

**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

**WITNESS STATEMENT OF
JULIO FÉLIX CASTAÑEDA MONDRAGÓN**

1 October 2021

[TRANSLATION FROM SPANISH]

TABLE OF CONTENTS

1	INTRODUCTION	3
2	MY PROFESSIONAL BACKGROUND.....	4
3	MY ROLE IN THE PROJECT	4
4	LUPAKA’S RESTRUCTURING OF THE PROJECT	5
4.1	The Project’s initial scope	6
4.2	The Project’s reduced scope	7
4.3	IMC’s acquisition of permits.....	8
5	RELATIONS WITH THE RURAL COMMUNITIES	11
5.1	Community relations prior to Lupaka’s arrival	11
5.2	The 2017 surface agreement with Lacsanga	14
5.3	2017-2018 negotiations with Santo Domingo.....	17
5.4	The 2016-2018 failed negotiations with Parán’s officials.....	18
5.5	The June 2018 raid by Parán’s officials and representatives 24	
5.6	The September 2018 agreement with Parán’s officials and the October 2018 Blockade	26
6	IMC’S PLAN TO PURCHASE A PROCESSING PLANT	28
6.1	The different processing plant options	28
6.2	The benefits of the Mallay processing plant	31
6.3	IMC’s inability to buy the Mallay processing plant due to the Blockade.....	33

1 INTRODUCTION

- 1 I, Julio Félix Castañeda Mondragón, provide this statement for purposes of the arbitration proceedings between Lupaka Gold Corp. (“**Lupaka**”) and the Republic of Peru (“**Peru**”). I was born in Chiclayo, Lambayeque, in 1954 and I am a Peruvian citizen. My address is Av. José Galvez Barrenechea 235, San Isidro, Lima, Peru.
- 2 I was President of Lupaka Gold Peru (“**LGP**” – formerly known as Minera Pacacorral) and General Manager of Invicta Mining Corp. (“**IMC**”), two subsidiaries of Lupaka, from February 2013 until 24 October 2018 (although as from approximately March 2018, Mr Daniel Kivari took an increasingly important role in IMC’s operations). In my role as General Manager of IMC (which could also be described as “Country Manager” for Lupaka), I acted as IMC’s legal representative and supervised the development of Lupaka’s project to mine gold and other minerals in Peru (“**Project**”).
- 3 Lupaka’s counsel has asked that I describe my involvement in the Project. In this statement, I thus describe:
 - i) My training and professional background (**Section 2**);
 - ii) My role in the Project (**Section 3**);
 - iii) The Project’s initial and reduced scope and our acquisition of permits (**Section 4**);
 - iv) The relations with local communities, including that of the Rural Community of Parán (“**Parán Community**”), which invaded the Project site (“**Site**”) in June 2018 and then occupied the Site, starting in October 2018 (**Section 5**); and,
 - v) IMC’s plan to purchase a nearby processing plant (**Section 6**).

2 MY PROFESSIONAL BACKGROUND

- 4 I obtained a Bachelor of Science in Geological Engineering in 1986 from the *Universidad Nacional de Ingeniería*, in Lima, Peru. I later qualified as a Geological Engineer in 2011.
- 5 My professional background is in mineral exploration and management of mining projects. Following my graduation, I was hired as a geologist at Hochschild Mining, where I had various roles until becoming Deputy General Manager of Explorations (2001-2003). I then moved to Barrick Gold Corporation where I worked as Senior District Geologist in the Las Lagunas Norte mine project (2004-2005). I subsequently worked at Golden Minerals Company in the role of Regional Manager for Peru, Ecuador, Chile and Mexico (2005-2012).
- 6 As I mentioned above,¹ from early 2013 to October 2018, I acted as President of LGP and as General Manager of IMC. Since November 2018, I have worked as both General Manager at T-Mining, a logistics and supply chain company, and as Managing Director for Red Capital Partners, an investment banking and mergers and acquisitions advisory services firm in Lima.

3 MY ROLE IN THE PROJECT

- 7 I became involved with the Project further to my appointment as General Manager of IMC. As General Manager, all of IMC's personnel reported to me. In turn, I reported to Lupaka's Chief Executive Officer, namely Mr Eric Edwards (until 14 October 2015), then Mr Gordon Ellis (until 26 September 2017), and then Mr Will Ansley.
- 8 My responsibilities involved acting as legal representative, directing the day-to-day operational management of the Project and overseeing all aspects of development works, including securing permits and agreements with the local communities.²

¹ See above para. 2.

² IMC, Board Meeting Minutes (SPA), 02/04/2013, at **Exhibit C-78**.

- 9 In March 2018, due to changes in IMC’s managerial structure, my role was reduced to focussing primarily on the acquisition of a neighbouring site with a processing plant (“**Mallay**” – at Mallay, approximately 100 kilometres away), which we aimed to use for the Project. However, IMC’s management decided that I should remain the registered legal representative of the company. I continued to follow important developments affecting the Project, including, for example, by attending a meeting with local authorities and Parán officials in September 2018, which I describe further below.³ However, I did not take any decisions in relation to the Project post March 2018. After the meeting in September 2018, I was hardly involved with the Project and left IMC at the end of October 2018.

4 LUPAKA’S RESTRUCTURING OF THE PROJECT

- 10 Lupaka invested in Peru in October 2012 by acquiring Andean American Gold Corp. (“**AAG**”), which, in turn, owned IMC, the owner of the Project’s concession area, Victoria Uno.⁴ When I joined in 2013, the Ministry of Energy and Mines (“**MEM**”) had already approved, in 2009, the Project’s environmental impact assessment (“**2009 EIA**”) (**Section 4.1**). However, due to technical and financial considerations, we decided to reduce the Project’s scale and production capacity, which required an amendment to the Project’s mining plan and EIA (**Section 4.2**). Thereafter, between 2014 and 2018, IMC secured the necessary permits for the Project and was on the verge of entering the exploitation phase (**Section 4.3**).

³ See below para. 76.

⁴ Consolidated record of Victoria Uno concession (SPA), at **Exhibit C-28**, p. 6. In addition to Victoria Uno, IMC was the owner of other concession areas in Peru, namely: Victoria Dos, Victoria Tres, Victoria Cuatro, Victoria Siete and Invicta II.

4.1 The Project's initial scope

- 11 The Project and the Site are located in the Huaura Province, some 180 kilometres from Lima. The Project consists of an underground polymetallic deposit, mainly of gold, silver and copper, but also with zinc and lead.
- 12 As reflected in the 2009 EIA, the Project initially envisaged a large-scale production programme with a potential to operate at 5,100 tonnes per day (“t/d”). It also envisaged the construction of a processing plant next to the mine.⁵ As can be seen from the approval document, the surrounding Rural Communities of Santo Domingo de Apache (“**Santo Domingo Community**”), Lacsanga (“**Lacsanga Community**”) and the Parán Community (together “**Rural Communities**”) had been consulted and their observations had been considered by IMC and the MEM when reviewing the 2009 EIA.⁶
- 13 SRK Consulting (Canada) Inc. (“**SRK**”), an international mining consulting firm, had produced a technical report on resources in April 2012, which IMC’s previous owners had commissioned (“**2012 SRK Report**”). According to the 2012 SRK Report, the Project’s primary mineralised zone was located in the “Atenea” vein and, to a lesser extent, in auxiliary veins, including mineral resource estimates at “8,644 kt grading an average of 2.13 g/t gold, 15.90 g/t silver, 0.43% copper, 0.24% lead and 0.29% zinc, classified as Measured and Indicated mineral resources; with an additional 2,534 kt grading an average of 1.61 g/t gold, 12.02 g/t silver, 0.46% copper, 0.27% lead and 0.18% zinc classified as Inferred mineral resources”.⁷ These were high mineral grades, particularly with respect to gold content, and made the Project very attractive.
- 14 The fact that the mine infrastructure was already in place, and the possibility to use an existing (third-party) processing plant in the short-term, made the Project even more attractive as it required minimal investment. Indeed, the Site already had an exploration tunnel into the

⁵ See e.g. 2012 SRK Report, at **Exhibit C-58**, p. ii.

