

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

ICSID CASE NO. ARB/20/46

LUPAKA GOLD CORP.

Claimant

VS.

REPUBLIC OF PERU

Respondent

**SECOND WITNESS STATEMENT OF
JULIO FÉLIX CASTAÑEDA MONDRAGÓN**

23 September 2022

[TRANSLATION FROM SPANISH]

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1 INTRODUCTION

- 1 Counsel for Lupaka Gold Corp. (“**Lupaka**”) have asked me to review certain sections of the Counter-Memorial which, as I understand it, was filed by the Republic of Peru (“**Peru**”) on 24 March 2022, as well as the accompanying witness statements and expert reports. I have carried out this review and offer some comments below.¹

2 LUPAKA’S EXPERIENCE IN MINING PROJECTS IN PERU

- 2 I have read the comments made by the State on Lupaka’s mining experience in Peru, in particular with reference to the Crucero and Josnitoro projects. I am aware of these projects as they were ongoing when I took over as President of Lupaka Gold Peru in February 2013.²
- 3 Lupaka’s departure from the Crucero and Josnitoro projects is not explained by a mismanagement of community relations or of the business, as Peru suggests.³ Rather, it is explained by the increased importance that the Invicta mine project took over time, which changed the company’s priorities.
- 4 When I arrived at Lupaka, the company owned the Crucero project, which was acquired by means of two transactions executed in 2010 and 2012, and the Invicta Project, which was acquired in 2012. Shortly after my arrival, Lupaka became interested in the Josnitoro project, an early exploration stage gold-copper project. The project was of interest and Lupaka was able to negotiate very good terms with Hochschild, which considered the option of acquiring 65% of the mining property with a fairly low investment and an additional 5% through a preliminary economic study. Lupaka signed a memorandum of understanding with

¹Capitalized terms not defined in this second witness statement shall have the meaning ascribed to them in the first witness statement.

²Witness Statement of Julio F. Castañeda, 01/10/2021, p. 3 (para. 2).

³Counter-Memorial, 24/03/2022, p. 56 *et seq.* (para. 118).

Hochschild in November 2013⁴ and formalized the agreement in March 2014, signing the option contract.⁵ This allowed us to move forward to operate this project, which was of interest to us as it would allow us to understand in greater detail its projection and potential, putting us in a better position to determine whether we should exercise the option.

- 5 However, already as from 2014, the Invicta Project was showing to be very promising and therefore more worthy of our efforts. Indeed, in early 2014, we asked SRK Consulting to conduct two conceptual studies of the Invicta Project, the first under a 1,000 t/d⁶ production scenario and the second under a 300 t/d⁷ scenario (we later concluded that 590 t/d would offer the best feasibility following the Mallay acquisition).⁸ These studies were important to assess the economic and technical feasibility of the Invicta Project. These studies demonstrated that by reducing the daily production volume and thus the CAPEX of the project, we could develop it profitably. In July 2014, we completed a resampling programme of mineralisation at the Invicta Project, which yielded very promising results.⁹
- 6 The possibility of developing the Invicta Project with a low CAPEX and in a relatively short period of time led Lupaka to prioritise this project over Crucero and Josnitoro. It was a strategic business decision on where to direct the funds. I remember that the thinking at the time was that Invicta would provide sufficient funding in the short to medium term to financially sustain the company and its other projects. So in Lupaka's 2014 annual report

⁴ Lupaka Gold Corp., "Lupaka Gold Announces Josnitoro Gold Project Option With Hochschild Mining PLC", 26/11/2013, at **Exhibit R-0038**.

⁵ Mining Assignment Agreement with Option to Purchase between Lupaka and Minera Ares S.A.C. (Hochschild) (SPA), 31/03/2014, at **Exhibit C-368**.

⁶ SRK, Conceptual Study Invicta Project: Preliminary Results (1,000 tpd), 22/01/2014, at **Exhibit C-67**.

⁷ SRK, Conceptual Study Invicta Project: 300 tpd Option, 03/02/2014, at **Exhibit C-37**.

⁸ Witness Statement of Julio F. Castañeda, 01/10/2021, p. 29 *et seq.* (para. 82 and Section 6.3).

