

International Centre for Settlement of Investment Disputes (ICSID)

Lupaka Gold Corp.,
Claimant,

v.

Republic of Peru,
Defendant.

ICSID Case No. ARB/20/46

Second Witness Statement of
Luis Miguel Incháustegui Zevallos

12 January 2023

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	THE NEED FOR A SOCIAL LICENSE FOR THE DEVELOPMENT OF MINING PROJECTS IN PERU.....	2
III.	PROMOTION OF DIALOGUE AS A NEGOTIATING POLICY TO ADDRESS CONFLICTS BETWEEN MINING COMPANIES AND THE RURAL COMMUNITIES.....	5
IV.	MINEM'S POSITION AT THE MEETING WITH LUPAKA'S REPRESENTATIVES IN JANUARY 2019.....	10

I. INTRODUCTION

1. I, **Luis Miguel Incháustegui Zevallos**, within the scope of the arbitration proceedings brought by the company Lupaka Gold Corp. ("**Lupaka**" or "**Claimant**") against the Republic of Peru ("**Peru**"), ICSID Case No. ARB/20/46 ("**Arbitration Proceedings**"), with the credentials provided in my first witness statement of 6 March 2022 ("**First Statement**"), make this second witness statement ("**Second Statement**") at the request of the Special Commission representing the State in International Investment Disputes ("**Special Commission**"). This Second Statement, which I understand will be presented together with Peru's Rejoinder ("**Rejoinder**"), is based on my personal knowledge of the facts, acquired whilst performing the duties which I identified in the First Statement, and on the experience I have acquired in the handling of social disputes between rural communities and companies in the mining sector, including in my professional practice in the private sector.
2. I have read the parts relevant to my testimony in Claimant's Reply of 23 September 2022 ("**Reply**"), as well as the second witness statement of Luis Felipe Bravo García, of 23 September 2022. I have also consulted several additional documents of the MINEM and other sources.
3. The lawyers for Peru's defense team have assisted me, at my request and under my supervision, in preparing this witness statement. I confirm that this witness statement reflects my personal knowledge and account of the relevant facts and events faithfully and correctly.
4. This Second Statement was originally prepared in Spanish. If I am called to testify at the Arbitration hearing, I reserve the right to testify in that language.

II. THE NEED FOR A SOCIAL LICENSE FOR THE DEVELOPMENT OF MINING PROJECTS IN PERU

5. As I mentioned in my First Statement, based on my experience in the private and public sector (including as Deputy Minister from April 2018 to May 2019, and as Minister from August to November 2020), I can confirm, in all certainty, that, for the development of mining projects in Peru, companies have to reach agreements with the communities in the area of direct social and environmental influence of their projects.¹
6. I understand that, in its Reply, Claimant questions the existence of this duty and excuses itself for not reaching an agreement with the Parán Community, affirming that the Peruvian legislation: (i) only requires companies to arrange agreements with the communities owning the land where the project will be developed;² but (ii) does not contain an express obligation to reach an agreement with communities in the area of direct influence.³ Moreover, Lupaka affirms that, although the legislation requires companies to present an Environmental Impact Assessment that includes social projects for the benefit of the communities, agreement with those communities does not constitute a requirement to develop the project.⁴
7. These affirmations never cease to amaze me and confirm the impression I had in January 2019 (particularly after the meeting with Mr. Ansley on 23 January of that same year), in the sense that Lupaka's strategy with the Parán Community was not the right one and, on the contrary, demonstrated its lack of due diligence, knowledge and experience in the development of mining projects in Peru. I stated that in my First Statement and I further confirm this in my Second Statement. Lupaka failed to understand – and clearly still fails to understand – that, without

¹ Witness Statement of Luis Miguel Inchaústegui Zevallos, ¶ 18.

² Reply, ¶ 78.

³ Reply, ¶ 76.

⁴ Reply, ¶¶ 76-77.

agreements with the communities in the area of influence, regardless of whether it is a legal requirement or not, the risk of disputes arising between the company and the local community, obstructing or even frustrating the project, increases.