⁶ MEM Resolution approving the EIA (SPA), 28/12/2009, at **Exhibit C-7 (corrected translation)**, p. 4 *et seq.*

⁷ 2012 SRK Report, at **Exhibit C-58**, p. v.

Atenea vein, a camp with capacity for 90 people, facilities with water, electricity and a public access road passing by Santo Domingo. However, Santo Domingo officials did not wish the trucks to pass through their village once the mining operations commenced. IMC had agreed to this request even though the road was public.⁸ Instead, IMC was to obtain approval to use the access road through another of the surrounding communities (either Parán or Lacsanga) or build detours from Santo Domingo's public road to avoid crossing through Santo Domingo's villages.

4.2 The Project's reduced scope

- 15 We concluded early on that the Project's initially forecasted production rates were unrealistic at 5,100 t/d.⁹ The construction of a processing plant next to the mine was not technically or economically desirable given that the mine was nearly 3,500 metres above sea level, the terrain's conditions were arid and the water supply for a plant of that capacity would be difficult to obtain.
- 16 We thus revised the Project.¹⁰ We commissioned reports from reputable consultants which then confirmed our view that we should significantly reduce the planned production rates and outsource the processing of the minerals. The Project would thus require less water which could be sourced locally with a long pipe (which is what we chose) or by transporting it by tank tippers.
- 17 Thus, in 2014, IMC submitted to the authorities a revised mining plan, which envisaged a reduced production of 400 t/d ("**2014 Mining Plan**"). The mining plan is a technical document which sets out in detail the annual work programme for the lifetime

⁸ Agreement between IMC and the Santo Domingo Community (SPA), 22/10/2010, at **Exhibit C-79**.

⁹ Witness Statement of Eric Edwards, 01/10/2021, p. 11 *et seq.* (paras. 31-32 and 53).

¹⁰ Witness Statement of Eric Edwards, 01/10/2021, p. 16 (Section 5.2).

of the mine. In December 2014, the MEM approved the plan.¹¹ We also updated the EIA, which was approved in 2015 (“**2015 EIA Amendment**”).¹² Notably, the 2015 EIA Amendment showed that we envisaged a significant reduction in the Project’s environmental impact. As set out below, IMC’s subsequent applications for permits for the Project relied on the 2014 Mining Plan and the 2015 EIA Amendment.

4.3 IMC’s acquisition of permits

- 18 Between 2014 and 2018, IMC secured a series of permits and authorisations that were necessary to start production. As General Manager, I participated in meetings and exchanges with representatives of the Peruvian government involved in the permitting process.
- 19 The main permits and approvals that we obtained included: i) the approval of the 2014 Mining Plan; ii) the approval of the 2015 EIA Amendment;¹³ iii) the mining operation certificate,¹⁴ which allowed IMC to use explosives to develop its mine infrastructure; and iv) the licence to acquire and store explosives.¹⁵ In addition, IMC had previously obtained v) the respective certificates of absence of archaeological remains within its mining area (“*Certificado de Inexistencia de Restos Arqueológicos*”) from the Ministry of Culture.¹⁶
- 20 Obtaining these permits was a lengthy technical process, which involved submitting design plans, environmental monitoring studies, demonstrating compliance with regulatory safety measures and

¹¹ MEM Report and Resolution approving the Mining Plan (SPA), 11/12/2014, at **Exhibit C-9 (corrected translation)**. See, also, Asesores y Consultores Mineros S.A., Project Mining Plan for IMC, 2014 (SPA), at **Exhibit C-41**, p. 41 and 43.

¹² MEM Report and Resolution approving ITS No. 1 (SPA), 09/04/2015, at **Exhibit C-40**, p. 2 (Section 3.4).

¹³ See above para. 17.

¹⁴ See e.g., MEM, IMC mining operations certificate (SPA), 30/11/2017, at **Exhibit C-10**.

¹⁵ See e.g., SUCAMEC, Licence to operate explosive magazines (SPA), 06/05/2016, at **Exhibit C-80**.

¹⁶ Ministry of Culture, Certificates of Non-Existence of Archaeological Remains for IMC, 2009-2010 (SPA), at **Exhibit C-59**.

obtaining insurance policies. It also involved detailed engineering aspects, such as specifying the type and quantity of explosives required for drilling at the different mining areas on a yearly basis.

- 21 At the time of the blockade, which commenced in October 2018 (“**Blockade**”), two items were outstanding. First, we needed to secure the MEM’s approval of an amendment to the mine closure plan (also known as the mine reclamation plan) and a related guarantee. While I was not involved in the preparation of the updated mine closure plan, I am not aware of any reason why it would not have been submitted and approved. We also needed to provide the guarantee, the funding of which would have been, in my opinion, straightforward, had the Blockade not occurred.
- 22 Second, the MEM still needed to carry out an inspection of the completed development works in accordance with the Mining Plan 2014. By the latter half of 2018, the mine had been constructed and IMC requested, in September 2018, that the MEM undertake the inspection.¹⁷ Unfortunately, however, the inspection never took place due to the Blockade.¹⁸
- 23 As I explain in Section 5 below, in accordance with Peruvian law, we also concluded agreements with local communities whose territory fell within the reduced Project area: the Santo Domingo Community and the Lacsanga Community. We also consulted the nearby Parán Community, even though its land did not fall within the Project area. We did not, however, conclude an agreement with the Parán Community, as I explain below.
- 24 As part of the development works, IMC invited potential contractors to submit proposals for the improvement and extension of the road leading to

¹⁷ Letter from IMC to MEM (SPA), 06/09/2018, at **Exhibit C-81**.

¹⁸ Letter from IMC to MEM (SPA), 17/10/2018, at **Exhibit C-11**; MEM Resolution (SPA), 23/10/2018, at **Exhibit C-82**.

the Site: the Picunche-Lacsanga road.¹⁹ In October 2017, following the bid process, we contracted Compañía Minera Lucero S.A.C. (“**Minera Lucero**”) to develop this road for approximately USD 1.100.000.²⁰ By mid-2018, Minera Lucero had virtually finished the works and the road was ready for the daily transit of trucks to carry minerals from the Site to the processing plant; only minor details were to be finalised which did not prevent the use of the road.

- 25 By mid to late 2018, we received additional funding, as a result of SRK’s promising conclusions about the Project in its Preliminary Economic Assessment (“2018 PEA”).²¹ The 2018 PEA relied on the 2012 SRK Report as well as bulk sampling results from the Atenea vein. The 2018 PEA anticipated recoveries and grades which were generally in line with the results we had obtained from our sampling activities in 2011, 2013, 2014 and 2015, all of which were taken from the same vein at the same location.²² In other words, the 2018 PEA confirmed what we had previously found and concluded.
- 26 Since SRK’s findings in the 2018 PEA indicated that significant capital investment would not be required and development works had been practically completed (including the completion of the additional mine entry at the 3430-metre level),²³ we did not see any need to commission an additional updated feasibility study. Further, the necessary financing had already been obtained through PLI Huaura Holdings LP (“**PLI**”).

¹⁹ Plan for the improvement and extension of the Picunche-Lacsanga-Invicta Mine road (SPA), 21/11/2016, at **Exhibit C-83**; and Working Plan for the Improvement and Extension of the road, Annex B: Technical Specifications (SPA), 01/12/2017, at **Exhibit C-84**.

²⁰ Works Contract between IMC and Minera Lucero (SPA), 03/10/2017, at **Exhibit C-85**, p. 10 (Clause 8).

²¹ 2018 PEA, 13/04/2018, at **Exhibit C-34**.

²² 2018 PEA, 13/04/2018, at **Exhibit C-34**, p. vi *et seq.* (Executive Summary and Section 12).

²³ Lupaka, Project Monthly Report, September 2018, at **Exhibit C-86**, p. 5. See, also, Lupaka, Project Monthly Report, October 2018, at **Exhibit C-87**, p. 7.

- 27 In sum, by the time of the Blockade, we were virtually ready to enter the exploitation phase of the Project and to commence operations.

