

[English Translation from Spanish Original]

International Centre for Settlement of Investment Disputes
(ICSID)

Lupaka Gold Corp.

Claimant

v.

The Republic of Peru

Respondent

ICSID Case No. ARB/20/46

Witness Statement of
Andres Fernando Trigoso Alca

11 March 2022

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1. My name is Andres Fernando Trigoso Alca. I was born on 10 November 1962 in the city of Lima in the Republic of Peru (“**Peru**”). I am a Peruvian citizen, identified with National Identity Document No. 25508985, residing at Jr. Simón Bolívar No. 351 Apt. 102 District of San Miguel, Lima, Peru.
2. From 12 April 2012 to 11 December 2020, with several breaks, I held many positions within the General Office of Social Management (“**OGGS**” [*Oficina General de Gestión Social*]) of the Ministry of Energy and Mines of the Republic of Peru (“**MINEM**” [*Ministerio de Energía y Minas*]). In particular, I was a Social Specialist (from April 2012 to April 2014); Regional Coordinator (from April 2014 to October de 2018); and Coordinator for the Promotion of Dialogue and Citizen Participation (from October 2018 to November 2019). While holding that latter position, I was simultaneously appointed General Director of the Office for the Management of Dialogue and Citizen Participation [(“**DGDPC**”) *Oficina de Diálogo y Participación Ciudadana*] (from August 2018 to March 2019) and General Director of the [OGGS] (from December 2018 until the end of January 2019). In March 2019, after leaving the position of DGDPC, I returned to my position as Coordinator for the Promotion of Dialogue and Citizen Participation, until 30 November 2019. Later, in September 2020, I returned to the OGGS of the Ministry of Energy and Mines as Director of the Office for the Management of Dialogue and Citizen Participation, under the administration of the Minister of Energy and Mines, Mr. Luis Miguel Incháustegui Zevallos, a position I held until December 2020. While holding these positions, we intervened, either through me or through the Social Specialists of the OGGS, as facilitators in various conflicts arising between mining and hydrocarbon companies and rural and/or native Communities, including the conflict between the Parán Community and the company Invicta Mining Corp. S.A.C. (“**Invicta**”).
3. I submit this witness statement at the request of the Special Commission that represents the State in International Investment Disputes (“**Special Commission**”)

ascribed to the Ministry of Economy and Finance of the Republic of Peru (“**MEF**” [*Ministerio de Economía y Finanzas*]), within the context of the international arbitration proceedings brought by the company Lupaka Gold Corp. (“**Lupaka**” or “**Claimant**”) against Peru, ICSID Case No. ARB/20/46 (“**Arbitration**”). This witness statement is based on my personal knowledge of the facts, acquired on holding the offices identified above.

4. I have read the parts that are relevant to my testimony of the Claimant’s Memorial filed by the Claimant on 1 October 2021 (“**Claimant’s Memorial**”), as well as the witness statement of Luis Felipe Bravo García dated 1 October 2021. I have also consulted several additional documents produced by the MINEM and other sources.
5. Peru’s defence team of lawyers have assisted me in preparing this witness statement. I confirm that this witness statement is a true and faithful reflection of my personal knowledge and account of the relevant facts and events.
6. This witness statement has been prepared in Spanish. If I were called to testify at the hearing of these Arbitration, I reserve the right to testify in that language.

I. PROFESSIONAL CAREER

7. I am a chemical engineer, having graduated from the National University of Callao [*Universidad Nacional del Callao*] (Peru) in 1998 and with a Master’s Degree in public management, from Cesar Vallejo University [*Universidad Cesar Vallejo (Peru)*] in 2015.
8. I obtained an international diploma in prevention and constructive transformation in social conflicts from the Continental University of Science and Engineering [*Universidad Continental de Ciencias e Ingeniería*] in 2011; as well as a diploma in “Strategic Intelligence and Analysis of Sociopolitical Information”, from the Center for Higher National Studies [*Centro de Altos Estudios Nacionales*] (CAEN), in 2013.