8. The analysis made by Claimant and Mr. Bravo is wrong for several reasons.
9. *First*, the social management of a project consists of the requirement for companies to reach an agreement with those involved, in order for a project to be successfully developed. It is a well-known fact in the mining sector that dialogue is needed to create trust between the companies and the local communities in the area of influence of the mining project. This is even reflected in the legislation, including the Regulations on Environmental Protection and Management for Mining, Development, General Labor, Transportation and Storage of Ore Activities (Supreme Decree No. 040-2014-EM, mentioned in my First Statement). As I explained in my First Statement,⁵ this provision recognizes principles of social management, such as (i) participation; (ii) continuous dialogue; (iii) environmental and social excellence, etc., which, in order to be implemented, require project managers to “implement mechanisms and processes for citizen participation involving the populations located in the area of influence of the project”.⁶ Therefore, given my experience at the MINEM and in the private sector as an independent advisor, I confirm that responsible, experienced companies know that they need to create that trust through dialogue, acts and agreements, to ensure acceptance by the communities and avoid opposition that might obstruct or frustrate the project.
10. *Second*, the concept of social license, also known as “social acceptance”, is well known, not only in Peru but also internationally. As I mentioned in my First Statement, in 2018 the MINEM and the Canadian Embassy

⁵ Witness Statement of Luis Miguel Incháustegui Zevallos, ¶¶ 32–33.

⁶ **Ex. R-0006**, Supreme Decree No. 040-2014-EM, 5 November 2014, Arts. 57.2, 57.7, 57.9.

in Peru prepared a “Understanding Company-Community Relations Toolkit.” This document contains the best international practices and standards, including the importance of promoting and respecting effective citizen participation in mining projects, and of building and maintaining lasting relations with the communities in the area of the project.⁷ Moreover, even before the Parán Community began its protests, international organizations such as the International Council on Mining and Metals (ICMM) and the OECD recognized and promoted the importance of achieving and protecting a social license with the communities for the development of projects in the mining sector.⁸

11. *Third*, Lupaka seems to confuse the role of the State, specifically that of MINEM, with regard to this license. Social management and relations with the communities are a responsibility held by the companies, not by the State. The MINEM assists but is not obliged to guarantee an agreement or the observance thereof. A mining concession is simply a right to begin a project; it is not a final, everlasting title to mine the subsoil and does not guarantee a result. Experienced, responsible companies know that a mining concession is the starting point, an authorizing title. The success thereof will depend on many factors, including good relationships with and acceptance by the local communities in the area of influence of the project. The MINEM plays a role

⁷ **Ex. R-0028**, *Kit de Herramientas de Relacionamiento y Comunicación*, MINEM, 2018, pp. 10-12.

⁸ **Ex. R-0094**, *Understanding Company-Community Relations Toolkit*, ICMM, 2015, p. 3 (“Responsible mining and metals companies recognise that the long-term success of their operations critically depends on building and maintaining positive relationships with communities. They recognise that ‘community support’ is a key factor in a ‘social licence to operate’, and yet a focus on the community has not always led to tangible improvements in company-community relationships.”), pp. 4, 6; **Ex. R-0086**, *Good Practice Guide: Indigenous Communities and Mining*, ICMM, 2015, p. 46; **Ex. R-0088**, *OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in Extractive Sector*, 2017, p. 16 (“**Regardless of the requirements in law**, meaningful stakeholder engagement is critical to avoiding some of the potential adverse impacts of extractive operations as well as optimising potential contributions. Engaging with stakeholders also makes good business sense in that it can contribute to: attaining and retaining a “social licence to operate” facilitating current and potential future operations and expansions” (emphasis added).

as mediator, but not as guarantor, when conflicts arise between the company and those local communities.

III. PROMOTION OF DIALOGUE AS A NEGOTIATING POLICY TO ADDRESS CONFLICTS BETWEEN MINING COMPANIES AND THE RURAL COMMUNITIES

12. In my First Statement, I mentioned that the process of negotiating to resolve conflicts between mining companies and the local communities is not linear, and usually takes some time.⁹ I also explained that the history of Peru in social conflicts in that sector has demonstrated that the use of force is not the way to resolve these conflicts, and that even the use of force may be counterproductive.¹⁰ Peru has had to face hundreds of social conflicts related to the mining sector and, after analyzing the effects of strategies where the intervention of the Peruvian National Police (“PNP”) took precedence (e.g., the Baguazo Case), the government understood that it had to prioritize dialogue as a means of resolving the conflict.¹¹ All this happened many years before Lupaka acquired its investment in Invicta.
13. I have read that Claimant and Mr. Bravo responded to my comments by affirming that it is not true that Peru has opted for a policy of prioritizing dialogue.¹² They argue that, following the tragedy known as the “Baguazo,” in which tens of people lost their lives in an armed confrontation between the State and the local community, Peru has not

⁹ Witness Statement of Luis Miguel Incháustegui Zevallos, ¶16.