5 RELATIONS WITH THE RURAL COMMUNITIES

- 28 As General Manager, I participated in the negotiation of surface and easement rights agreements with representatives from the Rural Communities.
- 29 IMC had concluded previous agreements with the Parán Community in 2008 and with the Santo Domingo Community in 2010 (**Section 5.1**). We then secured agreements with the Lacsanga Community in 2015 and 2017 (**Section 5.2**) and held further negotiations with the Santo Domingo Community between 2017 and 2018 (**Section 5.3**).
- 30 Despite our best efforts, we never reached a surface rights agreement with the Parán representatives, because they made too many unreasonable demands (**Section 5.4**). We thus had no choice but to proceed on the basis of the agreements with Santo Domingo and Lacsanga (and because, as I mentioned above,²⁴ we were not required to conclude a surface rights agreement with the Parán Community). However, in retaliation, Parán officials and representatives violently invaded the mine in mid-2018 (**Section 5.5**). Although Parán officials later signed a commitment promising that they would cease all hostilities towards the Project and our personnel, shortly thereafter, Parán officials and representatives breached that commitment by blocking the access to the mine (**Section 5.6**).

5.1 Community relations prior to Lupaka's arrival

- 31 In 2008, prior to Lupaka's acquisition of the Project, IMC's then-owners had entered into a series of agreements with the Parán Community. These included i) an agreement dated 29 April 2008,

²⁴ See above para. 23.

which provided, amongst other things, for compensation for the use of the Parán road and route openings, anti-pollution measures, the hiring of Parán residents for the Project, as well as the construction of two classrooms and a third floor for the communal hall;²⁵ ii) an agreement dated 7 May 2008 relating to the construction of a road to the initial location of the processing plant (within Parán territory), in exchange for further compensation as well as the construction of two additional classrooms and a medical centre;²⁶ and iii) an addendum to the 29 April 2008 agreement dated 13 December 2011, providing for further compensation (in exchange for the construction of the third floor of the communal hall) and agreeing to a fine of PEN 300,000 (approximately USD 73,000) in case of non-compliance with the construction of the agreed two classrooms within four months.²⁷

- 32 When I joined the Project, IMC also had in place an agreement with the Santo Domingo Community.²⁸ That agreement gave IMC access to over 200.93 hectares of Santo Domingo land for the purpose of mining activities for the duration of the Project.²⁹ In exchange, IMC agreed to pay the Santo Domingo Community PEN 341,700 (approximately USD 87,000) in two instalments: one upfront and the other once Santo Domingo had registered its communal territory in the public records.³⁰ IMC only made the first payment because Santo Domingo failed to register its communal land.

²⁵ Agreement between the Parán Community and IMC (SPA), 29/04/2008, at **Exhibit C-60**.

²⁶ Agreement between the Parán Community and IMC (SPA), 07/05/2008, at **Exhibit C-61**.

²⁷ Addendum to Agreement between the Parán Community and IMC signed on 29 April 2008 (SPA), 13/12/2011, at **Exhibit C-62**.

²⁸ Contract for the Constitution of Mining Easement between IMC and the Santo Domingo Community (SPA), 22/10/2010, at **Exhibit C-65**; and Public Deed for the 2010 SD Land Use Agreement (SPA), 22/10/2010, at **Exhibit C-63**.

²⁹ Contract for the Constitution of Mining Easement between IMC and the Santo Domingo Community (SPA), 22/10/2010, at **Exhibit C-65**, p. 2. (Article 2.1); and Public Deed for the 2010 SD Land Use Agreement (SPA), 22/10/2010, at **Exhibit C-63**, p. 6 (Article 2.1).

³⁰ Contract for the Constitution of Mining Easement between IMC and the Santo Domingo Community (SPA), 22/10/2010, at **Exhibit C-65**, p. 3 (Articles 4.1 and 4.2); and Public Deed for the 2010 SD Land Use Agreement (SPA), 22/10/2010, at **Exhibit C-63**, p. 7 (Articles 4.1 and 4.2).

I understand that this was the result of its ongoing territorial dispute with the Lacsanga Community. Nevertheless, under the agreement, IMC was entitled to take possession of the land and to initiate mining works as soon as the first payment was made³¹ (which occurred on the date the agreement was signed, 22 October 2010).

- 33 A second agreement with the Santo Domingo Community signed on the same date required IMC to refrain from using the public roads going through Santo Domingo for ore transportation, except in case of emergency or other *force majeure* event.³² This did not present a problem for IMC, because the Santo Domingo access road was not in good condition and was much longer than the Lacsanga road. Indeed, the access to the Site via Lacsanga was ideal and we therefore opted for this route.
- 34 IMC concluded a third agreement with the Santo Domingo Community on the same date. According to this agreement, IMC agreed to develop, during and after the mining activities, community programmes in the areas of health, education, agriculture, infrastructure, livestock, institutional development, and security, amongst others (“**Framework Agreement**”).³³ The Framework Agreement sought to facilitate sustainable development projects in coordination with the local community and stated that its provisions would be in force for as long as IMC carried out exploitation activities.³⁴
- 35 The Framework Agreement specified that IMC would spend PEN 300,000 (approximately USD 73,000) on these programmes³⁵ and would offer work to 36 local residents.³⁶

³¹ Contract for the Constitution of Mining Easement between IMC and the Santo Domingo Community (SPA), 22/10/2010, at **Exhibit C-65**, p. 4 (Article 5.1); Public Deed for the 2010 SD Land Use Agreement (SPA), 22/10/2010, at **Exhibit C-63**, p. 7 (Article 5.1).

³² Agreement between IMC and the Santo Domingo Community (SPA), 22/10/2010, at **Exhibit C-79**.

³³ Framework Agreement (SPA), 22/10/2010, at **Exhibit C-64**, p. 2 (Article 2).

³⁴ Framework Agreement (SPA), 22/10/2010, at **Exhibit C-64**, p. 3 (Article 4).

³⁵ Framework Agreement (SPA), 22/10/2010, at **Exhibit C-64**, p. 3 (Article 3.4).

³⁶ Framework Agreement (SPA), 22/10/2010, at **Exhibit C-64**, p. 4 (Article 5.3).

The Framework Agreement also provided that IMC would compensate the Santo Domingo Community for the mining activities that had been carried out by previous owners, and thereafter by IMC, prior to this agreement.³⁷ A payment of PEN 80,000 was to be made upon the registration of the Framework Agreement and a further PEN 550,000 was to be invested into sustainable development programmes within the community, to be carried out as directed by the Committee for the Management of Sustainable Development (created under the agreement).³⁸

5.2 The 2017 surface agreement with Lacsanga

- 36 Originally, our understanding was that the Project was located within Santo Domingo territory.³⁹ However, when attempting to register that land, we learned i) that the Rural Communities had boundary disputes; ii) that neither the Santo Domingo Community nor the Parán Community had registered their land in accordance with Peruvian law; iii) that the Lacsanga Community was the only local community which had registered its land in accordance with Peruvian law (which meant they were entitled to grant rights to IMC over that land); and iv) that the Project area was predominantly located within Lacsanga territory (as defined in the land registry).
- 37 We began conversations with the Lacsanga Community in late 2014. At that time, we prioritised negotiations with the Lacsanga Community for several reasons. First, as I mentioned above, the Lacsanga Community had registered its land and the Project was to be located predominantly within its territory.

³⁷ Framework Agreement (SPA), 22/10/2010, at **Exhibit C-64**, p. 4 *et seq.* (Articles 7.1-7.3).

³⁸ Framework Agreement (SPA), 22/10/2010, at **Exhibit C-64**, p. 5 (Article 7.3).

³⁹ Contract for the Constitution of Mining Easement between IMC and the Santo Domingo Community (SPA), 22/10/2010, at **Exhibit C-65**, p. 7; and Public Deed for the 2010 SD Land Use Agreement (SPA), 22/10/2010, at **Exhibit C-63**, p. 20.

Second, using the Lacsanga roads to access the mine was a good option for IMC. Although there was a way to access the mine through Parán, that road was steeper, winding and ran through the village itself. The Lacsanga road crossed through more even terrain that was much more suitable to transport ore. IMC would, however, need to invest in widening and improving the road to allow the circulation of trucks and heavy equipment and in building road detours to avoid crossing through Lacsanga's villages.

