2019-20/02/2019 (SPA), at **Exhibit C-192 (corrected translation)**, p. 2 *et seq.* (“The MEM has recommended that it is necessary to remove the blockade with police intervention in order then to initiate the dialogue with which we fully agree.”)

then proceeded to send him a formal request for intervention by the Police,<sup>92</sup> which was followed by a request for help from the Canadian embassy.<sup>93</sup>

71 At this point, I was utterly confused and frustrated by the lack of coordination and communication between the central government authorities. As I have noted, the MEM-OGGS, which had been closely involved in the dialogue with Parán for many months, strongly believed further dialogue was futile and that the Police should intervene. Further, the Police were aligned with this position and had prepared a detailed plan to intervene in coordination with us. Yet, Mr Saavedra, or others in the highest instances of government, refused to authorise police intervention for as long as the Parán authorities signalled even the slightest willingness to engage in dialogue.

72 It is for this reason that the MEM-OGGS was required to continue with the dialogue process. I will now go on to comment on the events surrounding the 26 February 2019 Agreement led by the MEM-OGGS, which was breached by Parán the very next day after it was signed.

## **5 THE 26 FEBRUARY 2019 AGREEMENT AND PARÁN'S FAILURE TO COMPLY**

73 I have read the statements of Mr Trigos and Mr León on the 26 February 2019 Agreement. Essentially their position is that we agreed to carry out the exploitation by using only the road going through Parán. But that is not what the agreement says and that is definitely not what we agreed. We would never have agreed to abandon exploiting the mine through the Lacsanga road, which had cost Lupaka a substantial amount of time and money to build, let alone negotiate. Indeed, that was the whole point of our insistent requests to lift the Blockade. If the Parán Community was willing to allow us to use their access road **on top** of lifting the Blockade on the Lacsanga road, then IMC would gladly take the offer, which we did.

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<sup>92</sup> Letter from IMC to MININTER (SPA), 19/02/2019, at **Exhibit C-16**; Witness Statement of Luis F. Bravo, 01/10/2021, p. 13 *et seq.* (paras. 35-36).

<sup>93</sup> Email chain between Canadian Embassy officials and Lupaka - 27/02/2019 to 20/02/2019, at **Exhibit C-197**; Witness Statement of Luis F. Bravo, 01/10/2021, p. 14 *et seq.* (paras. 37-38).

- 74 It is worth here pausing to reflect on the logical consequences of the supposedly exclusive agreement to use Parán's road. Our company had spent a considerable amount of time negotiating with Lacsanga to obtain access to their road and to build it. Mr Trigos and Mr León now contend that we would have willingly thrown that effort away and prioritised Parán's interests over other local communities because of Parán's blockades and threats of violence. That is extortion. The other local communities, who had worked with us in a collaborative manner, had title to the property where the mining activities were to be carried out. We could not ignore the agreements with them.
- 75 Below I give more context to the events before the 26 February 2019 meeting, before going on to discuss how the meeting took place. I will then refer to the Parán Community's clear failure to comply with the 26 February 2019 Agreement in two respects. First, the failure to lift the Blockade on the Lacsanga road and second, the demands by the Parán Community to use a unilaterally appointed topographer for a purpose that had not been agreed and that in addition, we pay for it. Despite these clear breaches of the 26 February 2019 Agreement, and the Parán Community's clear lack of good faith during the negotiations, the authorities did not intervene.

### **5.1 Events leading to 26 February 2019**

- 76 As I noted above, the MEM-OGGS had sent a very stern letter on 18 February 2019, essentially ordering the Parán Community to lift the Blockade, failing which it would be removed by force. Parán's President sent a response to this letter received by the MEM on 20 February 2019 which I saw at the time, stating that it was willing to resume dialogue at a meeting on 26 February 2019.<sup>94</sup> This letter was difficult to understand but seemed to also suggest that while the Parán Community was willing to lift the Blockade, IMC in turn had to withdraw the criminal complaints and that the MEM had to mediate at the "dialogue table" which was to follow. In other words, the Parán Community was again being defiant by conditioning its lifting of the Blockade.

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<sup>94</sup> Letter from the Parán Community to MEM (SPA), 20/02/2019, at **Exhibit C-198**.



- 77 Mr Trigos describes this letter in his witness statement as a “satisfactory reply” to his 18 February 2019 letter.<sup>95</sup> However, at the time, I discussed the Parán Community’s response with Mr Trigos and other MEM-OGGS officials at a meeting on 22 February 2019, during which he confided to me that the MEM-OGGS perceived the Parán Community’s position as disingenuous. Therefore, he suggested that, while IMC representatives should not participate in the upcoming meeting with the Parán authorities,<sup>96</sup> the MEM-OGGS should do so to formally request the lifting of the Blockade one last time. Mr Trigos further added that a MININTER representative should attend such a meeting precisely because this would bring the MININTER round to the same view that they had, which was that the Parán Community was not acting in good faith.
- 78 Later that day I reported to the Canadian officials that “[i]t [was] clear to everybody, including the local chief of [P]olice, that every time Par[á]n feels there will be a[] [police] intervention, they ask for nonsense meetings in order to delay the inevitable release of the blockade.” I also noted that “[o]nce again there seems to be a significant variance between the [MININTER] and the [MEM].”<sup>97</sup>
- 79 Despite the low hopes that any progress would be made with Parán’s representatives, I was in any event asked to provide a draft of a withdrawal of criminal complaints which we had filed against Parán’s members (as per Parán’s request in its letter). I provided this document (drafted by our lawyer), together with a draft agreement to Messrs Trigos and Ulloa on 25 February 2019, the day before the meeting of 26 February 2019.<sup>98</sup>
- 80 The draft agreement I provided was already on the MEM header as it was a slightly amended version of the same document prepared by the MEM during the failed 29 January 2019 meeting.<sup>99</sup> Most importantly, and as per

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<sup>95</sup> Witness Statement of Andrés Fernando Trigos, 11/03/2022, p. 14 *et seq.* (para. 37).

<sup>96</sup> Email chain between Canadian Embassy officials and Lupaka - 27/02/2019 to 20/02/2019, at **Exhibit C-197**, p. 2.

<sup>97</sup> Email chain between Canadian Embassy officials and Lupaka - 27/02/2019 to 20/02/2019, at **Exhibit C-197**, p. 2.

<sup>98</sup> Email from IMC to MEM with attachments (SPA), 25/02/2019, at **Exhibit C-199**.

<sup>99</sup> MEM, Draft agreement between Parán, MEM and IMC (as drafted by the MEM during 29 January 2019 meeting) (SPA), at **Exhibit C-344**.

our unwavering position, the document stated that the Parán Community was required to approve the lifting of the Blockade at its communal assembly as a prerequisite to establishing the “dialogue table” and in order to proceed with the other agreements (point 6), which were as follows. The parties were to agree that the “dialogue table” be initiated at the next meeting (points 1-3) and that there be an identification of the supposed damage on Parán’s land which had allegedly resulted from the mining components which Parán stated were on its land; this would be done with the presence of a representative from the Supervisory and Environmental Assessment Agency (“OEFA” which is the Spanish acronym for “*Organismo de Evaluación y Fiscalización Ambiental*”) (point 4). In addition, the date of the next meeting was to be agreed (point 5).

- 81 It should be noted that there was no mention in this draft or in the draft prepared by the MEM-OGGS during the 29 January 2019 meeting regarding the use of Parán’s road. This was because the Parán Community had not raised this as a request during the 29 January 2019 meeting. If it had been such a long-standing demand as Mr León states, it would naturally have been included in the draft agreement of 29 January 2019 prepared by the MEM-OGGS. I would also note that this issue had not been raised with me by the MEM-OGGS representatives at the 25 January 2019 meeting or at any time prior to the meeting with Parán on 26 February 2019.