⁹ Lupaka News Release, "Invicta Gold Project Mineralization Sample Results Include 6.38 Grams per Tonne Gold and 1.68% Copper at 6.4 Meters Width and over 105 Meters Length Exposed in Drift", 10/07/2014, at **Exhibit C-70**.

we communicated that we would focus our efforts on developing the Invicta Project, the income of which could later support the exploration and initial development of the Crucero and Josnitoro projects.¹⁰

- 7 In the Crucero project we did not have any social problems. Quite the opposite. We had a good relationship with the Oruro Community, the community in the project area, and the families of ancestral landholders, which allowed us to extend the exploration contract we had for a period of 4 years (2013-2017).¹¹
- 8 As for the Josnitoro project, it is true that we did not reach agreements with the communities of Huancabamba, Cceñuharan and Umamarca, the communities in the project area, but this was not the result of mismanagement of the relationship with the community. As I said above, Lupaka's priorities changed. We had signed the Josnitoro option contract in March 2014, but that same year we decided to prioritise the Invicta Project. This was not inconsistent with the Josnitoro contract, as it gave us a period of two years to work on the social issue and reach an agreement with the communities. This gave us leeway to prioritise the Invicta Project.¹² Hochschild was aware of our decision to prioritise the Invicta Project – I met regularly with their representatives to keep them abreast of our progress – and they agreed with our strategy.
- 9 As a consequence, our activities in the Josnitoro project were limited. In the exploration front, our geologists made visits to the Josnitoro project site to confirm historical geologic mapping and conduct limited sampling programs. In the

¹⁰ Lupaka Gold Corp., 2014 Annual Report, at **Exhibit AC-50**, p. 3

¹¹ Lupaka News Release, "Lupaka Gold Completes Community Agreement and Provides Update on Community Relations and Government Developments", 23/07/2013, at **Exhibit C-76**, p. 1; Crucero Project, Exploration Campaign Results 2012 (SPA), at **Exhibit C-369**.

¹² Lupaka Gold Corp., "Lupaka Gold Announces Josnitoro Gold Project Option With Hochschild Mining PLC", 26/11/2013, at **Exhibit R-0038**, p. 1; Mining Assignment Agreement with Option to Purchase between Lupaka and Minera Ares S.A.C. (Hochschild) (SPA), 31/03/2014, at **Exhibit C-368**, p. 15 *et seq.* (Clause 8.1.1).

community relations front, we decided to keep only one person talking to the leadership, community members and artisanal miners of Huancabamba, Cceñahuaran and Umamarca to maintain the relationship. We also held a few awareness-raising and informative meetings with those communities, including by participating in their assemblies. Our closest relationship was with the community of Huancabamba, whose members we even got to meet in our Lima office. Our objective was to maintain some presence and contact in the area, but the funds were primarily earmarked for the development of the Invicta Project.

- 10 The development of the Invicta Project took longer than expected due to negotiations with the communities. Therefore, in November 2015, we signed a first addendum to the Josnitoro option contract with Hochschild, extending by one year the term to work on the social issue and reach an agreement with the communities.¹³ In early 2017, we signed a second addendum extending the term for one more year.¹⁴
- 11 Turning back to Invicta, as I explained in my first statement, in July 2017 we signed the surface agreement with the Lacsanga Community, which was a fundamental step towards the start of production. In early 2018 I proposed to Hochschild the signing of a third addendum to extend by one further year the option of the Josnitoro project to be able to dedicate more time and resources to it once Invicta started production. Hochschild rejected this proposal. The Josnitoro option contract was terminated by Hochschild in April 2018, and then took over the project.
- 12 Peru's criticisms of our efforts on the Crucero and Josnitoro projects seem to reflect a lack of understanding of the business of junior companies in exploration. One of the ways in which junior mining companies, such as Lupaka, develop their business is through a project portfolio

¹³ Mining Assignment Agreement with Option to Purchase between Lupaka and Minera Ares S.A.C. (Hochschild), First Addendum (SPA), 20/11/2015, at **Exhibit C-370**, Clause 2.2.

¹⁴ Mining Assignment Agreement with Option to Purchase between Lupaka and Minera Ares S.A.C. (Hochschild), Second Addendum (SPA), 28/04/2017, at **Exhibit C-371**, Clause 2.2.

which are evaluated over time and can be put aside, sold or developed.

- 13 Lupaka is a junior mining company which was led by individuals with extensive experience in the mining sector, including in Peru, such as Gordon Ellis and Eric Edwards. In my case, before Lupaka, I worked all my life in mining exploration issues and mining project management in different countries in the Latin American region, in companies such as Hochschild, Barrick Gold Corporation and Golden Minerals Company.

3 THE RELATIONSHIP WITH THE COMMUNITIES IN THE PROJECT'S AREA OF DIRECT INFLUENCE BEFORE THE 2018 INVASIONS

- 14 In its brief, Peru states that IMC's relations with the communities of Santo Domingo de Apache (the "**Santo Domingo Community**") and Lacsanga (the "**Lacsanga Community**") were not good when Lupaka acquired the Project in late 2012.¹⁵ I do not agree with this assertion. Nor is it true that we mishandled relations with the Parán Community,¹⁶ as I explain in the following sections.