39 Third, the Lacsanga officials were open to dialogue and its members were overall supportive of the Project.

40 Between 2014 and 2017, IMC's community relations team ("**CR Team**") carried out the negotiations with the Lacsanga representatives. Initially, Elías Vila led the CR Team and reported to me. Negotiations were later conducted by external consultants Social Sustainable Solutions SAC ("**SSS**"). I attended only strategic meetings of the CR Team.

41 At the outset of the negotiations, the Lacsanga representatives insisted that a payment of PEN 500,000 (approximately USD 120,000) had been agreed with IMC's previous owners and demanded payment of this sum as compensation for the mining activities and environmental impact that had occurred prior to Lupaka's arrival.

42 We signed an agreement acknowledging compliance with commitments with the Lacsanga Community in March 2015 whereby IMC paid the above-mentioned amount and a further PEN 37,000 in exchange for the use and upgrade of the road and the installation of a water line to the mine.⁴⁰

43 In October 2015, we presented a proposal for a surface rights agreement with the Lacsanga Community covering over 710 hectares of land.⁴¹ IMC's proposal envisaged the use of

⁴⁰ Agreement between IMC and the Lacsanga Community (SPA), 31/03/2015, at **Exhibit C-42**.

⁴¹ IMC, Proposal to the Lacsanga Community (SPA), 19/10/2015, at **Exhibit C-88** (although this Proposal is not signed, I understand it was sent).

the land for mining purposes, construction of the Project's main access roads through Lacsanga, compensation for the use of the roads to transport minerals,⁴² and annual compensation for mining operations.⁴³ IMC's proposal entailed renegotiating previous agreements as the Project had changed significantly. However, since the Lacsanga Community did not accept the new terms, the negotiations were halted at that time.

- 44 As a result, we decided to shift our attention to the Parán Community, as explained in Section 5.4 below, and our communications with the Lacsanga Community for most of 2016 became less frequent.
- 45 We resumed more detailed conversations with Lacsanga officials in late 2016. The CR Team contacted Lacsanga's President, Mr Dimas Claros. The CR Team at the time comprised Mr Rómulo Zarauz (Head of Community Relations), Mr Miguel Mariños (Field Manager) and Mr Marco Estrada (Project Officer) from the company SSS.
- 46 On 18 July 2017, after a few months of negotiations, we signed a surface agreement with the Lacsanga Community,⁴⁴ which was subsequently executed as a public deed before a notary⁴⁵ and registered in the public registry ("2017 Lacsanga Agreement").⁴⁶ The 2017 Lacsanga Agreement provided for a series of payments from IMC to the Lacsanga Community, including: i) an annual sum of PEN 1,000,000 (approximately USD 250,000) paid in quarterly instalments

⁴² IMC, Proposal to the Lacsanga Community (SPA), 19/10/2015, at **Exhibit C-88**, p. 2 (para. 3) (although this Proposal is not signed, I understand it was sent).

⁴³ IMC, Proposal to the Lacsanga Community (SPA), 19/10/2015, at **Exhibit C-88**, p. 2 (para. 4) (although this Proposal is not signed, I understand it was sent).

⁴⁴ 2017 Lacsanga Agreement (SPA), 18/07/2017, at **Exhibit C-43**.

⁴⁵ Public Deed for the 2017 Lacsanga Agreement (SPA), 19/07/2017, at **Exhibit C-89**.

⁴⁶ Registration of the Agreement between IMC and the Lacsanga Community in the Public Registry (SPA), 26/07/2017, at **Exhibit C-90**.

of PEN 250,000 (approximately USD 60,000) during mining operations; ii) an annual payment of PEN 80,000 (approximately USD 20,000) for the use of the road, paid in quarterly instalments of PEN 20,000 (approximately USD 4,800); iii) payment of PEN 100,000 (approximately USD 25,000) for community development; iv) payment of PEN 100,000 (approximately USD 25,000) for the construction of a petrol station and related equipment; and v) payment of PEN 100,000 (approximately USD 25,000) for a water reservoir.⁴⁷ The agreement also provided for the creation of an Environmental Monitoring and Compliance Committee comprised of representatives from the Lacsanga Community and IMC,⁴⁸ and a series of undertakings from IMC to promote community enterprises and the hiring of community workforce for the Project.⁴⁹

- 47 A few months later, we amended the 2017 Lacsanga Agreement to further demarcate the areas where IMC's mining activities would take place, and we included a more detailed annex with coordinates.⁵⁰

5.3 2017-2018 negotiations with Santo Domingo

- 48 Between 2017 and 2018, we discussed the possibility of amending the 2010 agreements between the Santo Domingo Community and IMC's previous owners.

⁴⁷ 2017 Lacsanga Agreement (SPA), 18/07/2017, at **Exhibit C-43**, p. 8. (Clauses 8.1-8.5); Public Deed for the 2017 Lacsanga Agreement (SPA), 19/07/2017, at **Exhibit C-89**, p. 7 *et seq.* (Clauses 8.1-8.5).

⁴⁸ 2017 Lacsanga Agreement (SPA), 18/07/2017, at **Exhibit C-43**, p. 8 *et seq.* (Clause 8.6); Public Deed for the 2017 Lacsanga Agreement (SPA), 19/07/2017, at **Exhibit C-89**, p. 8 (Clause 8.6).

⁴⁹ 2017 Lacsanga Agreement (SPA), 18/07/2017, at **Exhibit C-43**, p. 8 *et seq.* (Clauses 8.7 – 8.10); Public Deed for the 2017 Lacsanga Agreement (SPA), 19/07/2017, at **Exhibit C-89**, p. 8 *et seq.* (Clauses 8.7 – 8.10).

⁵⁰ Amendment to the Surface Agreement between IMC and the Lacsanga Community (SPA), 12/10/2017, at **Exhibit C-91**.

- 49 As we were concluding the surface rights agreement with the Lacsanga Community, the neighbouring communities (Santo Domingo and Parán) became increasingly interested in negotiating with IMC. We thus engaged in conversations with the Santo Domingo Community to renegotiate the Framework Agreement (termed “Addendum”), which we were close to finalising when I left IMC.⁵¹
- 50 The draft Addendum foresaw more benefits for the Santo Domingo Community, namely a payment of PEN 600,000 (approximately USD 146,000) in three instalments during 2018, plus a subsequent payment of PEN 900,000 (approximately USD 219,000) in 2019 (when the exploitation stage was estimated to commence).⁵² The discussions were continuing by the time I left.
- 51 The Santo Domingo representatives were reasonable and amenable to discussion. The contrast with Parán representatives, who were obstructive and unreasonable, was striking.

5.4 The 2016-2018 failed negotiations with Parán’s officials

- 52 When negotiations with the Lacsanga Community came to a halt in 2015, IMC shifted its attention to the Parán Community.⁵³ Besides its interest in having good relationships with the local communities, IMC was exploring the possibility of using and upgrading a road through Parán territory to access the mine. IMC only needed either the Lacsanga road or the Parán road but either option required significant investment.
- 53 In addition, in the first quarter of 2016, IMC concluded a Pre-Paid Forward Gold Purchase Agreement with PLI, a subsidiary of Pandion Mine Finance LLC (“**Pandion**”)

⁵¹ See *e.g.*, Letter from the Santo Domingo Community to IMC (SPA), 07/05/2018, at **Exhibit C-92**.

⁵² Letter from IMC to the Santo Domingo Community (SPA), 04/05/2018, at **Exhibit C-93**; Draft Addendum to Framework Agreement between the Santo Domingo Community and IMC (SPA), 15/09/2017, at **Exhibit C-94**.

⁵³ See above para. 44.

to inject capital into the Project to commence production (“**PPF Agreement**” – as amended on 2 August 2017).⁵⁴ One of the conditions precedent to receive the first instalment from PLI was a surface rights agreement with either the Parán Community or the Lacsanga Community.⁵⁵ As explained in Section 5.2 above, this condition was fulfilled with the Lacsanga agreement.