## **5.2 The meeting on 26 February 2019**

- 82 As I noted in my first witness statement, the meeting on 26 February 2019 took place at the Hotel Britania in Lima. The first part of the meeting was held between the MEM-OGGS and Parán’s representatives.<sup>100</sup> I exchanged WhatsApp messages with Mr Trigoso during the meeting to ask how it was progressing. He responded that they had gone into recess for the Parán representatives to consider the MEM-OGGS’ proposal, namely that the Blockade be lifted, and that IMC would also withdraw the criminal complaints, following which a “dialogue table” could be set up. He also

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<sup>100</sup> Witness Statement of Luis F. Bravo, 01/10/2021, p. 15 *et seq.* (para. 41); Photographs of meeting between the Parán Community, IMC and the MEM, 26/02/2019, at **Exhibit C-345**.

stated that the MEM-OGGS would guarantee any agreement reached at the “dialogue table”.<sup>101</sup>

- 83 I note that Mr León today asserts in his statement that the MEM-OGGS did not have the powers to guarantee the agreement.<sup>102</sup> It is a matter of interpretation as to what the term “guarantee” means in such circumstances. My understanding is that the MEM-OGGS officials have a duty to verify compliance with the agreements reached and to record any breach. After identifying a breach, they are to take a decision as to how to proceed in coordination with other State authorities, if need be. As I will note in the next Section 5.3, the MEM-OGGS was the authority that, for example, declared dialogue with the community to no longer be a viable option and recommended that the Police intervene or decided to pursue dialogue with the community in parallel to an intervention by the Police ordered by the MININTER. Both occurred, as I will comment on below.
- 84 We were called into the meeting room at the Britania hotel in the afternoon.<sup>103</sup> When I arrived in the meeting room, Parán’s representatives wished for amendments to be made to the text of the draft agreement on two main issues.
- 85 The first was related to the supposed damage that we had caused to their land. We made it clear that as there was no damage to their land (environmental or otherwise) we would not sign a text saying so. Parán’s representatives were adamant that there was environmental damage to their land, but never produced any evidence of such damage. The vast majority of the discussions were devoted to this. In the end, we agreed to their suggestion that a topographic survey be carried out to verify the location of any environmental or other damage. The text of the redrafted agreement stated the following at point 4:

“The Invicta mining company, together with the Rural Community of Parán, will identify and locate the affected land (Rural

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<sup>101</sup> WhatsApp exchanges between Lupaka (Mr Bravo) and MEM (Mr Trigos) (SPA), 06/02/2019-26/02/2019, at **Exhibit C-346**.

<sup>102</sup> Witness Statement of Nilton César León Huerta, 22/03/2022, p. 20 *et seq.* (para. 61).

<sup>103</sup> WhatsApp exchanges between Lupaka (Mr Bravo) and MEM (Mr Trigos) (SPA), 06/02/2019-26/02/2019, at **Exhibit C-346**.

Community of Parán) through a topographic survey; such survey will take place on 20 March 2019.”<sup>104</sup>

- 86 This was a change to the text in the draft I had sent on 25 February 2019 which stated the following at point 4 (which was in line with the previous draft by the MEM-OGGS as I have noted):

“The Invicta mining company, jointly with the Rural Community of Parán, will identify and locate any negative impacts to which the Community refers, these would have occurred on land that they describe as being part of their property (according to the Community, sector called Pishcopampa), by the mining facilities located within the territory of the Rural Community of Parán, and a representative of the Environmental Assessment and Enforcement Agency (OEFA) must join this inspection which will take place on day ..... of 2019. The meeting point will be at 07:00 at the Plaza de Armas of the Rural Community of Parán.”<sup>105</sup>

- 87 These changes were not major. We knew there was no damage on Parán’s land, and this would be proven through the survey. The MEM representatives agreed at the meeting that this was a sensible approach to end the disagreement over alleged environmental damage on Parán’s land. As I will discuss below, however, Parán’s representative later argued that this agreement meant that a topographer would be hired by us to carry out work relating to the precarious road through its community leading to the Site.
- 88 The second change in the text that was proposed by Parán’s representatives related to the lifting of the Blockade and added text related to Parán’s access road.
- 89 The original text which had been discussed at the 29 January 2019 meeting with Parán’s representatives was as follows:

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<sup>104</sup> Minutes of the meeting between the Parán Community, IMC and MEM including 26 February 2019 Agreement (SPA), 26/02/2019, at **Exhibit C-200**, p. 1 (point 4).

<sup>105</sup> Email from IMC to MEM with attachments (SPA), 25/02/2019, at **Exhibit C-199**, p. 3 *et seq.*

“[the Parán Community] will **evaluate** the request for the lifting of the coercive measures, a decision that will be communicated to the Ministry of Energy and Mines, in order to set up the Formal Dialogue Process [...]”.<sup>106</sup>

- 90 The new text proposed by Parán was more favourable to us in respect of the lifting of the Blockade as can be seen below:

“The parties agree that the Rural Community of Parán will suspend all coercive measures as of this date, ratified by the Community Assembly on 2 March 2019. The [the Parán Community] guarantees the development of the activities of the mining company through the access road of the Parán Community as of the signing of this minutes, guaranteeing social peace with the company.”<sup>107</sup>

- 91 Our primary objective was for the Blockade to be lifted. The text provided for this in better terms than the draft which had been discussed on 29 January 2019. Indeed, the lifting of the Blockade was to be immediate and would then be ratified by the Community Assembly a few days later. This would allow us to use Lacsanga’s road to the Site as soon as we put it back into working order (it had deteriorated somewhat given the months that had gone by). In addition, the Parán Community was “guaranteeing social peace with the company.”
- 92 As to the addition relating to the access to the Project site through Parán’s road, during the meeting Mr León texted me stating “they want that the access be through Parán” instantly adding: “tell them that it is not possible technically”.<sup>108</sup> That is exactly what I told them during the meeting, by explaining that the Parán road was in an unusable state. I do not recall there being much discussion at all on this issue, but importantly exclusive

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<sup>106</sup> Email from IMC to MEM with attachments (SPA), 25/02/2019, at **Exhibit C-199**, p. 4 (emphasis added); MEM, Draft agreement between Parán, MEM and IMC (as drafted by the MEM during 29 January 2019 meeting) (SPA), at **Exhibit C-344**.

<sup>107</sup> Minutes of the meeting between the Parán Community, IMC and MEM including 26 February 2019 Agreement (SPA), 26/02/2019, at **Exhibit C-200**, p. 2.

<sup>108</sup> WhatsApp exchanges between Lupaka (Mr Bravo) and MEM (Mr León) (SPA), 26/02/2019-25/09/2019, at **Exhibit C-347**.

access via the Parán access road (to the exclusion of the Lacsanga road) was never demanded by the Parán Community during the meeting.

- 93 Additionally, had it been clear that the Parán road was the only road to be used to access the Project as Mr León states, we would have had no reason to insist on the lifting of the Blockade on the Lacsanga route, this being the main concession we obtained at that meeting.<sup>109</sup> In addition, agreeing to just use Parán's road would mean that we would no longer provide a benefit to the Lacsanga community. We could not agree that without Lacsanga being present, as the MEM-OGGS knew full well.
- 94 It was clear from the agreement that Parán was agreeing that we could use the Parán access road for our mining operations in addition to lifting the Blockade to allow us to use the Lacsanga road. We were not intending on using the Parán road at that stage because making the road useable would have required substantial works. However, I was not concerned by this. There was no prejudice to our need to use the Lacsanga access road as the agreement did not require that Parán road be used exclusively and indeed, the lifting of the Blockade meant we could use the Lacsanga road.
- 95 Accordingly, I accepted to sign the agreement after consultation with management in Canada.