3.1 The relationship with the Santo Domingo Community when I started working at IMC

- 15 As I explained in paragraphs 32-35 of my first statement, when I joined the Project, IMC had three agreements signed with the Santo Domingo Community, all dated October 2010.¹⁷

¹⁵ Counter-Memorial, 24/03/2022, p. 75 *et seq.* (paras. 152 *et seq.*).

¹⁶ Counter-Memorial, 24/03/2022, p. 1 (para. 1).

¹⁷ [Click or tap here to enter text.](#) Contract for the Constitution of Mining Easement between IMC and the Santo Domingo Community (SPA), 22/10/2010, at **Exhibit C-65**; Public Deed for the 2010 SD Land Use Agreement (SPA), 22/10/2010, at **Exhibit C-63**; Agreement between IMC and the Santo Domingo Community (SPA), 22/10/2010, at **Exhibit C-79**; Framework Agreement (SPA), 22/10/2010, at **Exhibit C-64**.

- 16 My attention has been drawn to an allegation contained in the report of Dr Daniel Vela, Peru’s environmental and community expert. He refers to an incident in 2011 that allegedly resulted from exploration work being carried out on land belonging to the Santo Domingo Community without prior authorisation. The Peruvian expert notes that this “is ultimately a factor in the poor start of Invicta’s community relations”¹⁸ This incident occurred prior to Lupaka’s purchase of the Project, which occurred in late 2012, and, while it may have generated some tension in 2011, I can confirm that it did not have a major impact on the relationship we developed at IMC with this Community when Lupaka took over.
- 17 Peru states that IMC did not have a “strong relationship” with the Santo Domingo Community when Lupaka acquired the Project in 2012 because “it became necessary [for IMC] to renegotiate [its] agreement with the Santo Domingo de Apache Community in 2017 to increase the funds paid by Invicta to that Community.”¹⁹ I disagree with this.
- 18 As from when Lupaka took over the Project, until 2017, the relationship with the Santo Domingo community was friendly and cooperative. Indeed, since the beginning, and as AAG’s successor, we supported a pine plantation project to create a source of income for the Santo Domingo Community through the commercialisation of timber, and also a water management initiative which entailed the construction of irrigation canals and training on irrigation techniques.²⁰ The pine plantation project eventually transformed into a forestry and agricultural initiative that was more global.²¹ Between 2014 to 2016, we undertook other initiatives, such as

¹⁸ Expert Report of Daniel Vela, 22/03/2022, p. 42 *et seq.* (para. 126).

¹⁹ Counter-Memorial, 24/03/2022, p. 75 *et seq.* (paras. 152 and 154).

²⁰ Lupaka Gold Corp., “Lupaka Gold Completes Community Agreement and Provides Update on Community Relations and Government Developments”, 23/07/2013, at **Exhibit R-0051**.

²¹ IMC, Internal Report on sustainable forestry development project in Santo Domingo Community (SPA), 21/08/2014, at **Exhibit C-372**.

donating medicines²² and providing financial and logistical support for the Community's traditional celebrations – for example, the Christmas festivities, the Mother's Day, local sports and educational institutional events.²³ We also hold informative meetings with Santo Domingo authorities, keeping them abreast of the project's progress.²⁴

- 19 It is true that in 2017 there was some discontent within the Santo Domingo Community as a few of its members claimed that we had not fulfilled our obligations under the October 2010 agreements. While we did not agree with the assertions being made, we were close to signing a surface contract with the Lacsanga Community and thereby taking a fundamental step to the exploitation of the Project. As we did not wish there to be tensions with Santo Domingo, where part of the site was located, we negotiated an addendum to the 2010 Framework Agreement to increase the annual payments once the Project entered the exploitation stage. This proposal was approved by the community.
- 20 Beyond the discontent of these few members opposed to the Governing Committee of the Santo Domingo Community, as I said before, we had a good relationship with this Community. We could communicate very well with them, as demonstrated by the fact that we have had constant good communications with them since 2012 and then when the

²² IMC, CR Team Report No. 011-2014-RRCC, November 2014 (SPA), at **Exhibit C-373**.

²³ IMC, CR Team Report No. 011-2014-RRCC, November 2014 (SPA), at **Exhibit C-373**; IMC, CR Team, Report No. 009-2014-RRCC, December 2014 (SPA), 31/12/2014, at **Exhibit C-506**; Letter from Santo Domingo Community to IMC (SPA), 05/06/2015, at **Exhibit C-375**; Letter from Santo Domingo Community to IMC (SPA), 15/10/2016, at **Exhibit C-376**; Letter from IMC to Santo Domingo Community (SPA), 09/06/2017, at **Exhibit C-377**.