9. From February 2007 to December 2008, I was advisor to the Presidency of the Council of Ministers ("PCM" [*Presidencia del Consejo de Ministros*]) on social matters.
10. From September 2009 to December 2011, I held the position of specialist at the Office for the Prevention of Social Conflicts at the Ministry of Housing, Construction and Sanitation [*Ministerio de Vivienda, Construcción y Saneamiento*].
11. As I indicated earlier, from April 2012 to December 2020, I worked at the Ministry of Energy and Mines of the Republic of Peru ("MINEM" [*Ministerio de Energía y Minas*]), holding various positions within the OGGS. During that period, I temporarily left the OGGS (from December 2019 to August 2020), working for the General Directorate for the Formulation of Intergovernmental Issues of the Ministry for Agricultural Development and Irrigation [*Dirección General de Articulación e Intergubernamental del Ministerio de Desarrollo Agrario y Riego*].
12. Since May 2021, I have acted as external advisor on social matters to the mining company Bateas S.A.C., a company that operates the "Caylloma" poly-metallic mine.

II. THE ROLE AND FUNCTIONS OF THE GENERAL OFFICE OF SOCIAL MANAGEMENT OF THE MINISTRY OF ENERGY AND MINES

A. Structure and functions of the General Office of Social Management (OGGS):

13. The OGGS is the agency of the MINEM responsible for the promotion and strengthening of harmonious relations among all actors involved in the energy and mining sectors that fall within the competence of the MINEM.¹ Specifically, article 51 of Supreme Decree 021-2018, which approves the Rules on Organization and Functions of the MINEM, provides that one of the main functions of the OGGS is to "[p]romote the strengthening of harmonious, synergic relations and the

¹ Ex. R-0012, Supreme Decree No. 021-2018-EM, 18 August 2018, Art. 50.

execution of agreements among companies in the energy and mining sector, the regional and local governments, the local populations, civil society and public and private entities.”² In addition, the OGGS also has the function of “[p]roposing mechanisms and guidelines for the improvement of relations among companies of the energy and mining sector, the regional and local governments, the local populations and civil society, to prevent and settle disputes and contribute to the sustainability and governance of extractive activities.”³ In performing its functions, the OGGS promotes, addresses, participates in and implements processes and mechanisms of dialogue, negotiation and cooperation for the prevention and settlement of social conflicts that may arise in projects in the Energy and Mining Sector.⁴ The OGGS is also responsible for providing specialized advice to assess the social aspects of mining projects and activities and for promoting relations between the mining companies and the social environment in which the mining projects are located.⁵

14. For the appropriate performance of its role in the prevention and settlement of social conflicts, the OGGS maintains and promotes coordination with other entities of Peru, such as the Department for Social Management and Dialogue of the Presidency of the Council of Ministers (“PCM” [*Presidencia del Consejo de Ministros*]), the Ministry of the Environment, the National Water Authority, the Ministry of Interior and other national, regional and local government entities.
15. Structurally, the OGGS reports to the Office of the Minister of Energy and Mines, not to the three Deputy Ministries of the MINEM or the Secretary General. The OGGS performs its functions through two units:⁶ the Office for the Management

² Ex. R-0012, Supreme Decree No. 021-2018-EM, 18 August 2018, Art. 51 (a).

³ Ex. R-0012, Supreme Decree No. 021-2018-EM, 18 August 2018, Art. 51 (b).

⁴ Ex. R-0012, Supreme Decree No. 021-2018-EM, 18 August 2018, Art. 50.

⁵ Ex. R-0006, Supreme Decree No. 040-2014-EM, 5 November 2014, Art. 5.2.

⁶ Ex. R-0012, Supreme Decree No. 021-2018-EM, 18 August 2018, Art. 51-A.

of Dialogue and Citizen Participation,⁷ and the Office for the Management of Social Undertakings.⁸ The first (namely, the Office for the Management of Dialogue and Citizen Participation) is responsible for dealing with social conflicts in the energy and mining sector.⁹

16. Based on that competence and while performing my duties as Director of the OGGS and Director of the Office for the Management of Dialogue and Citizen Participation, I was responsible for the handling and implementation of strategies to prevent and favour the settlement of socioenvironmental conflicts in the energy and mining sector.