### **5.3 Despite its agreement, the Parán Community did not lift the Blockade thereafter**

- 96 Mr León rightly asserts in his statement that he was present at the ratification of the 26 February 2019 Agreement at the Community Assembly on 2 March 2019.<sup>110</sup> However, he omits that after the meeting, he left for Lima. We had agreed that Mr León would go to the Blockade to make sure it was lifted immediately; when he did not do so, our agreement became meaningless and Parán treated it as such by failing to

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<sup>109</sup> WhatsApp exchanges between Lupaka (Mr Bravo) and MEM (Mr León) (SPA), 26/02/2019-25/09/2019, at **Exhibit C-347**.

<sup>110</sup> Witness Statement of Nilton César León Huerta, 22/03/2022, p. 19 (para. 57).

lift the Blockade. Consequently, we remained unable to access the Site on 27 February 2019 and reported as much to the authorities.<sup>111</sup>

- 97 I note that Mr León, while denying that the MEM-OGGS had any powers to “**ensure** that the Parán Community would comply with their obligations under the 26 February Agreement”, acknowledges that the MEM-OGGS does have powers to “**monitor compliance** with the agreements reached”. Mr León further adds that “if any disputes arise over the implementation [of an agreement], [the MEM-OGGS has powers] to gather information and mediate between the parties again to discuss their differences regarding the **implementation of the agreements**.”<sup>112</sup>
- 98 The difference that Mr León wants to highlight between “ensure” and “monitor” would suggest that the MEM-OGGS had a duty to verify compliance with the 26 February 2019 Agreement and that, in the event of a breach, the MEM-OGGS would have the duty to, at least, alert the competent State authorities with actual powers to ensure said compliance. This is indeed how I understood the role of the MEM-OGGS at the time. It was obvious that the MEM-OGGS had failed in such duty in the immediate aftermath of the 26 February 2019 Agreement and continued to do so thereafter.
- 99 Mr León further contends that “[i]n [his] opinion, the Parán Community did comply with the 26 February Agreement and the negotiations finally collapsed due to reasons that could have been overcome if Invicta would have shown a little more willingness.”<sup>113</sup> Mr León’s statement is false. Instead, it is clear that the State failed in its duty to require that the 26 February 2019 Agreement be respected by the Parán Community as can be seen from the events immediately subsequent to its signing. This would have logically required that the MEM-OGGS (including Mr León) acknowledge the Parán Community’s breach.

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<sup>111</sup> Witness Statement of Luis F. Bravo, 01/10/2021, p. 17 (paras. 47-48); Letter from Lupaka to MININTER (SPA), 28/02/2019, at **Exhibit C-17**; Letter from IMC to MEM (SPA), 28/02/2019, at **Exhibit C-201**.

<sup>112</sup> Witness Statement of Nilton César León Huerta, 22/03/2022, p. 20 *et seq.* (para. 61) (emphasis added).

<sup>113</sup> Witness Statement of Nilton César León Huerta, 22/03/2022, p. 21 (para. 62).

- 100 Indeed, following the signing of the 26 February Agreement, IMC personnel was only allowed access to the Site through the Parán access road as from 4 March 2019, which was in an impassable condition. Indeed, access to the Site required a two-and-a-half-hour hike as no vehicles could use the road. As I noted in my first statement, we kept trying to coordinate the re-entry with the authorities, as had been agreed, to no avail.<sup>114</sup> When IMC personnel entered the Site (on foot), they found that the explosives magazine had been forced open and several items were missing,<sup>115</sup> a risk that the authorities had been informed about repeatedly.<sup>116</sup> I wrote to and visited the MEM and MININTER offices in the two weeks that followed reporting on this and requesting intervention by the Police, but nothing concrete resulted from this.<sup>117</sup>
- 101 I also reported internally on 7 March 2019 that, as part of these communications, I talked to Evelyn Tello. I told her that the Blockade had not been lifted. Ms Tello said that “she will contact the [P]olice in Huacho to ask them for an inspection to verify if the agreements have been executed.”<sup>118</sup> It was entirely clear between us that this meant that the Police were to verify whether the Blockade had been lifted (*i.e.*, this was not a reference to verifying access through the Parán road). Ms Tello was Mr Saavedra’s subordinate and she agreed with our interpretation of the 26 February Agreement (*i.e.*, that IMC was to be allowed to access the Project freely through the Lacsanga road by lifting the Blockade). The day after the meeting, on 8 March 2019, I also sent her our letter of 5 March 2019 setting out our position and annexing pictures where one can appreciate

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<sup>114</sup> Witness Statement of Luis F. Bravo, 01/10/2021, p. 18 *et seq.* (paras. 52 and 54).

<sup>115</sup> Witness Statement of Luis F. Bravo, 01/10/2021, p. 18 *et seq.* (paras. 54 and 55); IMC, Inventory on missing items from the explosive magazine, 08/03/2019, at **Exhibit C-203-ENG**.

<sup>116</sup> WhatsApp exchanges between Lupaka (Mr Bravo) and MININTER (Mr Saavedra), 5/02/2019-20/02/2019 (SPA), at **Exhibit C-192**; Letter from IMC to MININTER (SPA), 07/12/2018, at **Exhibit C-184**; Letter from IMC to Sayán Police (SPA), 07/12/2018, at **Exhibit C-186**.

<sup>117</sup> Witness Statement of Luis F. Bravo, 01/10/2021, p. 19 (paras. 56-57); Letter from IMC to MININTER (SPA), 05/03/2019, at **Exhibit C-202**; Internal Lupaka email chain, 06/03/2021 to 07/03/2021, at **Exhibit C-204**.

<sup>118</sup> Internal Lupaka email chain, 06/03/2021 to 07/03/2021, at **Exhibit C-204**, p. 1.



the state tents set up by the Parán Community on Lacsanga's road and then the precarious state of the access route through Parán.<sup>119</sup>

102 In his statement, Mr Saavedra justifies not replying to our letter dated 19 February 2019 (which he received on 26 February 2019) by stating that it was not necessary as he was aware that an agreement with Parán had been reached during the meeting held on 26 February 2019.<sup>120</sup> Mr Saavedra's statement is not credible since I made sure to report to him regarding the Parán Community's breaches of the agreement on two opportunities: first, through the letter dated 5 March 2019 whereby we requested an immediate intervention by the Police,<sup>121</sup> and then via email dated 8 March 2019 also sent to Ms Tello which I have referred to.<sup>122</sup> It must have been even clearer to him that, further to Parán's breach of the 26 February 2019 Agreement, the only possible course of action was through an intervention by the Police.

103 As part of these communications, I also spoke to MEM-OGGS officials César Ulloa and Nilton León on 5 and 6 March 2019 to request that the Blockade be lifted. At first, Mr León argued that the agreement required exclusive access through Parán. However, during this meeting, the MEM-OGGS officials acknowledged that there was no indication in the agreement that access should be exclusively through Parán. I reported internally that further to my conversation with them "they were going to call Par[á]n President and get back to us",<sup>123</sup> as I stated in my first witness statement.<sup>124</sup> Yet, as I reported internally on 15 March 2019, I had not

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<sup>119</sup> Email from IMC to MININTER with attachment (SPA), 08/03/2019, at **Exhibit C-348**, p. 6 *et seq.*

<sup>120</sup> Witness Statement of Esteban Saavedra Mendoza, 15/03/2022, p. 10 *et seq.* (para. 26).

<sup>121</sup> Letter from IMC to MININTER (SPA), 05/03/2019, at **Exhibit C-202**.

<sup>122</sup> Email from IMC to MININTER with attachment (SPA), 08/03/2019, at **Exhibit C-348**, p. 5.

<sup>123</sup> Internal Lupaka email chain, 06/03/2021 to 07/03/2021, at **Exhibit C-204**.