²⁴ See *e.g.*, IMC, Report on the meeting between IMC and Santo Domingo officials (SPA), 21/05/2017, at **Exhibit C-378**; Letter from IMC to Santo Domingo Community (SPA), 26/05/2017, at **Exhibit C-379**; IMC Memorandum, Training Programme Mining Project at Invicta Mining Camp (SPA), 08/07/2017, at **Exhibit C-154**.

discontent was raised in 2017, we agreed on the draft addendum.²⁵

3.2 The relationship with the Lacsanga Community when I started working at IMC

- 21 When I started working on the Project there was not much of a relationship with the Lacsanga Community, which I understand was the case because of two reasons. First, the Project as conceived by the previous owners was mostly on Parán's land. In addition, they had wrongly assumed that the land belonging to Lacsanga belonged to Santo Domingo. Indeed, the agreement with Santo Domingo included a large portion of Lacsanga's land.
- 22 As I said in my first statement, when we started negotiating with the Lacsanga Community in late 2014, the Community demanded payment of PEN 500,000 (approximately USD 120,000) as compensation for the mining activities carried out by Invicta's prior owners before 2012 and its resulting environmental impact. The Community said that this amount had supposedly been agreed with the previous owners of Invicta but not paid.²⁶ We agreed to make this payment as a sign of good faith and with the aim to strengthen our bonds with the Lacsanga Community in the long term.²⁷
- 23 Peru states that the Lacsanga Community's payment request shows that IMC did not have a "strong relationship" with this community when Lupaka acquired the Project in 2012. Specifically, Peru states that we were forced to make this payment "to repair [our] relationship with that community, and to secure its support for the Invicta Project going forward."²⁸ This is not true. The fact that the Lacsanga Community requested payment of this amount does not mean that we inherited a

²⁵ Letter from IMC to the Santo Domingo Community (SPA), 04/05/2018, at **Exhibit C-93**; Letter from the Santo Domingo Community to IMC (SPA), 07/05/2018, at **Exhibit C-92**.

²⁶ Witness Statement of Julio F. Castañeda, 01/10/2021, p. 15 (para. 41).

²⁷ Agreement between IMC and the Lacsanga Community (SPA), 31/03/2015, at **Exhibit C-42**.

²⁸ Counter-Memorial, 24/03/2022, p. 75 *et seq.* (paras. 152-153).

bad relationship with this community. On the contrary, after participating in two Lacsanga General Assemblies held in November 2014²⁹ and in meetings with Lacsanga's leadership and community members in early 2015, we confirmed their good predisposition to reach an agreement with IMC. As was reported by IMC's CR Team in February 2015:

“[t]he majority of the Lacsanga community members are in favour of the development of the exploitation stage of the mine and want to work harmoniously with the company, they only demand that they be paid their outstanding debt, for that stage to be closed, and only then meet to define the terms to start exploitation and once a mutually beneficial agreement is reached, a framework contract would be signed.”³⁰

24 I remember that when we started talking with the Lacsanga Community there was a wall on the road that went from the Lacsanga village (Miraflores) to the Site, which we managed to get the Community to demolish in exchange for us improving the gates located at both the entrance and exit of Miraflores.

25 Following our conversations with the Lacsanga Community in 2016 and the first semester of 2017, we signed a surface agreement on 18 July 2017.³¹

3.3 The relationship with the Parán Community while I worked at IMC

26 In its brief, Peru contends that we mishandled the relationship with the Parán Community,³² marginalising it to the benefit of

²⁹ IMC, CR Team Report No. 011-2014-RRCC, November 2014 (SPA), at **Exhibit C-373**, p. 1.

³⁰ IMC, CR Team Report No. 011-2014-RRCC, February 2015 (SPA), at **Exhibit C-380**.

³¹ 2017 Lacsanga Agreement (SPA), 18/07/2017, at **Exhibit C-43**.

³² Counter-Memorial, 24/03/2022, p. 91 *et seq.* (paras. 185-187 and 313).

the Santo Domingo and Lacsanga Communities.³³ This is not true, as I explain in the following sections.

- 27 When I started working on the Project, IMC had signed two agreements with the Parán Community.³⁴ The existence of these agreements was a good sign which encouraged me to seek further agreements with this Community. Unfortunately, during the course of our conversations with Parán, we realised that they frequently changed their position and sought to monopolise all the benefits of the Project to the exclusion of the other communities, which we could not accept.

3.3.1 The projects announced in 2013 for the benefit of the Santo Domingo and Lacsanga Communities do not show that we were marginalising Parán

- 28 In its brief, Peru refers to social commitments made by IMC to the Santo Domingo and Lacsanga communities in 2013 to argue that we marginalised the Parán community and never took a real interest in them.³⁵ This is not true. We never excluded or marginalised Parán.
- 29 It does not seem right to pick isolated social commitments made to some communities at a particular moment in time – in this case, on the basis of a Lupaka press release dated 23 July 2013 – to say that they show that we were leaving Parán aside. Conclusions on IMC’s social engagement activities should be drawn on the basis of a more comprehensive analysis. Looking at Lupaka’s Annual Report for 2013, it can be seen that we were indeed supporting

³³ Counter-Memorial, 24/03/2022, p. 163 *et seq.* (para. 318).