- 54 During 2016, IMC presented a series of proposals to Parán officials.⁵⁶ These proposals included annual compensation for mining operations, a fund to finance technical studies for community members, a water supply for the community and the construction of two classrooms; in exchange for IMC’s use of Parán’s road.⁵⁷
- 55 The Parán Community appointed a negotiating committee (“Dialogue Committee”), who met with our CR Team periodically. Following months of exchanges, we provided an updated proposal on 6 October 2016.⁵⁸ This proposal specified an investment for a renewable period of ten years for an amount of PEN 600,000 (approximately USD 146,000) per year. This investment was to go towards irrigation programmes, construction of reservoirs, education scholarships and job opportunities with IMC, amongst others. The proposal also contemplated the potential construction of a processing plant and new mining facilities within Parán territory.⁵⁹
- 56 However, on 6 October 2016, we received a letter from Parán officials temporarily suspending the negotiations

⁵⁴ Second Amended and Restated PPF Agreement, 02/08/2017, at **Exhibit C-45**.

⁵⁵ Second Amended and Restated PPF Agreement, 02/08/2017, at **Exhibit C-45**, p. 23 (Section 3(1)(e)(x)).

⁵⁶ See *e.g.*, Letter from IMC to the Parán Community (SPA), 27/04/2016, at **Exhibit C-95**; Letter from IMC to the Parán Community (SPA), 30/06/2016, at **Exhibit C-96**; Letter from IMC to the Parán Community (SPA), 06/10/2016, at **Exhibit C-97**.

⁵⁷ See *e.g.*, Letter from IMC to the Parán Community (SPA), 27/04/2016, at **Exhibit C-95**; Letter from IMC to the Parán Community (SPA), 30/06/2016, at **Exhibit C-96**; Letter from IMC to the Parán Community (SPA), 06/10/2016, at **Exhibit C-97**.

⁵⁸ Letter from IMC to the Parán Community (SPA), 06/10/2016, at **Exhibit C-97**.

⁵⁹ Letter from IMC to the Parán Community (SPA), 06/10/2016, at **Exhibit C-97**.

until a new Parán Governing Committee was elected.⁶⁰ We nevertheless continued to exchange and, in parallel, IMC organised technical workshops for community members, introducing the development programmes that accompanied IMC's proposal.⁶¹ During these workshops, IMC discussed, for instance, new agricultural technologies such as a water retaining polymer and the use of worm humus as a fertiliser for peach crops.⁶²

- 57 We requested to participate in the next Assembly of the Parán Community, to be held in November 2016, to explain our proposal.⁶³ Although we did not manage to participate, Parán's representatives shortly thereafter provided a counterproposal to our 6 October 2016 proposal.⁶⁴ The counterproposal requested: i) higher payments for the use of the road; ii) an agreement to build the road only within Parán's undisputed territorial boundaries; iii) payment of alleged old debts; iv) exclusivity in the use of Parán's access roads; v) basing any new camp or extension of the current camp within Parán's undisputed boundaries; vi) direct payments to the community; and vii) an agreement to hire 60% of unskilled workforce and 50% of skilled workforce from Parán residents.⁶⁵
- 58 We could agree to some but not all of these counterproposals. We accepted to hire Parán's enterprises to provide services for the Project as well as to compensate the Parán Community for any possible harm to its crops.⁶⁶ Nonetheless, we rejected i) the construction of the access road within Parán's undisputed boundaries, since the access road's layout would depend on technical reports; ii) the attempt

⁶⁰ Letter from the Parán Community to IMC (SPA), 06/10/2016, at **Exhibit C-98**.

⁶¹ See *e.g.*, Letter from IMC to the Parán Community (SPA), 26/10/2016, at **Exhibit C-99**.

⁶² See *e.g.*, Special Report, Field Trip in Lima with the Parán Community and IMC (SPA), 21/10/2016, at **Exhibit C-100**, p. 2.

⁶³ See *e.g.*, Letter from IMC to the Parán Community (SPA), 20/10/2016, at **Exhibit C-101**.

⁶⁴ See IMC's comments to the Parán Community's counterproposal, November 2016 (SPA), at **Exhibit C-102**.

⁶⁵ IMC's comments to the Parán Community's counterproposal, November 2016 (SPA), at **Exhibit C-102**, p. 1 *et seq.* (Sections 1, 3, 4, 6, 8, 9, 13).

⁶⁶ IMC's comments to the Parán Community's counterproposal, November 2016 (SPA), at **Exhibit C-102**, p. 6 (Sections 12 and 13).

to unilaterally impose a fine of PEN 500,000 (approximately USD 120,000) for AAG's construction of a storage facility for explosives without Parán's authorisation; iii) the prohibition of the use of other roads outside Parán's territory to transport minerals; iv) that any new camp or extension of the current camp be installed exclusively within Parán's territory; and v) that IMC hire the majority of its workforce from Parán, since these demands would be to the detriment of the other communities.⁶⁷

59 In November 2016, Mr Mariños, a member of our CR team who was in contact with Parán leaders, reported that they seemed amenable to our proposals. However, he also noted that there was a group of people within the community that did not wish to accept IMC's proposals, some of whom appeared to be misleading the community members about IMC's activities, and others who were reportedly engaged in the illegal cultivation of marijuana in the area.⁶⁸ Mr Mariños confirmed news reports about marijuana seizures by the police in the area.⁶⁹ We therefore suspected that Parán leaders' resistance came from perceived threats to their marijuana cultivation business.

60 In early December 2016, the Parán Community held an Assembly to present and vote on IMC's proposal. I was not present at the meeting, but our CR Team was present. The CR Team gave a presentation and increased our October offer from PEN 600,000 (approximately USD 146,000) to

⁶⁷ IMC's comments to the Parán Community's counterproposal, November 2016 (SPA), at **Exhibit C-102**, p. 2 *et seq.* (Sections 2, 4, 6, 8, 13).

⁶⁸ Internal Lupaka email (SPA), 14/11/2016, at **Exhibit C-103**, p. 2.

⁶⁹ See *e.g.*, "More than 3,000 marijuana plants incinerated in the highlands of Lima", *Andina - Agencia Peruana de Noticias* (SPA), 13/08/2014, at **Exhibit C-104**; "Nearly 10,000 marijuana plants seized in Huambo - Leoncio Prado", *Diario Ecos Huacho* (SPA), 09/05/2017, at **Exhibit C-105**; "Nearly 10,000 marijuana plants found in Huaura", *Peru21* (SPA), 09/05/2017, at **Exhibit C-106**; "Hard blow to drug trafficking: Sierra of Huaura Province is the drug haven of the Norte Chico", *Agencia Digital de Noticias Huacho* (SPA), 11/04/2018, at **Exhibit C-107**; "5,000 marijuana plants valued at 1.5 million soles incinerated", *Litoral Noticias* (Vol. 193) (SPA), 12/04/2018, at **Exhibit C-108**; "More drugs seized in Huambo", *Litoral Noticias* (Vol. 194) (SPA), 19/04/2018, at **Exhibit C-109**.

PEN 700,000 (approximately USD 170,000) in annual investments for community development for a ten-year period.⁷⁰ The CR Team told me that they believed that a large majority of the attendees were in favour of the proposal, but the voting was postponed to January 2017,⁷¹ when a new Governing Committee would be in place.⁷²

- 61 I attended the Assembly rescheduled for 21 January 2017, together with the CR team, to discuss the Project with Parán representatives. The newly elected Parán President, Mr Isidro Román Palomares, had us waiting outside for almost one and a half hours whilst the Governing Committee deliberated. When invited to participate, we were told that the Parán officials would only continue to negotiate if we paid the sum of PEN 300,000 (approximately USD 73,000), which IMC's previous owners owed (for failing to build two classrooms).⁷³ Additionally, the Parán officials demanded that IMC pay a fine if the PEN 300,000 was not paid within 45 days and requested an additional sum of PEN 500,000 (approximately USD 130,000) upon execution of the agreement.⁷⁴
- 62 We were willing to pay AAG's outstanding debt to reach an agreement with the Parán representatives. However, at that stage, IMC was running low on liquidity as PLI's funds would only be disbursed once we had a duly executed agreement with either the Lacsanga Community or the Parán Community.⁷⁵ We therefore

⁷⁰ IMC Presentation to the Parán Community, Invicta Project (SPA), 10/12/2016, at **Exhibit C-110**, p. 13

⁷¹ See SSS, Report on Social Intervention for signing of an agreement with the Parán Community, 2018 (SPA), at **Exhibit C-111**, p. 3.