<sup>124</sup> Witness Statement of Luis F. Bravo, 01/10/2021, p. 19 (para. 61).

heard back from them by then,<sup>125</sup> nor had we heard back from them on 20 March 2019, the day Parán invaded the Site again.<sup>126</sup>

- 104 In his statement, Mr Trigosó refers to having received one letter on 7 March 2019 requesting that he orders that the Blockade be lifted. Mr Trigosó notes that he was not competent to order such a measure.<sup>127</sup>
- 105 The letter Mr Trigosó received in hard copy on 7 March 2019 (which was dated 28 February 2019) had also been received by him on 1 March 2019.<sup>128</sup> In the letter, we were informing him that the Parán Community had not lifted the Blockade and that as a result, they had breached the agreement. It made sense that I contact him given that, as I noted above, Mr Trigosó had informed me through WhatsApp that the MEM-OGGS would guarantee Parán's compliance with the agreement (*i.e.*, verify compliance with the terms of the 26 February Agreement).<sup>129</sup> As developed above, in practice, the MEM-OGGS would need to confirm that further dialogue was futile before the Police could intervene. Indeed, an internal MEM-OGGS document from 8 March 2019 that I have been shown and that has been produced by Peru, specifically recommends that the MEM and MININTER coordinate in order to re-establish order as any further dialogue was pointless<sup>130</sup> It is precisely because I knew that the MININTER and the MEM were to coordinate that I sent the same letter to the MININTER at the same time.<sup>131</sup>
- 106 Mr Trigosó's statement that he was not competent in relation to the lifting of the Blockade is therefore incorrect. Moreover, Mr Trigosó does not comment on the meeting that was held on 8 March 2019 between Mr Jaime

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<sup>125</sup> Internal Lupaka email, 15/03/2019, at **Exhibit C-349**, p. 2.

<sup>126</sup> Email chain between Lupaka and Canadian Embassy, 20/02/2019 to 20/03/2019, at **Exhibit C-350** ("It seems the focus should initially be the mining ministry - and they have, for some strange reason, gone completely silent on us ever since the PDAC two weeks ago.").

<sup>127</sup> Witness Statement of Andrés Fernando Trigosó, 11/03/2022, p. 14 *et seq.* (paras. 39-40).

<sup>128</sup> Letter from IMC to MEM (SPA), 28/02/2019, at **Exhibit C-201**.

<sup>129</sup> WhatsApp exchanges between Lupaka (Mr Bravo) and MEM (Mr Trigosó) (SPA), 06/02/2019-26/02/2019, at **Exhibit C-346**.

<sup>130</sup> Internal MEM email with attachment (SPA), 08/03/2019, at **Exhibit C-351**; Internal MEM email with attachment (SPA), 08/03/2019, at **Exhibit C-351**, p. 5.

<sup>131</sup> Letter from Lupaka to MININTER (SPA), 28/02/2019, at **Exhibit C-17**.

Gálvez, Deputy Minister of the MEM, Mr Trigos, Mr Arévalo and I.<sup>132</sup> During this meeting, upon reading the text of the 26 February Agreement together, Mr Gálvez agreed that it required that the Blockade be lifted. He said that the agreement had to be complied with and that they would be contacting Parán; he instructed Mr Trigos to contact the Parán Community to gain a better understanding of their position. This was all done precisely with a view to then leading the State to decide to take the appropriate action, including in particular the intervention of the Police. I told Mr Gálvez that it was entirely clear that dialogue was not going to get us anywhere and that force needed to be resorted to as the Parán Community was not acting in good faith. Following the meeting however, I do not recall receiving any feedback as to Mr Trigos's contact with the Parán Community which had been required by Mr Gálvez.

107 I sent Mr Trigos a letter on 20 March 2019 again stating that the Blockade was continuing and that in addition there had been a full-scale invasion of 150 community members on that day.<sup>133</sup> Again, Mr Trigos does not refer to such letter in his witness statement to which I never received an answer. I will comment on this invasion below.

108 Mr León testifies on these events. He makes the surprising allegation that upon travelling to Parán in March 2019, he confirmed that:

“the Parán Community had honored the commitments they had made. Specifically, I found that the Parán Community had complied with authorizing entry to the Project through the access road in the Parán Community. Invicta told me this was not enough, as they hoped to obtain access via the access road through the territory of the Lacsanga Community as well, despite having agreed to something different in the 26 February Agreement.”<sup>134</sup>

109 This of course makes no sense. Even if Parán allowed us to hike to the Site through the Parán access road, the Blockade was in place at the end of the Lacsanga access road. This was the **only** Blockade in place and this

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<sup>132</sup> Email from LAVETA to MEM (SPA), 07/03/2019, at **Exhibit C-352**.

<sup>133</sup> Email from IMC to MEM with attachment (SPA), 21/03/2019, at **Exhibit C-207**.

<sup>134</sup> Witness Statement of Nilton César León Huerta, 22/03/2022, p. 14 (para. 45).

had to be lifted as per the terms of the 26 February 2019 Agreement. We did not agree to keep the Blockade in place as is clear from the wording of the agreement and as I stated to the authorities.<sup>135</sup> Indeed, Mr León states that he finally requested Parán's representatives to lift the Blockade on 26 March 2019 when he was discussing compliance with the 26 February 2019 Agreement in a meeting with them.<sup>136</sup> I also note that Mr León seeks to muddy the waters by conflating this issue with the issue relating to the topographer,<sup>137</sup> which arose only as from 15 March 2019, while the failure to lift the Blockade was ongoing as from the next day the agreement was signed. I will refer to the issue with the topographer in Section 5.4.

- 110 In his statement, Mr León asserts that he repeatedly stated that it was wrong for us to push for the implementation of the Operational Plan. According to Mr León, he conveyed this message first during our meeting on 25 January 2019 where he stated that "requesting police action would not contribute to [dialogue]" and that "police support would not guarantee the settlement of the conflict in the long term".<sup>138</sup> Mr León confirms that he maintained this position throughout the meetings held on 29 January, 27 May and 2 July 2019.<sup>139</sup>
- 111 Yet, an internal memo of the MEM-OGGS issued by Mr León to Mr Trigoso dated 18 March 2019 states that:

"however, given the blockade of the access roads without any dialogue (transit routes through the CC Lacsanga), the re-establishment of public order through the corresponding channels, MININTER, PNP, [MININTER Directorate for the Prevention and Management of Social Conflicts], should proceed."<sup>140</sup>

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<sup>135</sup> See e.g., Letter from IMC to MININTER (SPA), 05/03/2019, at **Exhibit C-202**.

<sup>136</sup> Witness Statement of Nilton César León Huerta, 22/03/2022, p. 15 (para. 47).

<sup>137</sup> Witness Statement of Nilton César León Huerta, 22/03/2022, p. 13 *et seq.* (paras. 43-47).

<sup>138</sup> Witness Statement of Nilton César León Huerta, 22/03/2022, p. 10 (para. 34)

<sup>139</sup> Witness Statement of Nilton César León Huerta, 22/03/2022, p. 11 *et seq.* (paras. 36, 52 and 54).

<sup>140</sup> MEM, Report No. 003-2019-MEM-OGGS/NCLH (SPA), 18/03/2019, at **Exhibit C-353**, p. 2.

- 112 In other words, Mr León, himself of the MEM-OGGS, believed at the time that there was no use in further dialogue and that the Operational Plan should be implemented. Although the memorandum states that I was provided with a copy of it at the time, I confirm that I never received such a copy.

#### **5.4 The events surrounding the topographic survey (15-20 March 2019)**

- 113 In his statement, Mr León notes that “the parties agreed that [...] Invicta was also the party that would have to carry out the works to restore the land of Parán and thus obtain an access route to the Project.”<sup>141</sup> In addition, he states that “[t]his is why the parties agreed to conduct a topographical survey: because it was intended that the road to access the Project through the Parán Community territory would be improved.”<sup>142</sup> Mr León states in the same vein that “[d]uring the 26 February 2019 meeting, it was determined that the purpose of this topographical survey was to examine which land would be affected by the works to be carried out to allow access to the Project through Parán territory.”<sup>143</sup> Mr León’s statements are simply incorrect.