B. Performance of duties of the OGGS in situations of social conflict between mining companies and rural Communities

17. When the OGGS is informed of the existence of a social conflict between a mining, hydrocarbons and/or energy company and rural and indigenous populations or Communities, the Office for the Management of Dialogue and Citizen Participation provides support and advice and monitors the mediation and settlement of the conflict, establishing opportunities for dialogue where both parties set out their disagreements and positions. A specialist is assigned to each social conflict (“**Social Specialist**”), who is responsible for monitoring the process and for proposing the necessary mechanisms for the settlement of the conflict. The function of the Social Specialist includes participating in meetings and facilitating the process of dialogue between the parties. A coordinator (“**Coordinator**”) is also assigned to each case, to whom the Social Specialists report directly. The Social Specialists and Coordinators appointed reported to me at regular internal meetings on the status of the conflict for the case and we assessed the next steps to be taken to cooperate for the settlement of the dispute. At the time at which the

⁷ Ex. R-0012, Supreme Decree No. 021-2018-EM, 18 August 2018, Art. 51-B.

⁸ Ex. R-0012, Supreme Decree No. 021-2018-EM, 18 August 2018, Art. 51-C.

⁹ Ex. R-0012, Supreme Decree No. 021-2018-EM, 18 August 2018, Art. 51-B (a)(c)(e).

conflict between the Parán Community and Invicta emerged, I recall that at the OGSS we were dealing with around 80 social conflicts in the sector (mining, hydrocarbons, and energy), to which the status of the process was constantly monitored.

18. The OGGS always promotes and prioritizes dialogue. When a conflict arises, the OGGS leads mediation as an impartial third party, and proposes and implements communication and dissemination strategies that allow harmonious negotiations to continue. The OGGS does not negotiate on behalf of or in favor of any of the parties, nor is it responsible for reaching an agreement between the parties to the conflict. The parties to the conflict have to have a spirit of compromise to overcome their differences and thus guarantee the harmonious development of the mining, hydrocarbon and/or energy project in its area of influence. The function of the OGGS is to provide guidance, facilitate the dialogue process and give impartial advice during that process, suggesting alternatives that enable the parties to reach a negotiated solution. This includes, for example, listening to the position of both parties to suggest alternatives that manage to balance their interests.
19. The OGGS does not have the power nor competence or legal authority to order police intervention as a means of resolving disputes. Nor does its payroll include police officers or other officials able to use public force as a means of intervention in situations of social conflict.
20. Besides the fact that the OGGS does not have powers or competence to order police intervention in a social conflict, the use of force is not contemplated as an effective means or strategy for resolving this type of conflict.
21. Therefore, given the nature, functions, legal framework and tools available to the OGGS, dialogue is always favored to try and bring the parties together and facilitate a solution to the social conflict.

22. When a social conflict has escalated to a violent scenario in the midst of negotiations, the OGGS is still prepared to intervene as mediator and promoter of dialogue. A special team is generally appointed and is responsible for going to the area of conflict to deal with the crisis *in situ* and to try and open up a new phase of negotiations. In this scenario, the OGGS team tries to resolve the crisis and then provide further opportunities for dialogue. In addition, depending on the scope of the process of dialogue, other representatives of national, regional and local government are brought in.
23. When the parties in dispute sign agreements to resolve their conflict, the OGGS does not have coercive means to force the parties to comply with those agreements. Compliance with these agreements falls upon the parties to the dispute and is subject to their willingness and good faith.¹⁰ If the OGGS knows of any possible default by either party, it gathers information provided by each party on its position with regard to the alleged default. Based on the information gathered, the OGGS urges the parties to honor the agreements reached and, if their initial positions continue, it promotes the reopening of dialogue between the parties, either to try and salvage the agreement or to assist the parties in reaching a new agreement.