⁷² Internal Lupaka email, 14/12/2016, at **Exhibit C-112**.

⁷³ Internal Lupaka email with attachment (SPA), 25/01/2017, at **Exhibit C-113**. See also, SSS, Report on Social Intervention for signing of an agreement with the Parán Community, 2018 (SPA), at **Exhibit C-111**, p. 3.

⁷⁴ Internal Lupaka email with attachment (SPA), 25/01/2017, at **Exhibit C-113**.

⁷⁵ Second Amended and Restated PPF Agreement, 02/08/2017, at **Exhibit C-45**, p. 20 (Section 3(1)(e)(x)).

proposed paying both the principal amount and the fine following the conclusion of a surface rights agreement.⁷⁶

- 63 However, Parán representatives kept demanding that the amount be paid upfront. We were able to secure the funds later in the year and, further to a meeting that the CR Team attended on 13 December 2017, IMC agreed to pay the PEN 300,000 to move negotiations forward (whilst, as far as I understood, Parán officials agreed to exclude the payment of the fine).⁷⁷ IMC made this payment in two tranches in December 2017 and January 2018.⁷⁸
- 64 With these payments, we expected to conclude a surface rights agreement with the Parán Community.⁷⁹ Yet, despite the payments, Parán officials continued to request further payments⁸⁰ and, in a letter dated 4 May 2018, they sent an ultimatum demanding that we leave their alleged land within 15 days or else face eviction.⁸¹ We responded that none of IMC's mining operations were being carried out within Parán's territory. We also rejected accusations that we were causing water pollution, since IMC was not engaging in exploitation or other activities that could cause such pollution.⁸²
- 65 During this period, Parán officials' attitude towards IMC was contradictory: whilst on the one hand, they could be hostile, on the other hand,

⁷⁶ Letter from IMC to the Parán Community (SPA), 31/05/2017, at **Exhibit C-114**.

⁷⁷ Letter from IMC to the Parán Community (SPA), 14/12/2017, at **Exhibit C-115**.

⁷⁸ Confirmation of payment from IMC to the Parán Community (SPA), 18/12/2017, at **Exhibit C-116**; Confirmation of payment from IMC to the Parán Community (SPA), 31/01/2018, at **Exhibit C-117**.

⁷⁹ Letter from IMC to the Parán Community (SPA), 07/11/2017, at **Exhibit C-118**.

⁸⁰ Letter from the Parán Community to IMC (SPA), 19/12/2017, at **Exhibit C-119**; Letter from the Parán Community to IMC (SPA), 03/01/2018, at **Exhibit C-120**.

⁸¹ Notarised letter from the Parán Community to IMC (SPA), 04/05/2018, at **Exhibit C-121**. See also, Letter from the Parán Community to IMC (SPA), 03/01/2018, at **Exhibit C-120**; SSS, Report on Social Intervention for signing of an agreement with the Parán Community, 2018 (SPA), at **Exhibit C-111**, p. 4.

⁸² Letter from IMC to the Parán Community (SPA), 30/05/2018, at **Exhibit C-122**.

they continued to request social support for community initiatives.⁸³ In any event, as I describe below, the hostilities escalated in the months that followed.

5.5 The June 2018 raid by Parán's officials and representatives

- 66 On 19 June 2018, I was contacted on my mobile by a member of our CR Team, who informed me that Parán officials and representatives, along with approximately 350 community members, including armed individuals, had invaded IMC's facilities, threatened and harmed IMC's personnel and caused damage to IMC's property.⁸⁴ By the time I was called, the Parán representatives had left the Site. At the time, and as usual, I was in our offices in Lima, approximately 180 kilometres, and roughly four hours from the Site by car, and therefore could not easily go to the Site in person.
- 67 I quickly conveyed the news to the rest of the team, including Mr Kivari, who as I mentioned above,⁸⁵ had been the *de facto* General Manager since March 2018 and was also present in the office. We coordinated next steps with Lupaka's senior management, contacted IMC's lawyers, and instructed the head of the CR Team, Mr Zarauz, who was in Lima, to immediately contact the Police. I had several calls with the CR Team, including with Mr Estrada and Mr Mariños, who were on-site and had been, for a time, detained against their will by Parán representatives.
- 68 The CR Team reported the incident to the local Police (the Sayán Police) and made criminal complaints against Parán leaders, including its President, Mr Palomares.⁸⁶ We also communicated the situation to

⁸³ Letter from the Parán Community to IMC (SPA), 15/02/2018, at **Exhibit C-123**.

⁸⁴ Photographic material of the June 2018 Invasion (SPA), 19/06/2018, at **Exhibit C-124**.

⁸⁵ See above para. 2

⁸⁶ Criminal complaint filed with the Sayán Police by IMC representatives (SPA), 20/06/2018, at **Exhibit C-125**.

the MEM,⁸⁷ and other relevant authorities by letter.⁸⁸ This included a request for the guarantee of personal safety IMC's employees, which I filed with the Huaura Sub-Prefecture as General Manager of IMC.⁸⁹ The events surrounding the June 2018 Invasion are narrated in detail in an internal report prepared by our CR Team, which I reviewed at the time ("**SSS Special Report**").⁹⁰

- 69 As the SSS Special Report recorded at the time, Mr Mariños and Mr Estrada, amongst other personnel, attempted on the day of the invasion to engage in dialogue with Parán representatives but were threatened, detained against their will and repeatedly beaten.⁹¹ Mr Mariños, together with another CR Team member were locked in the Site facilities for an hour and a half, and were told they would be killed unless IMC agreed to release a public statement and signed minutes drafted by Parán officials.⁹² In addition, other IMC staff were assaulted for belonging to the Lacsanga Community, whilst others were targeted because they belonged to the Parán Community, but had been working for IMC as security employees.
- 70 Parán officials left the Site later that same day. However, Mr Mariños conveyed to me that, prior to leaving the premises, Parán leaders had demanded a commitment to pay 10% of the Project's revenues as a condition to any agreement with IMC. This was deemed unacceptable.

⁸⁷ Letter from IMC to MEM (SPA), 20/06/2018, at **Exhibit C-126**.

⁸⁸ Letter from IMC to Energy and Mining Investment Supervisory Body (SPA), 20/06/2018, at **Exhibit C-127**.

⁸⁹ Request by J. Castañeda to the Huaura Sub-Prefecture for protection (SPA), 26/06/2018, at **Exhibit C-128**.

⁹⁰ SSS, Special Report, seizure of the Invicta Mine Camp and Facilities (SPA), 19/06/2018, at **Exhibit C-129**.

⁹¹ SSS, Special Report, seizure of the Invicta Mine Camp and Facilities (SPA), 19/06/2018, at **Exhibit C-129**, p. 2.

⁹² SSS, Special Report, seizure of the Invicta Mine Camp and Facilities (SPA), 19/06/2018, at **Exhibit C-129**, p. 2.

71 As a result of the June 2018 Invasion, IMC was forced to suspend development works and could only gradually resume them ten days later, when we were sure that it was safe to proceed.⁹³ Shortly after the invasion, we invited Parán officials to meet at our offices in Lima to try to find some sort of agreement.⁹⁴ They, however, refused to do so unless and until IMC withdrew the above-mentioned criminal complaints.⁹⁵

5.6 The September 2018 agreement with Parán’s officials and the October 2018 Blockade

72 In August 2018, IMC received news that Parán officials were planning another invasion of the Site on 11 September 2018. I wrote to Lacsanga’s leaders alerting them and requesting assistance.⁹⁶ Another interruption of our plans to develop the mine would also affect their community.

73 On 2 September 2018, I wrote to the Sayán Police about Parán officials’ reported plans and stressed the importance of, and the need for, police intervention to prevent a takeover and to avoid violence.⁹⁷ The CR Team also actively engaged with the authorities to obtain police support.⁹⁸ We were relieved when, a week later, on 8 September 2018, the Huacho Police (the regional Police) issued an order to the Sayán Police (the local Police) that the invasion announced for 11 September 2018 should be prevented.⁹⁹ The Sayán Police arrived at the Site on 10 September 2018

⁹³ Letter from IMC to OSINERGMIN (SPA), 14/08/2018, at **Exhibit C-130** (although this letter is not signed, I understand it was sent).