- 114 As I noted above, the 26 February 2019 Agreement provided as follows with regards to the topographical survey at point 4:

“The Invicta mining company, together with the Rural Community of Parán, will identify and locate the affected land (Rural Community of Parán) through a topographic survey; such survey will take place on 20 March 2019.”<sup>144</sup>

- 115 As can be seen from the plain text of the agreement quoted above, it does not state that “purpose of this topographical survey was to examine which land would be affected by the works to be carried out to allow access to

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<sup>141</sup> Witness Statement of Nilton César León Huerta, 22/03/2022, p. 21 (para. 64).

<sup>142</sup> Witness Statement of Nilton César León Huerta, 22/03/2022, p. 23 (para. 70).

<sup>143</sup> Witness Statement of Nilton César León Huerta, 22/03/2022, p. 21 (para. 64).

<sup>144</sup> Minutes of the meeting between the Parán Community, IMC and MEM including 26 February 2019 Agreement (SPA), 26/02/2019, at **Exhibit C-200**, p. 1 (point 4).

the Project through Parán territory.”<sup>145</sup> This is because, as I noted above, what had been discussed at some length on 26 February 2019 was the alleged damage to Parán’s land, which the Parán representatives identified as existing in a particular area (Pishcopampa), subsequent to which we agreed that the topographer be used in the identification of the affected land (never in relation to the Parán road), which we did say we would select jointly but whose services we would pay for ourselves.

116 Mr León accuses IMC of “not [having] sufficiently cooperated with the topographical survey” as IMC “refused to pay the sum of 35,000 soles (approximately USD 9,000) to the surveyor to perform the survey.”<sup>146</sup> Mr León further states that “Invicta refused to pay [the] sum as [we] considered it to be too high”<sup>147</sup> and that we “limited [ourselves] to complaining about the price but did not seek a way to overcome this disagreement.”<sup>148</sup> Mr Trigos further confirms in his statement that Mr León informed him about this “disagreement over the topographical survey, pointing out that Invicta remained firm in its position that it did not wish to cover the surveyor’s fees.”<sup>149</sup> Both Mr León’s and Mr Trigos’s statements are incorrect and avoid dealing with the core issue, namely that Parán was requesting something very different from what we had agreed in the 26 February 2019 Agreement and did so in bad faith.

117 Parán’s representatives requested that the topographer be used to survey the Parán road subsequently to 26 February 2019. As I noted in my first witness statement, Mr Estrada met with the President of Parán, Mr Torres Palomares, on 15 March 2019 to organise the 20 March 2019 topographic survey for the affected land as per the 26 February 2019 Agreement. At this meeting, and during the subsequent call I had with Mr Torres Palomares, he told us that the survey was to be conducted in relation to the access road through Parán and that we had to pay PEN 30,000 in fees for the topographer the next day. He threatened that if we did not do so, IMC

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<sup>145</sup> Witness Statement of Nilton César León Huerta, 22/03/2022, p. 21 (para. 64).

<sup>146</sup> Witness Statement of Nilton César León Huerta, 22/03/2022, p. 14 (para. 45).

<sup>147</sup> Witness Statement of Nilton César León Huerta, 22/03/2022, p. 21 *et seq.* (para. 65).

<sup>148</sup> Witness Statement of Nilton César León Huerta, 22/03/2022, p. 21 *et seq.* (para. 65).

<sup>149</sup> Witness Statement of Andrés Fernando Trigos, 11/03/2022, p. 16 (para. 43).

would not be allowed even the limited access on foot through the Parán road and that our team would be expelled from the Site.<sup>150</sup>

- 118 We wrote to the Parán representatives on 18 March 2019 expressing our disagreement with his proposal.<sup>151</sup> We noted first that we did not agree to the continuing Blockade on the Lacsanga road. Second, the topographer was meant to plot the areas on Parán's land affected by the mining works (which was consistent with its supposed environmental concerns), not carry out a survey in relation to a future access road through Parán. In any event, in the letter we proposed to meet Parán's representatives to clear the air.
- 119 Mr Ansley and I met Mr Torres Palomares and other Parán officials on 19 March 2019 in Huacho. This was an important meeting which I elaborated on in my first witness statement at some length.<sup>152</sup> In sum, Mr Torres Palomares' demands went well beyond the demand that IMC pay the fees of the unilaterally appointed topographer for the road works. He also demanded that IMC cancel the agreements with Lacsanga and Santo Domingo (this was of course impossible), use the Parán road exclusively and build a processing plant in Parán.
- 120 I was particularly struck by the Parán President's demand that we build a processing plant on Parán's land which was completely contradictory to their early supposed environmental concerns, as I noted in my first statement.<sup>153</sup> We nevertheless agreed to consider it if Parán were on board.<sup>154</sup>
- 121 With respect to Parán President's demand for exclusive access via their road, we explained to them that the only safe route was the Lacsanga road

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<sup>150</sup> Witness Statement of Luis F. Bravo, 01/10/2021, p. 20 (paras. 59-60).

<sup>151</sup> Letter from IMC to the Parán Community (SPA), 18/03/2019, at **Exhibit C-205**.

<sup>152</sup> Witness Statement of Luis F. Bravo, 01/10/2021, p. 21 *et seq.* (paras. 62-68); Letter from IMC to MININTER (SPA), 20/03/2019, at **Exhibit C-206**, p. 2 *et seq.*

<sup>153</sup> Witness Statement of Luis F. Bravo, 01/10/2021, p. 22 (para. 66).

<sup>154</sup> Witness Statement of Luis F. Bravo, 01/10/2021, p. 22 (para. 66).

but offered to consider the topographic survey for the Parán road and to make enhancements to the Parán access road over time.<sup>155</sup>

122 Mr Ansley and I also offered jobs and other proposals to foster social and economic development, namely by bringing water up to their community.<sup>156</sup> However, we also told Parán's officials that we could not cancel the agreements with the Lacsanga and Santo Domingo communities.

123 Despite our efforts to appease Parán's officials, including cooperating on the issue of the Parán road, he stated clearly that he never intended to honour the 26 February 2019 Agreement, particularly relating to the lifting of the Blockade.<sup>157</sup>

124 Mr Ansley relayed to the Canadian embassy officials that the meeting had not gone well.<sup>158</sup> He also referred to the fact that we had not been able to contact the MEM officials for approximately two weeks despite our numerous attempts. The same was true of the MININTER officials.

125 On 20 March 2019 (the following day), the Parán Community invaded the Site again and forced out our personnel. I of course wrote to the MININTER to relay the above meeting with Mr Torres Palomares and the invasion asking for an intervention by the Police.<sup>159</sup> We received no answer.

126 It is against this background that the statements of Mr León accusing us of a failure to cooperate with Parán's demands for us to pay for a topographic survey in relation to the Parán road that I referred to at the beginning of this section should be reviewed.<sup>160</sup> As I have noted, Mr León states that

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<sup>155</sup> Email from Lupaka to Lupaka and Laveta, 27/03/2019, at **Exhibit C-354**, p. 2.

<sup>156</sup> Email from Lupaka to Lupaka and Laveta, 27/03/2019, at **Exhibit C-354**, p. 2.

<sup>157</sup> Email from Lupaka to Lupaka and Laveta, 27/03/2019, at **Exhibit C-354**, p. 3; Letter from IMC to MEM (SPA), 29/03/2019, at **Exhibit C-209**, p. 5.

<sup>158</sup> Email chain between Lupaka and Canadian Embassy, 20/02/2019 to 20/03/2019, at **Exhibit C-350**, p. 1.