III. THE OBLIGATION OF THE MINING COMPANIES TO REACH AGREEMENTS WITH THE COMMUNITIES LOCATED IN THE PROJECT'S AREA OF IMPACT

24. Mining projects are generally developed in rural areas, which are usually inhabited by rural or indigenous Communities. Therefore, besides having the necessary relevant social and environmental impact studies, it is well-known that for the mining company to achieve and maintain good relations with those

¹⁰ See Ex. R-0006, Supreme Decree No. 040-2014-EM, 5 November 2014, Art. 57 (establishing compliance with agreements, responsible relations and ongoing dialogue as principles of social management).

Communities (that is, obtaining the social licence), is crucial to the success of the mining project.

25. Based on my experience in the sector and the positions I have held, the Peruvian legal framework establishes mechanisms for promoting and maintaining good relations between companies in the mining sector and the rural Communities, establishing a series of obligations to the Communities situated within the “areas of influence”¹¹ of the project. Mainly, Supreme Decree No. 040-2014-EM, which approves the Rules on Environmental Protection and Management for Mining, Exploitation, General Labour, Transport and Storage Activities (“**Environmental Mining Regulation**”) states that social aspects must be incorporated into the mining project’s environmental impact assessment.¹² These social aspects to be incorporated include the following:
- a) Determining the area of social influence of the mining project;
 - b) The social baseline;¹³
 - c) Identifying and assessing the possible social impact on the area of influence; and
 - d) The social management plan [(“**Social Management Plan**”)];

¹¹ See Ex. R-0006, Supreme Decree No. 040-2014-EM, 5 November 2014, Art. 4 (defining different areas of social and environmental impact, such as (i) area of direct impact; (ii) area of direct environmental impact; (iii) area of direct social impact; (iv) area of indirect impact; (v) area of indirect environmental impact; and (vi) area of indirect social impact).

¹² Ex. R-0006, Supreme Decree No. 040-2014-EM, 5 November 2014, Art. 56.

¹³ Ex. R-0006, Supreme Decree No. 040-2014-EM, 5 November 2014, Art. 64.2 (indicating that the “quantitative and qualitative” social baseline is that which “describes the relevant social, economic, demographic and cultural aspects of the populations of the area of social impact developed with the mining project.”).

26. The social aspects contained in the environmental studies as well as the details of the activities to be developed should consider the characteristics of the project and its areas of influence and the related population¹⁴.
27. The title holder of the mining activity is the party that proposes the Social Management Plan Social, the tool used to “prevent, mitigate the negative social impacts and develop the positive social impacts of the mining project in the corresponding areas of social impact”¹⁵. The Social Management Plan must contain at least the following plans: (i) community relations; (ii) citizen participation; (iii) social agreement; and (iv) community development¹⁶. In particular, the community relations plan includes the measures “proposed by the holder in order to achieve a harmonious relationship with the populations and their lifestyles.”¹⁷.
28. Beyond the legal obligations on the inclusion and participation of the Communities (including with regard to the EIA at the stage of obtaining authorizations to develop the mining project), experience shows that, for a mining project to be successful, the mining company must obtain and manage to maintain the approval and support of the Communities in the area. In other words, the licences and legal permits granted by the competent State bodies are necessary but not sufficient for the successful development of mining activities; the mining company is responsible for obtaining what is known in the industry as a “social licence” as the means for establishing relations and agreements over time, which guarantee social peace during the development of the project.
29. The existence and importance of so-called “social licence” is established in Peruvian law. Knowing the importance of creating these harmonious relations with the Communities impacted by the mining project, the Environmental Mining

¹⁴ Ex. R-0006, Supreme Decree No. 040-2014-EM, 5 November 2014, Art. 56.

¹⁵ Ex. R-0006, Supreme Decree No. 040-2014-EM, 5 November 2014, Art. 60.

¹⁶ Ex. R-0006, Supreme Decree No. 040-2014-EM, 5 November 2014, Arts. 60.1-60.3.

¹⁷ Ex. R-0006, Supreme Decree No. 040-2014-EM, 5 November 2014, Arts. 60.1.