³⁴ Witness Statement of Julio F. Castañeda, 01/10/2021, p. 11 *et seq.* (para. 31).

³⁵ Counter-Memorial, 24/03/2022, CM of Peru, p. 163 *et seq.* (para. 318).

social projects for the benefit of the Parán Community.³⁶ We had also donated food and medicines to them.³⁷

- 30 The fact that we reached agreements with the Lacsanga and Santo Domingo Communities for the development of the Project does not mean that we did not try to reach an agreement with the Parán Community. As I explained in my first statement, we did try very hard to reach an agreement with this Community.³⁸ Despite their constantly changing demands and aggressions, we never stopped trying to reach an agreement with them as long as I was at the company.

3.3.2 IMC handled adequately and in good faith its relationship with the Parán Community

- 31 In its brief, Peru repeatedly states that IMC mishandled the relationship with Parán and gives some examples to prove its point. I disagree and would like to address the examples Peru gives.
- 32 First, Peru contends that IMC's CR Team apparently waited until September 2016 to interact with the Parán community. It states that "Claimant appears to have waited until September 2016 – *remarkably, nearly a full three years after* it acquired the Invicta Project – before its community relations team carried out their 'first intervention' with the Parán Community".³⁹ This is incorrect.
- 33 Mr Javier Herrera was IMC's community relations manager when we started working on the Project in 2012. He continued in that position until late 2014/early 2015, when he was replaced

³⁶ Lupaka Gold Corp., 2013 Annual Report, at **Exhibit AC-49**, p. 46.

³⁷ Letter from IMC to the Parán Community and Parán Educational Institution (Jorge Basadre School) (SPA), 01/12/2014, at **Exhibit C-381**; Letter from IMC to the Parán Community, Educational Institution of Parán (Colegio Jorge Basadre) (SPA), 01/12/2014, 01/12/2014, at **Exhibit C-382**; Letter from IMC to the Parán Community (SPA), 17/11/2014, at **Exhibit C-383**; Letter from IMC to the Parán Community (SPA), 07/05/2015, at **Exhibit C-384**.

³⁸ Witness Statement of Julio F. Castañeda, 01/10/2021, p. 18 et seq. (Section 5.4).

³⁹ Counter-Memorial, 24/03/2022, p. 159 (para. 313(b)).

by Mr Elías Vila. Messrs Herrera and Vila led the outreach activities of the company with the Parán Community until September 2016. For example, in 2013 and 2014, IMC supported infrastructure projects for the benefit of the Parán Community and also donated food and medicine to this Community.⁴⁰ In 2015 and 2016, IMC continued to make donations,⁴¹ maintaining contact with the authorities of the Parán Community and holding informative meetings.⁴² I remember that we received constant requests for support from the Parán Community. From September 2016, SSS took over as head of community relations at IMC, [REDACTED]
[REDACTED]
[REDACTED]

- 34 Second, Peru refers to a debt owed by Invicta's previous owners to Parán, amounting to PEN 300,000 (approximately USD 80,000) and which arose from the failure to construct classrooms. Peru states that in my first witness statement I acknowledged that this debt and the associated fine were due, but that IMC, under Lupaka's control, only paid the debt.⁴⁵ I disagree with Peru's account of what happened with this debt and its associated fine, which is misleading.

⁴⁰ Lupaka Gold Corp., 2013 Annual Report, at **Exhibit AC-49**, p. 38; Letter from IMC to the Parán Community and Parán Educational Institution (Jorge Basadre School) (SPA), 01/12/2014, at **Exhibit C-381**; Letter from IMC to the Parán Community, Educational Institution of Parán (Colegio Jorge Basadre) (SPA), 01/12/2014, 01/12/2014, at **Exhibit C-382**; Letter from IMC to the Parán Community (SPA), 17/11/2014, at **Exhibit C-383**.

⁴¹ IMC, CR Team Report No. 05-2015/RRCC, May 2015 (SPA), at **Exhibit C-386**, p. 1 *et seq.*

⁴² IMC, CR Team Report No. 011-2014-RRCC, February 2015 (SPA), at **Exhibit C-380**, p. 3 (Section 3); Letter from IMC to the Parán Community (SPA), 12/03/2016, at **Exhibit C-387**; Letter from IMC to the Parán Community (SPA), 05/11/2015, at **Exhibit C-388**; Letter from IMC to the Parán Community (SPA), 30/06/2016, at **Exhibit C-389**; IMC, CR Team, Report No. 10-2015-RRCC, January 2015 (SPA), at **Exhibit C-390**, p. 2.