<sup>159</sup> Letter from IMC to MININTER (SPA), 20/03/2019, at **Exhibit C-206**, p. 2 *et seq.*

<sup>160</sup> See para. 116 above.



we complained that he was too expensive and that our refusal to pay was unreasonable given what was at stake.<sup>161</sup>

127 First, under no circumstances could this “disagreement”, as Mr León calls it, have served as a justification for the Parán officials to invade the Site. Nothing gave the Parán Community the right to, for the third time in less than a year, intimidate and expel our staff from the Site and to take possession of the assets on the property.

128 Second, the issue was not the money. During our discussions with Parán’s President on 19 March 2019, we offered to consider enabling Parán’s road for transport from the Site (which would have required the topographic survey) as well as other benefits for the Parán Community even though this was not required by the 26 February 2019 Agreement. We expected the lifting of the Blockade of course. Yet, as I have noted, this offer was not accepted for no good reason. Their bad faith was patent as I have noted above by reference to our discussions with them on 19 March 2019 and their invasion of the Site the next day.

129 Mr León states that he contacted me to suggest finding another topographer;<sup>162</sup> I do not recall this, but again, the point as to the Parán Community’s bad faith was the main issue.

130 As can be seen from the above, this “disagreement” regarding the topographic survey was nothing more than an excuse for not complying with their obligations to lift the Blockade as required under the 26 February 2019 Agreement which was used by the State to avoid intervention.

## **6 THE STATE’S FAILURE TO REACT TO PARÁN’S INVASION OF THE SITE ON 20 MARCH 2019**

131 As I noted above and in my first witness statement, on 21 March 2019, I wrote to the MEM-OGGS to report on the armed invasion of the Site by 150 community members and the subsequent evacuation of our personnel which occurred on 20 March 2019.<sup>163</sup> I also called Ms Tello of the

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<sup>161</sup> Witness Statement of Nilton César León Huerta, 22/03/2022, p. 21 *et seq.* (paras. 64-68).

<sup>162</sup> Witness Statement of Nilton César León Huerta, 22/03/2022, p. 21 *et seq.* (para. 65).

<sup>163</sup> Email from IMC to MEM with attachment (SPA), 21/03/2019, at **Exhibit C-207**.

MININTER, Colonel Arbulú in Huacho and Mr Trigos the day after the invasion.<sup>164</sup> I was not able to get through to the authorities, but the Canadian embassy officials did manage to speak to the MEM who reported that while its representatives could not meet, “they will speak with Ministry of Interior (today) to diffuse and relocate the 150 campesinos currently blocking the concession.”<sup>165</sup> The MEM otherwise proposed that we meet in the future. Their promised request to the MININTER to intervene seemed to be good news as the MININTER was taking a passive stance despite the gravity of the circumstances. Indeed, on the same day of the invasion, we were provided access to an internal MININTER note which stated that they were simply “monitoring the situation” and that there was a “medium risk” despite it being noted that there were twelve workers on site (who had been evacuated), as well as equipment, machinery and 5,675 kilos of explosives.<sup>166</sup> Mr Estrada had also filed a criminal complaint.<sup>167</sup>

- 132 On 21 March 2019, Parán’s President, Mr Torres Palomares, sent a letter to the MEM which I saw at the time. It stated that:

“[on] 20 March there should have been an initiation of the topographic survey, the identification and the situation of the superficial lands which had been affected in the Community of Parán by the Mining Company Invicta.”<sup>168</sup>

It then stated that an urgent meeting was requested further to “the breaches” by IMC and that “the Rural Community of Par[á]n continue[s] to be affected by environmental contamination[] within their communal lands”. For such reasons, Mr Torres Palomares requested an urgent meeting for 26 March 2019, including with the OEFA and the National Water Authority (“ANA” which is the Spanish acronym for “*Autoridad*

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<sup>164</sup> Witness Statement of Luis F. Bravo, 01/10/2021, p. 22 *et seq.* (para. 70).

<sup>165</sup> Email from Canadian Embassy to IMC, 21/03/2019, at **Exhibit C-355**, p. 1.

<sup>166</sup> Email chain between Lupaka to Canadian Embassy (SPA) - 20/02/2019 to 20/03/2019, at **Exhibit C-356**, p. 1.

<sup>167</sup> Criminal complaints filed with the Sayán Police by IMC representative (SPA), 21/03/2019, at **Exhibit C-208**.

<sup>168</sup> Letter from the Parán Community to MINEM (SPA), 21/03/2019, at **Exhibit C-357**, p. 1 (point 2).

*Nacional de Agua*”). There was no mention of the survey being conducted in relation to the road in the letter. Rather, the Parán Community’s stated concerns relating to the communal lands being “affected” were environmental and did not relate to Parán’s access road. The word “affected” as relating to Parán’s land had been used in the same manner in the 26 February 2019 Agreement.

- 133 As we were to learn later, on 26 March 2019, Parán’s representatives met with the MEM and the MININTER further to Mr Torres Palomares’ request in the aforementioned letter dated 21 March 2019.
- 134 On 28 March 2019, we finally met with Mr Trigos, Mr León, Deputy Minister Gálvez and MININTER representatives (I believe it was Ms Tello in particular), together with the Canadian embassy officials who had secured the meeting. As I have noted, we had not communicated with MEM officials since early March despite our numerous attempts in the meantime). During the meeting, I read out loud a statement from Mr Ansley which I have located since I signed my first statement.<sup>169</sup>
- 135 Mr Ansley’s statement referred in detail to the meeting that he and I had attended on 19 March 2019 with Parán’s President as referred to above, at which he bluntly stated that he never intended to honour the agreement to abandon the Blockade.<sup>170</sup> The statement also continued to explain how Parán’s President expressed his unsubstantiated conviction that the Project was within Parán’s territories and his insistence that we renege on our agreements with Lacsanga and Santo Domingo.
- 136 Further, it explained in detail how we and our contractors had suffered violence and significant theft and damages to the camp. This included Parán members “shooting over [the] head[s] of our contract workers” who had been clearing the Lacsanga access road running to the Blockade and the theft of “explosive equipment, numerous valuable pieces including computers and other electronic equipment from the heavy machinery”.<sup>171</sup> Lastly, in his statement, Mr Ansley pointed out the lack of support from

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<sup>169</sup> Email from Lupaka to Lupaka and Laveta, 27/03/2019, at **Exhibit C-354**.

<sup>170</sup> Email from Lupaka to Lupaka and Laveta, 27/03/2019, at **Exhibit C-354**, p. 3.

<sup>171</sup> Email from Lupaka to Lupaka and Laveta, 27/03/2019, at **Exhibit C-354**, p. 2 *et seq.*

the State authorities, particularly accusing the MEM of not providing “leadership to the process” which gave Parán no incentive “to follow along respectfully”.<sup>172</sup>

- 137 Precisely for the reasons detailed above, we stated that we would not participate in further negotiations unless the Blockade was lifted either by force or voluntarily. (I would add that even the intelligence services in Huacho agreed with us that there was no point in entertaining further dialogue with Parán representatives again, as Marco Estrada reported to me on 22 March 2019.<sup>173</sup>) We noted during the statement that there had very recently been a forcible intervention at Las Bambas to relieve the blockade there and that the same action should be followed in the case of the Project. Sadly, the MEM representatives requested that we continue with the dialogue with the Parán Community without an indication that there was to be any effective State intervention to reinstate public order.
- 138 During this meeting, which was attended by Mr Trigos, we were informed that the Parán representatives had claimed that we had breached the 26 February 2019 Agreement. Mr Trigos does not comment on the discussions that took place at the 28 March 2019 meeting, even if he does assert in his statement that one of the reasons why the “26 February 2019 Agreement[] collapsed” was that “Invicta was not prepared to collaborate by paying the fees of a surveyor who was to conduct the topographic survey agreed, or to propose an alternative to this deadlock”.<sup>174</sup> This is in line with Mr León’s position as I have developed in Section 5.4.
- 139 However, as I noted in my first statement, at the time Mr Trigos did explain to the Deputy Minister that the topographic survey did not relate to Parán’s road (I note that neither Mr Trigos nor Mr León has denied this statement).<sup>175</sup> We were in no way reprimanded for not complying with the 26 February 2019 Agreement. We followed up with a letter dated 29

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<sup>172</sup> Email from Lupaka to Lupaka and Laveta, 27/03/2019, at **Exhibit C-354**, p. 3.