Regulation includes the fact that the title holder may make voluntary investments and social undertakings in addition to those included in its EIA, and register them at the OGGS and at the General Directorate for Mining Environmental Matters (“DGAAM” [*Dirección General de Asuntos Ambientales Mineros*]).¹⁸ The establishment and preservation of harmonious relations with the Communities that comprise the project’s area of social impact is not achieved with force, intimidation or intransigence. Although the State entities seek to act as facilitators in bringing the rural Communities and the companies together, the company has the duty of including the local Communities in the development of the mining project and thus obtain social licence and peace.

30. Invicta’s EIA defined the area of direct social impact of the Invicta I project owned by Invicta (the “**Project**”) as that formed by the Lacsanga, Santo Domingo de Apache and Parán Communities.¹⁹ Therefore, Invicta had to draft plans for how it would manage social relations with those three Communities and implement them effectively, as part of its social responsibility with the Project.

IV. THE NEGOTIATION TO RESOLVE THE CONFLICT BETWEEN INVICTA AND THE PARÁN COMMUNITY

31. In this section of my witness statement, I will summarize the relevant facts and my intervention as an OGGS official, in the performance of its tasks, in order to facilitate dialogue between Invicta and the Parán Community, to find a solution to the social conflict existing with regard to the Project.

¹⁸ Ex. R-0006, Supreme Decree No. 040-2014-EM, 5 November 2014, Arts. 62, 63.

¹⁹ Ex. C-0007, Directorial Resolution No. 427-2009-MEM-AAM, MINEM, 28 December 2009; Ex. C-0226, Report No. 00214-2018-SENACE-PE/DEAR, 12 November 2018, p. 14 (“Area of Social Influence: The area of social influence contemplated for the Third ITS Invicta corresponds to the same area approved in the Environmental Impact Study by Directorial Resolution No. 427-2009-MEM-AAM, dated December 28, 2009, which determines as Area of Indirect Social Influence the socioeconomic and cultural space of the districts of Leoncio Prado and Paccho, and as Area of Direct Social Influence the rural communities of Lacsanga, Paran and Santo Domingo de Apache.”).

A. The OGGS promoted dialogue and agreement between Invicta and the Parán Community

32. Since the OGGS became aware of the conflict between Invicta and the Parán Community, in June 2018, it has promoted dialogue between the parties and encouraged the formal commencement of dialogue tables. The purpose of the OGGS—as we have always mentioned to Invicta—was to invite the parties to participate in a dialogue process, in order to resolve the social conflict between them. Messrs. Nilton César León, Victor Raúl Vargas and Daniel Amaro were the Social Specialists, and Mr. César Ulloa was the Regional Coordinator. They contributed to the effort made by the OGGS to deal with the conflict, coordinating meetings and bringing together Invicta and the Parán Community. During this process, we tried to encourage both parties to reach agreements. We maintained frequent communications with the Parán Community and Invicta's representatives.
33. As I will explain in the following paragraphs, I had the opportunity to participate in the formal establishment of the dialogue table between Invicta and the Parán Community, thus ensuring that the OGGS was present in this process. The OGGS participated in the development of this process through its relevant specialists, who reported to me on the progress and difficulties encountered in the process.
34. On 16 October 2018, we received a letter from Invicta at the MINEM informing us that two days earlier, on 14 October 2018, the Parán Community had set up a protest blocking one of the access roads to the Project, situated in the Lacsanga Community.²⁰ I recall that, shortly after receiving this letter, the Social Specialists appointed went to the area of the Project in the District of Sayán, to hear the parties and to coordinate the formal opening of dialogue. While I was in office at the OGGS, I had the opportunity to participate in several of these meetings and I also

²⁰ Ex. C-0171, Letter from Invicta Mining Corp. S.A.C. (J. Castañeda) to MINEM (F. Castillo), 15 October 2018.

exchanged communications with the Parán Community and Invicta to mediate a resolution to the conflict.