⁴³ [REDACTED]

⁴⁴ [REDACTED]

⁴⁵ Counter-Memorial, 24/03/2022, p. 92 *et seq.* (paras. 185-187). The construction of these classrooms had been promised by the previous owners of the Invicta Project, not by Lupaka (**C-113**, p. 2).

- 35 I addressed this issue in paragraphs 61 to 63 of my first statement. It is true that IMC agreed to pay the debt and the fine to the Parán community once IMC received the necessary funds from PLI, which was subject to IMC securing an access road to the Site. However, after IMC's negotiations with Parán, the Community accepted to exclude the payment of the fine. As I indicated in paragraph 63 of my first statement, "IMC agreed to pay the PEN 300,000 to move negotiations forward [with Parán] (whilst, as far as I understood, the Parán Community agreed to exclude the payment of the fine)".⁴⁶ IMC's non-payment of the fine does not show that the company breached its commitments or mishandled its relationship with Parán, as Peru suggests, but was simply the result of the agreement reached by IMC and Parán.⁴⁷
- 36 We paid the PEN 300,000 in two instalments, the first in December 2017 and the second in January 2018.⁴⁸ The agreement with Parán's leaders was that after these payments they would send us a letter to organise a visit to the Project and start conversations for a future agreement between IMC and the Community. As SSS reported in its January 2018 report:

"[d]uring the delivery of the cheque and the signature of the minutes with the community, much emphasis was put on the minutes on what had been discussed and detailed, that the company is complying and PAYING the debt of the community, with the agreement of its leadership. As a result of this payment and discussions with the CR team, the leadership should send us an invitation letter first to request a visit to the project, and second start dialogue

⁴⁶ Witness Statement of Julio F. Castañeda, 01/10/2021, p. 23 (para. 63).

⁴⁷ SSS, Monthly Report, Project, December 2017 (SPA), at **Exhibit C-391**.

⁴⁸ 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**.

for a future negotiation for the signature of an agreement between company and community”.⁴⁹

- 37 Shortly after complying with our part of the deal, we had a very bitter surprise that highlighted the Parán Community’s bad faith: in early May 2018, the Community sent us a notarized letter asking us to leave “their” lands – this, despite our agreement and the fact that we had repeatedly explained to them that the Project was not on their land.⁵⁰
- 38 Third, Peru refers to the letter I sent on 31 May 2017 to the Parán Community.⁵¹ By way of reminder, in this letter I said the following:

“The main subject of this letter is to inform you that despite all the efforts made by Invicta (and Lupaka) to get the **Banks** to disburse us the money to fulfil our commitments and finance the mining Operation in invicta, they refuse to do so while the company does not have and submit an **Agreement** signed with the Community of Parán. In this regard, it is important to remember that in a first consultation in December 2016, the Community of Parán voted by majority to negotiate and sign an Agreement with Invicta, which we are willing to sign, and pay the amounts of money that have been owed for several years. This long-term Agreement is the only condition that the **Banks** place on Invicta to deliver the monetary funds.

It is for that reason we would be grateful if you, Mr President, would put to the consideration of the Governing Committee and Assembly the convenience of signing an Agreement with invicta, since it is the only way that the

⁴⁹ SSS, Monthly Report, Project, January 2018 (SPA), at **Exhibit C-392**, p. 6. See also SSS, Monthly Report, Project, December 2017 (SPA), at **Exhibit C-391** [Click or tap here to enter text.](#), p. 6.

⁵⁰ Notarised letter from the Parán Community to IMC (SPA), 04/05/2018, at **Exhibit C-121**, p. 7 (“Fourth”).

⁵¹ Letter from IMC to the Parán Community (SPA), 31/05/2017, at **Exhibit C-114**.

Banks will disburse the money, with which the debt plus the fine would be paid. [...]

- 39 Peru says that I made a “false representation” in this letter when I said that the bank was requesting an agreement with Parán as the sole condition to disburse the money. Peru says this would be false because the condition was to have secured an access road to the Site, which could be achieved through an agreement “with the Lacsanga Community or the Parán Community”.⁵²
- 40 The letter of 31 May 2017 is addressed to the Parán Community and there is nothing wrong with my statement that we needed to reach an agreement with them for the bank to disburse the money. Yes, we could also have obtained the funds through an agreement with the Lacsanga Community, but I was negotiating with Parán and once I had secured an agreement with them, the bank would disburse the funds.
- 41 It is not true that our engagement with the Parán Community was opportunistic and only aimed at getting the bank to disburse the money. As I explained above, we had been engaging with this community for years through the development of community projects, donations and informative meetings, many agricultural-related workshops on technical crop management, installation of micro-reservoirs, implementation of technified irrigation systems, among others.⁵³ We began our engagement with the Parán Community well in advance because we sought to build a lasting relationship with this Community and we knew this would take time.
- 42 In fact, the EIA update that we submitted in 2015 included a chapter dedicated to citizen participation in the communities in the area of direct influence of the Project, which expressly included the

⁵² Counter-Memorial, 24/03/2022, p. 160 (para. 313(d)).