<sup>173</sup> Internal IMC email (SPA), 22/03/2019, at **Exhibit C-358**.

<sup>174</sup> Witness Statement of Andrés Fernando Trigos, 11/03/2022, p. 17 (para. 48).

<sup>175</sup> Witness Statement of Luis F. Bravo, 01/10/2021, p. 23 (para. 72).

March 2019 to the MEM (received on 1 April 2019), with copy to the MININTER, summarizing our position.<sup>176</sup>

- 140 Despite this clear showing of Parán's lawless conduct, the only action taken by the State at the time was the organization of a meeting on 1 April 2019 between MEM-OGGS representatives and Parán representatives. We did not attend as it was a hopeless waste of time to do so.

## **7 PARÁN'S RETALIATION AFTER THE ATTEMPT TO RECOVER THE SITE ON 14 MAY 2019**

- 141 We knew we had to hire security from early on in 2019. Indeed, the document reflecting the Operational Plan made it clear that once the Police had taken control of the Site, the Police were only going to stay on the Site for a maximum of 72 hours.<sup>177</sup> Hence, a private security firm would be needed to keep the Parán Community from invading the Site again.
- 142 We re-engaged with WDS after the Parán Community's renewed invasion of the Site. On 27 March 2019 our CEO, Will Ansley instructed that "[i]n speaking with [WDS] it is important that we state that we will no longer dialogue with them so long as the blockade is present. We urged the [P]olice to step in and do their job to protect our property rights and investment."<sup>178</sup> After the Police secured the area, WDS would maintain security at the Site. WDS was to coordinate with the Police to this effect. WDS had a good communication channel with the Police as some of the team were ex-police officers.
- 143 Indeed, we still believed at this time that an Operational Plan could well go ahead, which would have been very manageable given that the sparse presence of Parán's members at the Blockade would have made an entry by the Police very manageable. On 10 April 2019, Mr Estrada met with the Chief of Police Intelligence in Huacho. Mr Estrada was informed that he had requested that an Operational Plan be drawn up and that the Sayán

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<sup>176</sup> Letter from IMC to MEM (SPA), 29/03/2019, at **Exhibit C-209**; Letter from IMC to MEM (SPA), 01/04/2019, at **Exhibit C-359**.

<sup>177</sup> Police Operational Plan to lift the Blockade (SPA), 09/02/2019, at **Exhibit C-193**, p. 13 (item d).

<sup>178</sup> Email from Lupaka to Lupaka and Laveta, 27/03/2019, at **Exhibit C-354**.

police station was in charge of drafting such plan.<sup>179</sup> On 24 April 2019, Mr Estrada reported that he was due to meet on that day with the secretary of the Sayán police station to try to push for him to finalize the report and send it to authorities in Huacho.<sup>180</sup> However, as I noted in my first witness statement, we obtained informal information on 25 April 2019 from the Police that they had received instructions from the MININTER not to implement the Operational Plan as the Blockade was not seen as sufficiently grave.<sup>181</sup>

- 144 Despite this, the intelligence services from the Sayán police station continued to investigate matters. As I noted in my first witness statement, on 1 May 2019, Mr Estrada accompanied two intelligence officers and WDS security personnel to a lookout to observe how many Parán members were manning the Blockade. WDS collaborated with the Huacho intelligence services at this time to help the Police draw up the new Operational Plan, as I noted in my first statement.<sup>182</sup> They found that there were only seven Parán members at the Blockade.<sup>183</sup>
- 145 In addition, on 8 May 2019 Mr Estrada informed me that the Sayán Police had practically finalized drafting a new iteration of the Operational Plan; the intelligence services had sent its report which was to form part of the Operational Plan and only an inspection of the Blockade was needed from the Sayán Police before it was to be delivered to the Huacho Police Division for further approval. The report noted that Colonel Arbulú, the head of the Huacho Police Division, was afraid of going ahead with the implementation of the Operational Plan.<sup>184</sup> However, I spoke to Colonel Arbulú on two occasions subsequently and he informed me that he had in fact approved the implementation of the Operation Plan and sent it on to Lima for final approval.

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<sup>179</sup> Internal IMC email (SPA), 10/04/2019, at **Exhibit C-213**.

<sup>180</sup> Internal IMC email (SPA), 24/04/2019, at **Exhibit C-214**.

<sup>181</sup> Witness Statement of Luis F. Bravo, 01/10/2021, p. 24 *et seq.* (paras. 76-77).

<sup>182</sup> Witness Statement of Luis F. Bravo, 01/10/2021, p. 25 (para. 79).

<sup>183</sup> Internal IMC email (SPA), 04/05/2019, at **Exhibit C-216**.

<sup>184</sup> Internal IMC email (SPA), 08/05/2019, at **Exhibit C-360**.

- 146 The draft contract with WDS specified that they were to prepare a strategic security plan for the mining installation, which would be implemented as from 14 May 2019.<sup>185</sup> The latter date had been foreseen as the date on which WDS would enter the Site with the Police and verify the camp as well as set up control posts and then stay for 30 clear days (*i.e.*, without incidents) within the Site. However, as we had discussed with WDS, the date of entry was to be coordinated with the Police (*i.e.*, after the approval of the Operational Plan). There was no doubt that it was not for WDS to carry out a forcible entry to the Site and we never instructed them to do so. WDS would enter at the same time as the Police and the Police would be in charge of using force during the Operational Plan.
- 147 As I noted in my first statement, a few days before 14 May 2019, WDS personnel confirmed that the tents set up by the Parán Community on the Lacsanga road were empty. I communicated with WDS personnel to state that while this was good news, they should wait for the Police to enter first. However, on 14 May 2019, WDS entered the Site unimpeded by any Parán member and reported that the Police were on their way up as I noted in my first statement.<sup>186</sup>
- 148 In his witness statement, Mr León recounts the version of events given by Parán representatives further to a meeting he and other high-ranking officials had on 20 May 2019 to which we were not invited. Mr León states that he was informed by Parán's representatives that "on 14 May 2019, around 50 private security agents hired by Invicta had approached the protest site with firearms, threatening and attacking the Community members in an attempt to remove them from the access road through the Lacsanga Community."<sup>187</sup> This is totally false for the following reasons.
- 149 First, the alleged confrontation between WDS and the Parán Community that Mr León refers to never took place as there were no community members at the Blockade. As can be seen from a video shot that day, which I also was aware of at the time, all the tents set at the Blockade were

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<sup>185</sup> Draft Contract between IMC and WDS (SPA), at **Exhibit C-361**.

<sup>186</sup> Witness Statement of Luis F. Bravo, 01/10/2021, p. 26 (paras. 80-81).

<sup>187</sup> Witness Statement of Nilton César León Huerta, 22/03/2022, para. 51.

empty.<sup>188</sup> Indeed, the reference to WDS having been “threatening” and “attacking the Community members” is pure fabrication.

150 Second, as I stated in my first statement, shortly after WDS entered the Site, it was the Parán Community members who arrived at the Site by the hundreds shooting their guns, leading to the flee of WDS personnel as well as Mr Estrada without returning fire.<sup>189</sup> The Parán Community manned the Blockade again from then on.