⁹⁴ Letter from IMC to the Parán Community (SPA), 25/06/2018, at **Exhibit C-131**.

⁹⁵ Internal Lupaka email (SPA), 02/07/2018, at **Exhibit C-132**.

⁹⁶ Letter from IMC to the Lacsanga Community (SPA), 30/08/2018, at **Exhibit C-133**.

⁹⁷ Letter from IMC to Sayán Police (SPA), 02/09/2018, at **Exhibit C-134**.

⁹⁸ Internal Lupaka email chain (SPA), 03/09/2018, at **Exhibit C-135**.

⁹⁹ Police approval of plan to avoid the Parán Community’s invasion (SPA), 08/09/2018, at **Exhibit C-136**.

and left two days later. The invasion was thus averted, but only temporarily.¹⁰⁰

- 74 We knew that the Parán representatives would not be deterred for long and that once the Police had left, the Site would again be at risk of invasion. For this reason, we persisted in our efforts to secure an agreement with the Parán Community.
- 75 We welcomed an invitation from the MEM to participate in a meeting with Parán leaders in September 2018. During this meeting, which I attended personally, Parán representatives demanded arbitrarily that IMC cease all activities. IMC and the MEM's representative rejected this demand, and no progress was made.¹⁰¹
- 76 On 18 September 2018, following IMC's multiple requests for assistance from the Peruvian authorities, the Huaura Sub-Prefecture, a subdivision of the Ministry of Internal Affairs in charge of maintaining public order in the region, mediated a meeting between representatives of IMC and the Parán Community. I attended the meeting on behalf of IMC together with legal counsel. Mr Palomares attended on behalf of the Parán Community.
- 77 The meeting resulted in a binding commitment between IMC, the Parán Community and the Sub-Prefecture, in which the Parán officials committed to cease all acts of violence, threats and harassment against IMC and to engage in peaceful dialogue ("**September 2018 Commitment**").¹⁰² The September 2018 Commitment was a decisive step for us towards normalising relations with the Parán Community. Any breach would also constitute contempt of authority, subject to separate legal remedies under Peruvian law.¹⁰³

¹⁰⁰ See CR Team Report on the Police intervention 10-12 September 2019 at the Project Site (SPA), 13/09/2018, at **Exhibit C-137**.

¹⁰¹ See SSS, Monthly Report, Project, September 2018 (SPA), at **Exhibit C-138**, p. 5.

¹⁰² Minutes of the Sub-Prefecture meeting between IMC and the Parán Community including September 2018 Commitment (SPA), 18/09/2018, at **Exhibit C-139**.

¹⁰³ Minutes of the Sub-Prefecture meeting between IMC and the Parán Community including September 2018 Commitment (SPA), 18/09/2018, at **Exhibit C-139**, p. 2.

78 Nevertheless, soon afterwards, Parán representatives breached the September 2018 Commitment by blocking the roads to and from the Site and forcefully evacuating IMC's personnel and occupying the Site. This resulted in the imposition of the Blockade I mentioned above. By that point in time, although I was still officially on the company payroll at that time (until the end of October 2018), I was no longer involved in any company business; I simply received news of the events.

6 IMC'S PLAN TO PURCHASE A PROCESSING PLANT

79 IMC's reduced Project included the outsourcing of the processing of ore. IMC considered the different nearby options (**Section 6.1**) and concluded that the acquisition of a nearby plant called Mallay would be the best option (**Section 6.2**). However, despite reaching an agreement with Mallay's owners, and securing the necessary funding, IMC did not complete the acquisition of Mallay because of the Blockade (**Section 6.3**).

6.1 The different processing plant options

80 Between 2014 and 2018, IMC contemplated outsourcing the processing of ore from the mine to one or more nearby existing plants. Besides the price charged by the different plants, the other two main criteria were the location and the type of plant.

81 The distance between the potential plants and the mine was critical since we would need to move 400 tonnes of ore per day, which required multiple trips of a large fleet of truck dedicated to the task. Transportation costs could make the operation financially unattractive. As to the type of plant,

IMC needed a facility that could process Invicta's gold, which was contained within copper, lead and zinc concentrates.

- 82 However, in 2014, as IMC considered various offsite options to outsource the processing of its ore, we were presented with a potential business opportunity to purchase a processing plant outright which would cover our needs. This plant was in Mally, Oyón, in the department of Lima, approximately 100 kilometres from the mine. I therefore arranged for a metallurgical consulting firm specialised in processing plants, Aminpro, to visit the Mally plant to carry out a feasibility report,¹⁰⁴ followed by a due diligence report (together "**Mally Aminpro Reports**").¹⁰⁵ At that time, Mally was three years old and was operating at 400 t/d with a potential to reach at least 600 t/d.¹⁰⁶
- 83 The Mally option required installing a copper concentrate functionality to treat the copper present in the polymetallic mineral. We obtained quotations to add this processing line for a cost of between USD 350,000 (without gravity separation) to USD 470,000 (with gravity separation). We were also testing modifications to the chemical reagents and flow sheets that would allow the recovery of the same concentrate value without having to install the copper processing circuit.
- 84 After reviewing the Mally Aminpro Reports, IMC confirmed its interest in purchasing Mally. However, Mally's owner, Compañía de Minas Buenaventura S.A.A. ("**Buenaventura**"), was only interested in selling the whole mining unit, including the mining concession and related assets, not just the processing plant, and quoted a price of USD 30 million. At that time, IMC neither had the funding nor the interest in Mally's mining concession. Therefore, in early 2015, negotiations with Buenaventura halted and IMC moved on to consider other alternatives to outsource the processing of its ore, as initially planned.

¹⁰⁴ Aminpro, Mally Plant Visit Report (SPA), 23/11/2014, at **Exhibit C-74**.

¹⁰⁵ Aminpro, Due Diligence Report for Lupaka, Project, 25/11/2014, at **Exhibit C-38**.

¹⁰⁶ Aminpro, Mally Plant Visit Report (SPA), 23/11/2014, at **Exhibit C-74**, p. 2.

85 IMC therefore continued reviewing its options to outsource the processing of ore to other plants in the area, which included the following: San Juan Evangelista (Huari, Junín region), Enproyec (Nazca, Ica region), Toma La Mano (Buenos Aires, Ancash region), Virgen del Rosario (Caraz, Ancash region), Arahuary (Arahuary, Lima region), TLM (Catac, Ancash region), Huancapite II and Coriland (Caral, Lima region). Amongst these, the best options were: Toma La Mano, Planta Virgen del Rosario, Huancapeti II and Coriland. The table below summarises these options:

Plant Name	Owner	Location	Distance f/ Invicta	Road Condition	Capacity	Processing Charge/t
Toma la Mano	Corp. Min. TLM	Catac, Ancash	288 km	100% paved	200 t/d (for IMC)	35-38 USD
Virgen del Rosario	DHP Metals	Caraz, Ancash	412 km	95% paved	350 t/d (for IMC)	38-42 USD
Coriland	Andes Mineral SAC	Caral, Lima	113 km	75% paved	200 t/d	50 USD
Huancapeti II	Minera Venard	Recuay, Ancash	325 km	90% paved	350 t/d	35 USD
San Juan Evangelista	Consorcio Metalúrgico San Juan Evangelista SAC	Huari, Junín	325 km	85% paved	100 t/d (for IMC)	45 USD

87 By mid-2018, when construction works at the mine were close to completion, including the access road through Lacsanga and the additional mine entry at the 3,430-meter level, IMC had mined approximately 6,500 tonnes of mineralised material on the Site ready to be shipped for pre-exploitation testing.¹⁰⁷

¹⁰⁷ See “Lupaka Commences Toll Processing of Mineralized Development Material from Invicta”, *News File Corp.*, 21/08/2018, at **Exhibit C-140**.