⁵³ SSS, Monthly Report, Project, October 2016 (SPA), at **Exhibit C-393**, p. 3; SSS, Monthly Report, Project, November 2016 (SPA), at **Exhibit C-394**, p. 3 *et seq.* [REDACTED]

Parán Community.⁵⁴ This update was done after our contractor ACOMISA carried out surveys in all these communities.⁵⁵ The Ministry of Energy and Mines (“MEM”) approved this update, after which we implemented it and followed through with our participation efforts. We took all these actions to build a relationship with the Parán Community, not to simply get the bank to disburse funds.

- 43 Peru also alleges that we had no genuine interest in Parán because, as soon as we reached an agreement with the Lacsanga Community, we suspended our efforts to reach an agreement with the Parán Community.⁵⁶ I disagree with this. [REDACTED] continued talking to the leadership of the Parán Community to try to reach an agreement, even if it was not required for us to move forward with the Project – we had already secured an access road to the Site. [REDACTED] also continued to include Parán in our community activities, as shown in IMC’s Annual Operational Plan for 2018.⁵⁷ But not only this: as I said before, we paid the Parán Community PEN 300,000 (approximately USD 80,000) between December 2017 and January 2018, that is, when we had already signed the surface agreement with Lacsanga. If we had not had a genuine interest in reaching an agreement with the Parán Community it would not have made sense to make this payment.
- 44 I shared [REDACTED]’s suspicion that the resistance of the Parán Community to reach an agreement with IMC came from the risk that the Project posed to the marijuana business in the Huamboya area, which is part of Parán. I think this ended up playing a very important role in the Community’s behaviour. I also think that the regional and municipal elections that took place

⁵⁴ ACOMISA, Invicta Project, (EIA) Update, Chapter V (Citizen Participation), June 2015 (SPA), at **Exhibit C-395**.

⁵⁵ IMC, CR Team, Report No. 04-2015-RRCC, April 2015 (SPA), at **Exhibit C-396**, p. 2.

⁵⁶ Counter-Memorial, 24/03/2022, p. 93 (para. 189).

⁵⁷ SSS, Community Relations Annual Operating Plan, 2018 (SPA), at **Exhibit C-397**.

in Peru in October 2018, and in particular, the political promises made by the candidates to the population as to the benefits they could get from ongoing mining projects (such as the Invicta Project), led to increased expectations by the Parán Community. In retrospect, I think that Parán wanted to extract as much benefit as they could from us but never had any real interest in reaching an agreement and also tried to exclude the other communities from benefiting from the Project.

4 THE ENVIRONMENTAL AND SOCIAL OBLIGATIONS OF IMC

- 45 In its brief, Peru repeatedly refers to the risk of IMC’s activities contaminating Parán’s water sources, as well as IMC having committed certain environmental infractions as found by the Organismo Especializado en Fiscalización Ambiental (“OEFA”).⁵⁸ While as IMC’s general manager I was not dealing directly with these issues – it was done by Mr Romel Valencia, the head of the Environmental and Occupational Health and Safety Management (SSOMA) –, Mr Valencia kept me abreast of these issues and prepared draft letters or presentations that I reviewed and approved before they were submitted. I have reviewed the relevant documents again and comment on what Peru states below.
- 46 By way of preliminary comment, the Parán Community’s claims prior to 2018 were based primarily on allegations that the Project was located on their land, and that they had not granted permission to IMC to operate within their territory.⁵⁹ Parán’s claims were not based on concerns about water contamination. Indeed, the first time

⁵⁸ Counter-Memorial, 24/03/2022, p. 84 *et seq.* (Section II.D.1).

⁵⁹ SSS, Monthly Report, Project, December 2017 (SPA), at **Exhibit C-391**, p. 5; SSS, Weekly Report, Project (SPA), 03/01/2018 to 14/01/2018, at **Exhibit C-398**, p. 4

I received a letter from the Parán Community expressing water contamination concerns in May 2018.⁶⁰

4.1 IMC took adequate measures to address Parán’s water contamination concerns and systematically complied with the OEFA requirements

- 47 Peru refers to the inspections carried out by OEFA from 10 to 12 June 2017⁶¹ and from 27 February to 4 March 2018,⁶² in which it was concluded, *inter alia*, that the mine effluents exceeded the maximum permissible limits (“MPL”) for Cadmium, Copper and Zinc. Peru also refers to the inspection of the Parán Community’s water sources carried out by the Huaura Local Water Authority (“ALA”) on 7 May 2018,⁶³ the minutes of which state that in the Parán sector “it is observed that turbid water with a whitish tone is flowing”⁶⁴ but that it could not be confirmed that this was the result of effluents coming from the Invicta mine.
- 48 I will first comment on these water pollution concerns, and then address the environmental issues found by the OEFA in relation to the Invicta project.