¹⁰ Witness Statement of Luis Miguel Incháustegui Zevallos, ¶16 (“In my experience, it may take a lot of time to resolve social disputes and the negotiating process is not linear; these processes experience setbacks before agreements are reached. Moreover, for the reasons I will explain in the following section, experience shows that the use of force is not the way to resolve social disputes and may even prove counterproductive.”).

¹¹ Witness Statement of Luis Miguel Incháustegui Zevallos, ¶¶ 34–40.

¹² Second Witness Statement of Luis Felipe Bravo, ¶¶ 4–6.

ceased to intervene in PNP operations.¹³ Mr. Bravo affirms that, in similar circumstances to the Invicta case, Peru used public force. According to Mr. Bravo, this demonstrates that the decision not to intervene in Invicta was due to political and not legal reasons.¹⁴ I do not agree. On the contrary, the cases referred to by Claimant and Mr. Bravo, far from contradicting my First Statement, confirm that the use of force in the vast majority of cases, is not the appropriate way to resolve social conflicts between mining companies and local communities, and may even be counterproductive. I base the foregoing on several reasons.

14. *First*, the fact that cases of PNP intervention exist does not automatically imply that, in Lupaka's case, the use of force by the PNP was required by law or even advisable. Conflicts should be analyzed in their context (manner, time, place and other factors that are taken into account when deciding whether to activate the use of force). Therefore, no two social conflicts are the same, and the government must analyze whether, within its discretionary power the use of force is required in a specific case and is advisable for resolving the conflict.
15. *Second*, as I explained in my First Statement, what has changed in Peru is that, since the Baguazo events in the year 2009, dialogue has been prioritized to avoid the use of force as much as possible. My experience in the public and private sector is that the entry of the PNP breaks the trust with the communities and does not resolve the basic conflict. That was precisely what happened in Las Bambas, in 2022.
16. I have read that Mr. Bravo refers to my statements of the Las Bambas case made in my First Statement. More specifically, Mr. Bravo affirms

¹³ Reply, ¶ 372 ("These assertions are contradicted by the record evidence"); Second Witness Statement of Luis Felipe Bravo, ¶ 6 ("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").

¹⁴ Second Witness Statement of Luis Felipe Bravo, ¶¶ 8, 14.

that it is not true that, in the Las Bambas case, the conflict was resolved without resorting to the police, and points out that the government had approved police intervention in March and October 2019, September 2021 and April 2022.¹⁵ Mr. Bravo refers to different times in a conflict that lasted for several years. The dialogue process that helped the company resume its operations between January and April 2022 led to an agreement between the mining company and the communities in December 2021.¹⁶ There was no police intervention during that period. By contrast, the use of force on the dates that Mr. Bravo refers to did not resolve the conflict. Subsequent facts confirmed that the PNP's subsequent intervention, far from resolving the dispute, made it worse.

17. There are several facts that distinguish the Las Bambas from the Invicta case. The protests in Las Bambas are mainly due to the disturbance caused to several communities by the use made by the mining company of a public road for transporting ore, without reaching an agreement with the communities in the area of influence.¹⁷ This route is a corridor widely used by several mining companies and the civilian population. Therefore, its blockade

¹⁵ Second Witness Statement of Luis Felipe Bravo, ¶¶ 12–14.

¹⁶ **Ex. R-0220**, “*Mina de cobre Las Bambas de Perú reinicia operaciones tras paralización por bloqueos de rutas*,” SWISSINFO.CH, 3 January 2022, pp. 1–2 (“Last Thursday, the government and the communities reached an agreement, which allowed the lifting of the road block and the consequent resumption of Las Bambas activities. ‘MMG welcomes the end of the blockade after a meeting held on December 30 in the province of Chumbivilcas, which was attended by representatives of the company, regional and local governments, and the communities,’ the company said ‘After the meeting, agreements were established to allow dialog with the communities, led by the government, to continue,’ he added.”); **Ex. R-0221**, “*Aníbal Torres sobre Las Bambas: ‘Se resolvió el conflicto sin matar campesinos como siempre se hizo*,” EXITOSAS, 2 January 2022, p. 1 (“the head of Minjus highlighted that the government of Pedro Castillo had resolved the conflict without resorting to violence.”).