At first, we distributed the minerals between Coriland and San Juan Evangelista with a view to measure their respective performances.¹⁰⁸ We also agreed that approximately 6,000 tonnes of minerals would be shipped to Huancapeti II for further pre-exploitation testing.¹⁰⁹

- 88 The use of these processing plants revealed certain issues. For instance, Coriland, which was the closest to the Site (besides Mallay), lacked a cyanidation treatment option in its tailings facility, which meant potentially losing recoverable gold; San Juan Evangelista also lacked a cyanidation treatment option and had piles of mineral accumulated due to processing commitments with other mining companies; and Huancapeti II needed to postpone works due to unexpected mechanical failures.
- 89 Based on the unsatisfactory results and experiences with Coriland, San Juan Evangelista and Huancapeti II, we decided to restart negotiations with Buenaventura.

6.2 The benefits of the Mallay processing plant

- 90 From early 2018, IMC focused its efforts on purchasing Mallay. As set out below, acquiring Mallay would have provided a number of benefits to the Project, including i) increased production rates; ii) lower unit processing costs; iii) lower transport costs; iv) improved quality; and v) potential

¹⁰⁸ Service Contract for the treatment of mineral at Coriland between Minera Coriland and IMC (SPA), 16/05/2018, at **Exhibit C-141**; Addendum No. 1 to the Service Contract for the treatment of mineral at Coriland between Minera Coriland and IMC (SPA), 16/07/2018, at **Exhibit C-142**; Addendum No. 2 to the Service Contract for the treatment of mineral at Coriland between Minera Coriland and IMC (SPA), 30/07/2018, at **Exhibit C-143** (although this Annex is not signed, I understand it was executed); and Service Contract for ore processing between Consorcio Metalurgico San Juan Evangelista and IMC (SPA), 10/07/2018, at **Exhibit C-144**. See also, “Lupaka Commences Toll Processing of Mineralized Development Material from Invicta”, *News File Corp.*, 21/08/2018, at **Exhibit C-140**; “6,500 tonnes of gold-bearing ore begin processing by Lupaka”, *Rumbo Minero* (SPA), 24/08/2018, at **Exhibit C-145**.

¹⁰⁹ Service Contract for processing mineral at Huancapeti II (SPA), 01/08/2018, at **Exhibit C-146** (although this Contract is not signed, I understand it was executed). See also “Lupaka Commences Toll Processing of Mineralized Development Material from Invicta”, *News File Corp.*, 21/08/2018, at **Exhibit C-140**; “6,500 tonnes of gold-bearing ore begin processing by Lupaka”, *Rumbo Minero* (SPA), 24/08/2018, at **Exhibit C-145**.

provision of processing services to third parties and, thus, additional revenue streams.

- 91 First, IMC's prospect of acquiring Mallyay would have increased the Project's production rates by 200 t/d since Mallyay had the potential to operate at 600 t/d.¹¹⁰ This immediate increase in processing capacity would have generated more cash flow, which in turn would have facilitated a quicker return of the investment and increased profitability.
- 92 Second, Mallyay's acquisition would have provided lower unit processing costs as IMC would not have had to rely on tolling agreements with nearby third-party plants. This would have streamlined the production process and would have allowed IMC to have control over all its mining components.
- 93 Third, IMC's purchase of Mallyay would have entailed lower comparative transportation costs given that, as shown in the table above, Mallyay was the closest processing facility to the Site.
- 94 Fourth, having its own processing plant would have allowed IMC to tailor the processing circuits and chemicals to the specific characteristics of its mineral. This would have saved costs, improved the quality of the concentrates and optimised production in the long-term.
- 95 Fifth, counting on a processing plant with a higher capacity than the Project's initial production rates would have meant that IMC could have offered processing services to other nearby mining companies, particularly given the limited options available in the region. In any case, IMC's long-term expectation was to reach Mallyay's maximum production capacity of 600 t/d.

¹¹⁰ Aminpro, Mallyay Plant Visit Report (SPA), 23/11/2014, at **Exhibit C-74**, p 33.

6.3 IMC's inability to buy the Mally processing plant due to the Blockade

- 96 We resumed discussions with Buenaventura in early 2018. As mentioned above,¹¹¹ from around March 2018, my role at IMC focused primarily on negotiating the acquisition of Mally. Initially, Buenaventura's asking price was USD 20 million, while we considered Mally's value to be lower, closer to USD 8 million.
- 97 By mid-2018, as we continued negotiating the final purchase price, Lupaka submitted a letter of intent to Buenaventura for the acquisition of Mally.¹¹² This was the starting point for promising negotiations between IMC and Buenaventura, on the one side, and Lupaka and PLI, on the other side, which would have concluded in IMC's acquisition of Mally but for the Blockade.
- 98 In September 2018, IMC and Buenaventura had agreed on the terms of IMC's acquisition of the entire Mally mining production unit, including its processing plant, mining concessions and transferable permits to operate ("**Draft Mally Purchase Agreement**").¹¹³ The Draft Mally Purchase Agreement contemplated a purchase price of USD 10.4 million, plus VAT (approximately USD 12.2 million in total), payable in three tranches.¹¹⁴
- 99 In parallel, IMC had arranged for the financing of the Mally transaction through a loan for approximately USD 13 million from PLI, a subsidiary of Pandion, to IMC's parent company, Lupaka. Specifically, PLI would have provided the funding for the purchase of Mally through an amendment to the PPF Agreement.¹¹⁵ The terms of the amendment to the

¹¹¹ See above para. 9.

¹¹² Lupaka, Draft Letter of Intent to purchase Mally, 04/06/2018, at **Exhibit C-147**.

¹¹³ Draft Mally Purchase Agreement between Buenaventura and IMC, 21/09/2018, at **Exhibit C-48**.

¹¹⁴ Draft Mally Purchase Agreement between Buenaventura and IMC, 21/09/2018, at **Exhibit C-48**, p. 7 (Clause Fourth).

¹¹⁵ Second Amended and Restated PPF Agreement, 02/08/2017, at **Exhibit C-45**.

PPF had already been agreed upon in the form of a draft amendment dated 26 September 2018 (“**Draft Amendment No. 3**”).¹¹⁶

- 100 According to the Draft Mallay Purchase Agreement, the transfer of the mining unit included a surface rights agreement signed between Buenaventura and the Rural Community of Mallay (“**Mallay Community**”).¹¹⁷ Accordingly, Buenaventura represented that IMC was not required to renegotiate or pay any additional sums to the Mallay Community other than those agreed under the surface rights agreement.¹¹⁸
- 101 However, the Mallay Community wanted to review the terms of the Draft Mallay Purchase Agreement. As a result, Buenaventura engaged in conversations with the Mallay Community to seek the approval of the transfer and thus the signing of the Mallay Purchase Agreement was suspended until the new Governing Committee was elected, which was expected to occur by 8 October 2018. Both IMC and PLI agreed to wait for the Mallay Community’s approval of the transfer (which I understand eventually came in early 2019).
- 102 Nevertheless, the Blockade then occurred and PLI decided not to sign the Draft Amendment No. 3, which would have provided the funding for the acquisition of Mallay. Unfortunately, the Blockade was never lifted, and IMC was never able to access the mine again. Ultimately, the inability to solve the Blockade on a timely basis resulted in the loss of the deal with PLI and Buenaventura.

¹¹⁶ Draft Amendment and Waiver No. 3 to the Second Amended and Restated PPF Agreement, 26/09/2018, at **Exhibit C-50**, p. 3.

¹¹⁷ Draft Mallay Purchase Agreement between Buenaventura and IMC, 21/09/2018, at **Exhibit C-48**.

¹¹⁸ Draft Mallay Purchase Agreement between Buenaventura and IMC, 21/09/2018, at **Exhibit C-48**, p. 12 (Clause 8.1.22).

* * *

This witness statement has been drafted with the assistance of LALIVE, counsel for Lupaka Gold Corp., on the basis of several discussions and exchanges of correspondence. I have carefully reviewed the statement and confirm that it correctly reflects my recollection of the facts described and my opinions. I am prepared to appear before the Arbitral Tribunal to confirm the content of this statement. While I can read and understand English, I reserve the right to testify orally in Spanish (my mother tongue).

Julio Félix Castañeda Mondragón

Signed on 1 October 2021 in Lima, Peru.