35. On 19 November 2018, Invicta sent a letter to the Minister of Energy and Mines recognizing the efforts made by the MINEM to encourage dialogue between the Parán Community and Invicta.²¹ In that letter, Invicta asked the MINEM only to call it to further negotiations when the MINEM had verified that the Parán Community had removed its blockade from the access road.²² I am aware that Lupaka has referred to the response I sent to its letter, arguing that I ignored its request to remove the Community's blockade as a pre-condition for the resumption of negotiations.²³ That is not true. I did not ignore Invicta's request. In my letter of 22 November 2018, I informed Invicta that, following its request, we had invited it to a meeting on 21 November 2019.²⁴
36. In an ideal scenario, dialogue tables take place within a context in which there are no active protests or blockades. In practice, however, protests and blockades very often take place during negotiations when dialogue tables are in place. As I have stated in the previous sections of this witness statement, the OGGS does not have the competence to order and oblige (much less by force) the rural Community to end its protest. Therefore, the MINEM could not ensure that the condition imposed by Invicta would be complied with; that is, the OGSS could not guarantee that the Parán Community would end its blockade on one of the access roads before continuing with the negotiations.

²¹ Ex. C-0240, Letter No. 268-2018-MEM/OGGS/OGDPC from MINEM (F. Trigoso) to Invicta Mining Corp. S.A.C. (D. Kivari), 22 November 2018, p. 2.

²² Ex. C-0240, Letter No. 268-2018-MEM/OGGS/OGDPC from MINEM (F. Trigoso) to Invicta Mining Corp. S.A.C. (D. Kivari), 22 November 2018, p. 3.

²³ Claimant's Memorial, ¶ 134.

²⁴ Ex. C-0240, Letter No. 268-2018-MEM/OGGS/OGDPC from MINEM (F. Trigoso) to Invicta Mining Corp. S.A.C. (D. Kivari), 22 November 2018, p. 1.

37. What we did at the OGGS, within the scope of our competence and what was permitted by law, was precisely to urge the Parán Community to remove its blockade, which we did on repeated occasions. This position was consistent with OGGS's function to facilitate opportunities for dialogue. For example, on 12 February 2019 we received a letter from the President of the Parán Community at the MINEM, informing us of the Community's willingness to continue with the dialogue table with Invicta after a meeting held on 29 January, and requested the Ministry management to do so on 19 February 2019.²⁵ On 18 February 2019, I replied to the President of the Parán Community, and informed him that the OGGS would continue to promote dialogue between the Parán Community and Invicta, but under conditions of equality between the parties and always maintaining social peace.²⁶ I informed the Parán Community that dialogue tables should continue without their blockade in place²⁷ and I specifically urged them to remove their blockade to resume dialogue and negotiations.²⁸ On that occasion, as well as on several others, I informed the Parán Community that the MINEM, through the OGGS, was promoting and strengthening relations between the parties involved in the mining projects, guaranteeing opportunities for dialogue, but that the disputing parties were the ones who ultimately had to settle their differences and reach agreements.²⁹ I also informed them that the Parán Community could liaise with the lawyer Mr. León, Social Specialist, as part of our

²⁵ Ex. R-0013, Official Letter No. 004 from the Parán Community (A. Torres) to MINEM (F. Ismodes), 12 February 2019.

²⁶ Ex. C-0191, Official Letter No. 0028-2019-MEM/OGGS/OGDPC from MINEM (F. Trigoso) to the Parán Community (A. Torres), 18 February 2019, p. 1.

²⁷ Ex. C-0191, Official Letter No. 0028-2019-MEM/OGGS/OGDPC from MINEM (F. Trigoso) to the Parán Community (A. Torres), 18 February 2019, p. 1.

²⁸ Ex. C-0191, Official Letter No. 0028-2019-MEM/OGGS/OGDPC from MINEM (F. Trigoso) to the Parán Community (A. Torres), 18 February 2019, p. 2.