¹⁷ **Ex. R-0223**, Leonidas Wiener Ramos, *Debida Diligencia y Minería: Las Bambas*, November 2022, p. 9 (“The Las Bambas case has a special connotation, due to the situation of social conflict that has impacted its operations going back several years. Although the parent company of Las Bambas (the consortium MMG Limited) has signed on to and always claims to comply with the most important regulatory company and human rights instruments, this study includes several elements that allow us to substantiate the way in which — in various aspects — Las Bambas has acted ethically contrary to the principles of RBC, or has lacked sufficient capabilities for its self-regulation mechanisms to ensure the full respect for the human rights of the communities or villages within its area of influence.”).

constituted a regional problem, beyond the Las Bambas project. Moreover, the conflict in Las Bambas is long-standing and of a much greater intensity and gravity than what we have seen with regard to the Invicta Project. When the police were used in Las Bambas, in September 2015 and October 2016, there were many deaths and more than 40 injured.¹⁸ Confrontations between the police and the communities continued in September 2018, March 2019, September 2021¹⁹ and April 2022.²⁰ That recent police intervention, in April 2022, (i) left 44 injured; (ii) was criticized by the Office of the Ombudsman, which issued a call to cease the violence;²¹ and (iii) did not resolve the problem or remove the blockade installed by the local community. In fact, in July 2022 the police continued to try and evict the community members.²² I understand that the company is currently seeking to resolve the problems by means of dialogue.²³

18. These facts confirm that the use of force is not a long-term solution to a social conflict but rather may make the conflict worse. I have no doubt that the use of force against the Parán Community at the end of 2018 and the beginning of 2019 would not have resolved the conflict, but would have led to new blockades by the Parán Community shortly after the police withdrew from the area. Moreover, the Constitutional Court of Peru and

¹⁸ **Ex. R-0224**, Infographics Las Bambas 2003–2019, Ombudsman’s Office of Peru, 5 April 2019, p. 1; Reply, ¶ 379.

¹⁹ **Ex. R-0224**, Infographics Las Bambas 2003–2019, Ombudsman’s Office of Peru, 5 April 2019, p. 1; Reply, ¶ 379.

²⁰ See **Ex. C-0314**, “Peruvian police carry out a new eviction of an indigenous community in the Las Bambas mine,” EURONEWS, 28 April 2022, p. 1; **Ex. C-0315**, “Peruvian police evicts communities in Las Bambas mining,” TELESURTV, 28 April 2022, p. 1.

²¹ **Ex. R-0225**, Social Conflicts Report No. 218, Ombudsman’s Office of Peru, April 2022, p. 35; **Ex. R-0226**, “Conflicto en Las Bambas: Defensoría del Pueblo exige cese inmediato de la violencia en Challhuahuacho y Coyllurqui,” Ombudsman’s Office of Peru, 28 April 2022, pp. 1–2.

²² See **Ex. C-0318**, “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, 29 April 2022, p. 1.

²³ **Ex. R-0227**, “Las Bambas inicia reducción progresiva de sus operaciones debido a bloqueos viales,” LA REPÚBLICA, 3 November 2022, p. 1.

even international organizations have issued opinions on the need to avoid the constant presence of members of the PNP in the mines.²⁴

19. Therefore, despite the affirmation made by Claimant in its Reply and by Mr. Bravo in his second witness statement, I repeat, based on my experience in the public and private sector, that Peru has prioritized the policy of dialogue as a means of obtaining lasting solutions to social conflicts linked to activities in the mining sector, and has limited the use of force to extreme situations (or when required by law).²⁵ During my time as an officer of the MINEM, the understanding always was that the PNP would intervene exceptionally and only when it was absolutely necessary or required by law.

²⁴ **Ex. R-0222**, “*Fin a los convenios entre la Policía y empresas extractivas: Tribunal Constitucional se pronunció*,” IDL, 13 June 2022, p. 1 (“The Constitutional Court has finally decided the case of the Bar Association of San Martín against the Executive (Case No. 00009-2019-AI/TC). Through the ruling and its clarifying decision, the high court issued a set of rules that aim at one thing only: to restrict the scope of the agreements between the National Police and mining companies, also known as “extraordinary police service agreements” (SPE). In our opinion, the SPE agreements are one of the tools that have most served the criminalization of social protest in our country, particularly against members of indigenous communities. This is demonstrated by the report entitled “Agreements between the National Police and mining companies: analysis of relations that allow the violation of human rights and break the principles of the democratic rule of law”, which we published in 2019.”); **Ex. R-0223**, Leonidas Wiener Ramos, *Debida Diligencia y Minería: Las Bambas*, November 2022, pp. 45–46 (“In its report, Las Bambas fails to point out that there are strong challenges surrounding these agreements between private companies and the PNP. . . . As indicated in Wiener (2018, p. 109), if one takes into consideration a history of police action in other areas of the country in which agreements of this type have also been signed, in practice the PNP has acted as an agent in the service of companies.¹⁸ In that regard, the existence of such agreements does not contribute to the image of impartiality that policing should have, as the first agent mediating between companies and the population. Another salient issue regarding these agreements between the PNP and private companies like Las Bambas is their secrecy. The public was not aware of the content of these agreements, since they could not be accessed through laws on transparency and access to public information. After a habeas data process filed by the NGO Derechos Humanos Sin Fronteras (Human Rights Without Borders), the Cusco Police Region provided copies of various agreements signed between the PNP and mining companies, including the one for Las Bambas.”).