151 Mr León states that:

“The Parán Community appeared to be seriously vexed by this attack, insisting that it had considerably worsened the social conflict. The Parán Community were then sternly refusing to remove their protest while insisting that they would request the closure of the Project. They informed us that their communal assembly had decided that they no longer wanted to participate in further negotiations. The altercation caused by the private security company employed by Invicta brought the conflict to a crisis point.”<sup>190</sup>

152 Indeed, we were informed by the authorities that this was Parán’s position as I discuss below at Section 8. Yet the reality was that WDS had not committed any illegality in that they had entered our Site, which was not on Parán land, without confrontation, while Parán’s members were absent from the Blockade. When they were subsequently attacked by Parán’s members a few hours later, they did not shoot back and thereby avoided causing any injury, as I indicated in my first statement.

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<sup>188</sup> Mr Marco Estrada showing the Blockade at the Lacsanga road (SPA) (Video), 14/05/2019, at **Exhibit C-362**; Mr Marco Estrada showing the Blockade at the Lacsanga road (Transcript) (SPA), 14/05/2019, at **Exhibit C-363**.

<sup>189</sup> Witness Statement of Luis F. Bravo, 01/10/2021, p. 26 (para. 82).

<sup>190</sup> Witness Statement of Nilton César León Huerta, 22/03/2022, p. 16 *et seq.* (para. 51).



## **8 HIGH-RANKING STATE OFFICIALS CONTINUED TO IGNORE OUR PLEAS FOR INTERVENTION FROM MAY TO JULY 2019**

- 153 Peru's witnesses have not commented on the reference I made in my first statement to meetings and correspondence I had with State officials in May to July 2019 in which our pleas for intervention were ignored.<sup>191</sup> I would nevertheless like to comment further on this period in the light of additional evidence I have located or which has been presented to me.
- 154 On 27 May 2019, Miguel Velásquez and I attended a meeting with a group of high-ranking State officials who had met with Parán officials days before. Additionally to what I stated in my first statement, I explained to them that while the WDS guards managed to peacefully enter the Site, the Parán members had come armed some three hours later and began shooting down at them. Despite the danger they were in, the guards had not returned fire and managed to flee the Site. Sadly, one of them was chased and eventually shot dead in cold blood by the Parán villagers the following day.<sup>192</sup>
- 155 Despite this, I firmly conveyed to the MEM that IMC continued to maintain the same position that we had held all along (*i.e.*, that we were willing to dialogue but that the Blockade should be lifted first). Ignoring my pleas and the fact that there now had been fatalities at the Blockade, the MEM officials asked us to continue the dialogue with the Parán Community in order to reach an agreement without lifting the Blockade. As if that were not enough, they conveyed to us that we had to consider the various demands by Parán as part of the encouragement to come to an agreement (*i.e.*, an agreement with the Parán Community on the same conditions as with the other communities, a replacement of the CR Team staff and the withdrawal of criminal charges before they would lift the

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<sup>191</sup> Witness Statement of Luis F. Bravo, 01/10/2021, p. 27 *et seq.* (paras. 85-97).

<sup>192</sup> IMC, Minutes of meeting between IMC and MEM (SPA), 27/05/2019, at **Exhibit C-364**, p. 2.

Blockade) as I noted in my first statement.<sup>193</sup> I was both bewildered and outraged by the MEM's response.

- 156 The MEM-OGGS met with Parán on 8 July 2019 to convey our acceptance to pay for a topographic survey for the construction of a road through Parán and our willingness to negotiate an agreement. The MEM-OGGS wrote to me to state that although they had initially rejected the offer, they would consider it only if all IMC representatives that had been involved in the negotiations were fired by the owner and that he attend their general assembly to express his willingness to negotiate and to submit his proposals.<sup>194</sup> Again Parán was making impossible demands, clearly in bad faith. In any event, we lost the investment shortly thereafter.

## **9 SUPPOSED INADEQUACY OF OUR COMMUNICATIONS CHANNEL WITH PARÁN IN 2019**

- 157 Mr León states that in 2019 only I attended the meetings with Parán representatives, where it would have been more adequate in his opinion for a specialised community relations team to meet with them instead.<sup>195</sup> This requires an explanation.
- 158 It should be recalled that IMC had a specialised community relations team on the ground for many years until the Blockade was installed in October 2018. [REDACTED] until November 2018 and from then on, Mr Estrada continued to be on the ground until the end of May 2019 approximately (he had been there since September 2016), with the addition of an external consultant, Mr Arévalo. [REDACTED] Mr Estrada had a close relationship with the Parán Community's members. However, it should be noted that as from 14 October 2018, the Parán Community allowed only Mr Estrada to access the Site twice a week, and that from mid-December 2018, Parán did not allow access to the Project Site at all, except for a few days from 4-20 March 2019 and also for the above-referred failed inspection by the

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<sup>193</sup> Witness Statement of Luis F. Bravo, 01/10/2021, p. 28 (paras. 87-90); see also IMC, Minutes of meeting between IMC and MEM (SPA), 27/05/2019, at **Exhibit C-364**, p. 3.

<sup>194</sup> Email from MEM to IMC (SPA), 08/07/2019, at **Exhibit C-365**.

<sup>195</sup> Witness Statement of Nilton César León Huerta, 22/03/2022, p. 24 (para. 76).

authorities on 8 February 2019. Keeping a large community relations team on our payroll made no sense. It should also be recalled that both [REDACTED] had been physically attacked in June 2018 by Parán members. Armed personnel were manning the Blockade which had been in place since October 2018, and in January 2019 a Lacsanga member had been shot by a Parán member. The Parán Community's bad faith can also be seen through how they tried and succeeded in extorting money from IMC's contractors in April 2019, as I noted in my first witness statement,<sup>196</sup> and their subsequent exploitation of the mine.

159 Under these conditions Mr León's statement that we should have approached the Parán Community with people that could be perceived as their allies is disingenuous. Parán's members were armed and dangerous and the negotiations with Parán had moved to a whole new level with the intervention of the State. Hence why it made sense that I was the person leading the few meetings we had with Parán, namely:

- a) On 29 January 2019 (I was accompanied by Mr Arévalo and Mr Velázquez);
- b) 26 February 2019 (I was accompanied by Mr Arévalo and Mr Velázquez); and
- c) 19 March 2019 (Mr Ansley and I met the President of Parán).

160 If anything, the fact that I was involved (with Mr Ansley on 19 March 2019) in the negotiations with Parán's representatives should have shown them how seriously we were taking the matter. Instead, Mr León states that the "fact that it was only Mr. Bravo who attended, showed that Invicta's only concern was its business and not achieving harmonious relations with the Parán Community."<sup>197</sup> This statement makes no sense to me. Harmonious relationships with Parán and the interests of our business were two sides of the same coin. This is the reason why we paid some Parán community members from 4-20 March 2019 to guard the

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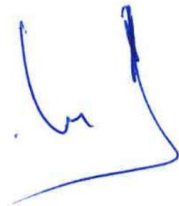
<sup>196</sup> Witness Statement of Luis F. Bravo, 01/10/2021, p. 24 (para. 75).

<sup>197</sup> Witness Statement of Nilton César León Huerta, 22/03/2022, p. 24 (para. 76).

explosives magazine, for example.<sup>198</sup> These were payments that in reality were a community relations exercise during a difficult period.

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This second witness statement has been drafted with the assistance of LALIVE, counsel for Lupaka Gold Corp., on the basis of several communications. I have carefully reviewed the statement and confirm that it correctly reflects my recollection of the facts described and my opinion. I am prepared to appear before the Arbitral Tribunal to confirm the content of this statement.



Luis Felipe Bravo García

Signed on 23 September 2022

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<sup>198</sup> Internal IMC email with attachment (SPA), 25/03/2019, at **Exhibit C-366**; Internal Lupaka email (with attachments) (SPA), 26/03/2019, at **Exhibit C-367**.