²⁹ Ex. C-0191, Official Letter No. 0028-2019-MEM/OGGS/OGDPC from MINEM (F. Trigoso) to the Parán Community (A. Torres), 18 February 2019, p. 1.

attempt to facilitate a settlement to the dispute.³⁰ In response to my letter of 18 February 2019, on 21 February 2019 we received a satisfactory reply from the Parán Community. The President of the Parán Community requested the MINEM's intervention to continue negotiations with Invicta, and to reach an agreement on 26 February 2019.³¹

38. With the mediation and participation of the OGGS, on 26 February 2019 dialogue opened and an agreement was reached between the Parán Community and the Invicta representatives.³² Mr. Nilton León and Mr. Victor Vargas attended on behalf of the OGGS. I recall being present at the start of the meeting. Despite not having participated throughout the meeting, I learned that the parties had reached the following agreements (the "**26 February 2019 Agreements**"):
(i) to declare dialogue tables formally established;
(ii) to authorize the representatives of each party that would participate in the meetings;
(iii) to conduct a topographical survey of the Parán Community's territory to identify affected land of that Community; and
(iv) to remove the blockade installed by the Parán Community as of that date, following ratification at the Community assembly on 2 March 2019, allowing Invicta employees access to the Project via the *Parán* access road.³³
39. After that meeting, I learned that both the Parán Community and Invicta accused each other of defaulting on the 26 February 2019 Agreements. For example, I received two letters from Invicta alleging that the Parán Community had breached the 26 February 2019 Agreements because they had not cleared the access road

³⁰ Ex. C-0191, Official Letter No. 0028-2019-MEM/OGGS/OGDPC from MINEM (F. Trigoso) to the Parán Community (A. Torres), 18 February 2019, p. 2.

³¹ Ex. C-0198, Official Letter No. 005 from the Parán Community (A. Torres) to MINEM (F. Ismodes), 20 February 2019.

³² Ex. C-0200, Minutes of the Meeting, Meeting between the Parán Community, Invicta Mining Corp. S.A.C., and MINEM, 26 February 2019, p. 1.

³³ Ex. C-0200, Minutes of the Meeting, Meeting between the Parán Community, Invicta Mining Corp. S.A.C., and MINEM, 26 February 2019, p. 1.

through the *Lacsanga* territory.³⁴ I received the first letter on 7 March 2019, in which Invicta formally requested that I “order and provide for the removal of the blockade on the access road to our mining camp, authorising the use of public force, if necessary.”³⁵ A few weeks later, on 21 March 2019, Invicta sent me a second letter, reiterating its position on the reasons for which, in its opinion, the Parán Community had breached the 26 February 2019 Agreements.³⁶ In particular, Invicta argued that the Parán Community was requesting that Invicta pay allegedly high fees to the surveyor to conduct the topographical survey of the access road to the Project through the Parán Community on 20 March 2019, and that this were “not part” of the 26 February 2019 Agreements.³⁷ Invicta also alleged that the Parán Community had once again decided to install its blockade as from 20 March 2019.³⁸ I understand that Lupaka alleges that it did not obtain an affirmative response to these letters.³⁹ That is not true.

40. As I explained in previous sections of this witness statement, the OGGS’s functions did not include coercive measures to order or guarantee the removal of the blockade, and much less to do so through police force. Therefore, it was not possible to meet Invicta’s demands. The only thing we were authorized to do was act within the scope of our competence set out in the Rules on Organization and Functions and within the scope of the Law.

³⁴ Ex. C-0201, Letter from Invicta Mining Corp. S.A.C. (L. Bravo) to MINEM (F. Trigoso, *et al.*), 28 February 2019, p. 1; Ex. C-0207, Letter from Invicta Mining Corp. S.A.C. (L. Bravo) to MINEM (F. Trigoso), 21 March 2019, p. 1.

³⁵ Ex. C-0201, Letter from Invicta Mining Corp. S.A.C. (L. Bravo) to MINEM (F. Trigoso, *et al.*), 28 February 2019, p. 2.

³⁶ Ex. C-0207, Letter from Invicta Mining Corp. S.A.C. (L. Bravo) to MINEM (F. Trigoso), 21 March 2019, pp. 2–4.

³⁷ Ex. C-0207, Letter from Invicta Mining Corp. S.A.C. (L. Bravo) to MINEM (F. Trigoso), 21 March 2019, p. 3.

³⁸ Ex. C-0207, Letter from Invicta Mining Corp. S.A.C. (L. Bravo) to MINEM (F. Trigoso), 21 March 2019, p. 4.

³⁹ Claimant’s Memorial, ¶¶ 157, 168–169.