²⁵ Witness Statement of Luis Miguel Incháustegui Zevallos, ¶¶ 40–43.

IV. MINEM'S POSITION AT THE MEETING WITH LUPAKA'S REPRESENTATIVES IN JANUARY 2019

20. In my First Statement, I referred to the meeting I attended, in my capacity as Deputy Minister, with Mr. Will Ansley (Lupaka's CEO) and members of the Canadian Embassy in January 2019. During that meeting, which, as rightly corrected by Mr. Bravo, was held on 23 and not 22 January 2019, I listened to the position of Lupaka's representative, who demanded the use of the police to end the protests initiated in October 2018,²⁶ and I tried to explain the importance of finding a solution through dialogue.²⁷
21. In this respect, Mr. Bravo does not say anything new in his second statement and limits himself to repeating his version of the facts, according to which at that meeting I confirmed that dialogue was not possible while the blockade installed by the Parán Community continued, and that I agreed that that blockade would have to be lifted for dialogue to be viable.²⁸ Mr. Bravo once again refers to the letter dated 6 February 2019, which Mr. Ansley sent to the then Minister of the MINEM, Francisco Ismodes, alleging that, at that meeting on 23 January, I suggested as an initial measure that the protests be lifted with the use of force.²⁹ Finally, Mr. Bravo argues that it is hardly credible that that was not my stance since, if that were the case, I would have said so at the time.³⁰
22. In my First Statement, I referred in detail to those arguments raised by Mr. Bravo and Claimant on the letter of 6 February. I repeat what I have stated in this respect, and I would like to make four additional comments:
23. *First*, I attended the meeting held on 23 January 2019 in my capacity as Deputy Minister of the MINEM to hear Lupaka's position and to report its

²⁶ Witness Statement of Luis Miguel Incháustegui Zevallos, ¶ 22.

²⁷ Witness Statement of Luis Miguel Incháustegui Zevallos, ¶ 23.

²⁸ Reply, ¶¶ 390–392; Second Witness Statement of Luis Felipe Bravo, ¶ 24.

²⁹ Second Witness Statement of Luis Felipe Bravo, ¶ 25.

³⁰ Second Witness Statement of Luis Felipe Bravo, ¶ 24; Reply, ¶¶ 390–392.

concerns to the Minister and to the OGGS, the agency in charge of that conflict, which answered to the Office of the Minister of Energy and Mines, not to any of the Deputy Ministries of the MINEM.³¹ As I explained in my First Statement, at that meeting I repeated to Mr. Ansley that the MINEM would make it possible for a dialogue to formally open and I explained the importance of managing these conflicts by negotiation and not seeking to resolve them with the use of force.³² As Deputy Minister of the MINEM, I did not accept, propose, promote or in any other way suggest that the State should use force to resolve or defuse the social conflict with the Parán Community. Owing to the limitations of my position and competence as an officer of the MINEM, I could not have made such a suggestion and in fact I did not do so.

24. *Second*, and consistent with the foregoing, after that meeting I followed up on the matter, commenting with Mr. Trigoso on the need to find a solution through dialogue. As proof of this institutional effort, at the MINEM and the OGGS we managed to call the parties to a meeting on 29 January 2019, a few days after the meeting with Mr. Ansley, to initiate a dialogue. Prior to this meeting, the OGGS held a preparatory meeting with Invicta, on 25 January 2019, at which, I understand, Mr. Bravo agreed to attend the dialogue process. Thus, both the facts and the MINEM's action, contradict Lupaka's arguments as well as the positions of Mr. Bravo and Mr. Ansley, according to which it was necessary "to remove the blockade before opening negotiations". By then, after the meeting on 23 January, but before Ansley's letter dated 6 February 2019, the OGGS had managed to get the parties to sit down and discuss the start of a dialogue process.³³

³¹ See **Ex. R-0012**, Supreme Decree No. 021-2018-EM, 18 August 2018, Art. 50.

³² Witness Statement of Luis Miguel Incháustegui Zevallos, ¶ 23.

³³ **Ex. C-0344**, Draft agreement between Parán, MEM and IMC (as drafted by the MEM during 29 January 2019 meeting), 29 January 2019, pp. 1-4.

25. Unfortunately, at the meeting on 29 January 2019, the parties did not manage to reach an agreement on the terms of the negotiations, and the OGGS had to resume individual talks with both parties to formally establish a dialogue process in February 2019.
26. Therefore, the version of the facts given by Mr. Ansley in his letter, and by Mr. Bravo in his second witness statement, is not correct and is controverted by the facts after the meeting.
27. *Third*, Mr. Bravo's affirmations in his second witness statement contradict his first witness statement. On reporting the meeting with Mr. Ansley in his first statement, Mr. Bravo confirmed that "Deputy Minister Incháustegui understood our position **but limited his commitment to ensuring that the parties continued discussions**" ³⁴ (emphasis added).
28. Moreover, the description now given by Mr. Bravo of this meeting does not correspond to his contemporary affirmations. On 30 January 2019, a week after the meeting with Mr. Ansley, Mr. Bravo sent me an email summarizing what had happened during the negotiations on 29 January 2019.³⁵ This email makes it possible to corroborate that I had not agreed to the need to lift the blockade, much less with the use of force, before initiating the dialogue. On the contrary,

³⁴ Witness Statement of Luis Felipe Bravo, ¶ 22, ¶¶ 20–22 ("Second, we met with the highest official within the MEM to whom we had access: Mr.. Incháustegui, Deputy Minister for the MEM. We did this to ensure that he was aligned with our discussions with the MININTER and the Police and that the need for the Operational Plan to proceed was well understood. Indeed, on 23 January 2019, Mr.. Ansley, Mr.. Arévalo and I attended a meeting with Deputy Minister Miguel Incháustegui and two Canadian Embassy officials. It had taken time and effort to secure a meeting with the MEM Deputy Minister to discuss our situation. While Deputy Minister Incháustegui knew of the Blockade in general terms, he was unaware of the specifics, including that it was impossible to negotiate with the Parán Community. He appeared receptive to our complaints and promised to liaise with other central authorities. We explained to Deputy Minister Incháustegui that our mining license was worthless with the Blockade in place and that it was having dire economic consequences for the company. We stressed that a genuine dialogue could only occur if the Parán Community lifted the Blockade. Otherwise, we were being held to ransom, as I also stated in my subsequent email to him referring to this meeting. Deputy Minister Incháustegui understood our position but limited his commitment to ensuring that the parties continued discussions.").

³⁵ **Ex. C-0188**, Email from Invicta Mining Corp. S.A.C. (L. Bravo, *et al.*) to MINEM (M. Inchaustegui, *et al.*), 30 January 2019, p. 2.

Mr. Bravo confirms that the Ministry encouraged dialogue, by calling the meeting on 29 January 2019. This email also confirms that it was Lupaka that was not willing to talk if the blockade was not lifted. Mr. Bravo points out that at the meeting “it was not possible to reach agreements in view of the refusal to . . . lift the forceful measure.”³⁶

29. *Fourth* and finally, I do not agree with Mr. Bravo’s affirmations when he questions my statements with respect to the 23 January 2019 meeting, because, had that been the case, I would have responded and corrected Mr. Ansley’s letter dated 6 February 2019, shortly after it was sent.³⁷ At the time, I discussed the letter with Minister Ismodes and we decided that it was not necessary to reply because (i) the MINEM had pointed out at the meeting on 23 January 2019, on repeated occasions, before and after that meeting, that it prioritized dialogue over the use of force (which also fell outside its competence); and (ii) they carried on doing so, even encouraging the meeting on 29 January 2019, and the 26 February 2019 Agreement.

* * *

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

Thursday, 12 January 2023

[Signature]

Luis Miguel Inchaústegui

³⁶ **Ex. C-0188**, Email from Invicta Mining Corp. S.A.C. (L. Bravo, *et al.*) to MINEM (M. Inchaústegui, *et al.*), 30 January 2019, p. 2.

³⁷ Second Witness Statement of Luis Felipe Bravo, ¶ 24; Reply, ¶¶ 390–392.