41. The Parán Community, for its part, maintained, among other things, that Invicta had not honored its commitment to conduct the topographical survey to identify the land affected in the Parán Community's territory.⁴⁰
42. When we acknowledged each party's allegations of default concerning the 26 February 2019 Agreements, we gathered information on the situation, to try once again to bring the parties together. We knew that the parties disagreed on the spirit and compliance of the 26 February 2019 Agreements.
43. At that time, I recall that Mr. León, Social Specialist of the OGGS, informed me of the 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. That position surprised both Mr. León and me a great deal, as Invicta had agreed to the surveyor making the survey to identify which land would be affected to trace the road through the Parán Community that led to the Project. The purpose of the visit was consistent with the works conducted in a topographical survey: surface identification of land, taking into account the physical and geographical characteristics of the land, which is generally used to plan construction and adjustments.
44. The Social Specialists informed me that they had coordinated further meetings, but that the Parán Community and Invicta had not managed to reach an agreement.
45. When I left my office at the OGGS, and before joining the Ministry for Agricultural Development and Irrigation, in December 2019, Invicta and the Parán Community had not managed to resolve their dispute.

⁴⁰ Ex. R-0026, Official Letter No. 006-2019-CCP from the Parán Community (A. Torres) to MINEM (F. Ismodes), 21 March 2019, ¶ 2.

B. Lupaka's failings in dealing with the conflict

46. During my time as Director of the Office for the Management of Dialogue and Citizen Participation of the OGGS, I participated in several meetings arranged by the OGGS between Invicta's representatives and the Parán Community. I was able to observe serious weaknesses in Invicta's Community management and social relations team that participated in the negotiations.
47. From the start of negotiations and at several times, Invicta's representatives demonstrated a relative prejudice against the establishment of dialogue tables, arguing that they would not accept the preliminary conditions proposed by the Parán Community.
48. My perception was that Invicta's negotiation team did not have the capacity to make immediate decisions in the dialogue process (as the preliminary agreements were reached by telephone), and were hardly disposed to making concessions to reach agreements and establish the bases for reaching a negotiated settlement. For example, as I explained earlier, the 26 February 2019 Agreements collapsed, partly because Invicta was not prepared to collaborate by paying the fees of a surveyor who was to conduct the topographical survey agreed, or to propose an alternative to this deadlock. This position did not contribute towards continuing the progress made until then. Invicta had committed to conduct the survey and not wanting to pay the surveyor's fees was contradictory. When this type of agreement is reached between mining companies and rural Communities, the company generally assumes this type of expense, given the limited resources. Moreover, assuming this type of expense is an act that demonstrates commitment and generates trust in the Community and demonstrates its willingness to collaborate to ensure harmonious coexistence with its social environment. From the outset, Invicta demanded the intervention of the Peruvian National Police and the use of the police force against the Community members, to remove their access road blockade. Invicta's demand and attitude allowed us to see that the mining

company had a misguided concept of the way in which negotiation processes should be approached in the event of a social conflict. Based on my experience, the fact that Lupaka is alleging in its Memorial that it was not under any obligation to secure agreements in order to maintain harmonious relationships with the Parán Community demonstrates, in my opinion, a lack of experience in the appropriate way to handle Community relations.⁴¹

49. Moreover, they did not appear to understand, or they refused to accept, that in situations involving the rights of rural or indigenous Communities and given the right to protest and potential risk to life, among other considerations, the conflict must be approached through dialogue and not through public force, until all efforts and means of dialogue have been exhausted. This has always been what we try and achieve at the OGGS, not only in this case, but in every situation in which a social conflict arises between a mining company and a rural Community. In my experience with handling and settling social conflicts, invoking violence is not effective in achieving any concertation nor a sustainable long-term agreement.

* * *

I declare that, to the best of my knowledge and understanding, what I affirm in this witness statement is the truth and nothing but the truth and that it is in accordance with what I sincerely believe.

⁴¹ See Claimant's Memorial, ¶¶ 67, 122.

Signed in Lima, Peru, on 11 March 2022.



Andres Fernando Trigoso Alca
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