⁶⁰ Notarised letter from the Parán Community to IMC (SPA), 04/05/2018, at **Exhibit C-121**. The CR Team had informed me prior to this that during a Site visit in July 2017, some Parán members had made enquiries regarding the environmental impact of the Project. IMC Memorandum, Training Programme Mining Project at Invicta Mining Camp (SPA), 08/07/2017, at **Exhibit C-154**, p. 2.

⁶¹ MINAM, Directorial Resolution No. 2203-2018-OEFA/DFAI (SPA), 27/09/2022, at **Exhibit C-399**, p. 7.

⁶² Directorial Resolution No. 02050-2019-OEFA/DFAI (SPA), 17/12/2019, at **Exhibit C-400**, p. 4 (III.1), 10 (III.2), 16 (III.3), 19 (III.4) and 24 (III.5).

⁶³ Letter from the Parán Community (W. Narvasta) to Huaura Local Water Authority, 10/04/2018, at **Exhibit R-0077**.

⁶⁴ ANA, Record of Field Technical Verification, 07/05/2018, at **Exhibit R-0080**, p. 3 (p. 2 of the document) (Section IV.2).

Water contamination concerns

- 49 Peru tries to portray IMC as an environmentally negligent operator.⁶⁵ I disagree with this. We were mindful of the impact of our development activities on the environment, including on water, and were careful to comply with the environmental regulations.
- 50 Initially, in 2013-2014, our activities were very limited. We were re-evaluating the scope of the mining plan prepared by the previous owners of the Project, requesting conceptual studies from SRK Consulting and metallurgical studies from Aminpro, working on permitting issues, etc.⁶⁶ At that time we were not doing any work in the mine or in the tunnels and therefore did not generate any effluents. If there were any effluents, these were minimal and resulted from rainfall that filtered through the mountain and reached the mine tunnels. These tunnels were built by the previous owners of the mine, who had in the past drilled diamond drill holes.
- 51 To deal with this, at the time we had a sedimentation pond located outside the mine adit, at the 3400 level, into which we had channelled this natural effluent. The water entered this sedimentation pond, where it decanted and then came out clarified at the other end of the pond, that is to say, without solids or other particles that might have adhered to the water as it passed through the mine tunnels. I remember that we used to pour into the pond (pure) lime oxide into the pond, that is, commercial lime without any chemical additives, into the pond to neutralise the natural acidity of the water that was coming through. The aim was to make the natural effluent as neutral as possible. We opted for lime oxide because it has many advantages. It is not harmful to health – all the water we drink contains calcium, sodium, magnesium, etc. in minimal doses – or for cultivation. In fact, lime oxide is favourable for cultivation as it helps to control the *pH* of the soil; this is precisely why it is used in agriculture.
- 52 In 2014 we asked external consultant J. Ramón del Perú S.A.C. to carry out environmental testing in terms of water, air, soil and sound at Invicta. We sought

⁶⁵ See *e.g.* Counter-Memorial, 24/03/2022, p. 94 *et seq.* (Section II.D.2.b).

⁶⁶ Witness Statement of Julio F. Castañeda, 01/10/2021, p. 14 (paras. 36-37).

with this to understand the environmental conditions at the mine and the impact of our limited activities on these conditions. The results were very favourable.⁶⁷ Our activities were then suspended from June 2015 to February 2018, as we negotiated with the Lacsanga and Parán Communities to secure an access road to the Site. The State was aware of this.⁶⁸

- 53 Despite the suspension of our activities, the OEFA conducted inspections of the Invicta Project from 10 to 12 June 2017⁶⁹ and 27 February to 4 March 2018.⁷⁰ The OEFA officials did not provide us with copies of the samples collected during the inspection carried out in June 2017, leading us to challenge its findings.⁷¹ Dr Daniel Vela, Peru's environmental expert, asserts that IMC did not present a defence to the infractions found by the OEFA in the inspection conducted in early 2018. This is not correct. IMC submitted its defence on 28 March 2018.⁷²
- 54 It is true that the June 2017 inspection concluded that the mine's effluents exceeded the MPLs for cadmium, copper and zinc, and that the early 2018 inspection concluded that the effluents exceeded the MPLs for zinc,⁷³ but we took prompt measures to address these findings. Indeed, as I show further below in relation to other infractions

⁶⁷ J. Ramón, Environmental Monitoring Report, August 2014 (SPA), at **Exhibit C-401**, p. 26 *et seq.*

⁶⁸ Letter from IMC to OEFA (SPA), 27/03/2018, at **Exhibit C-402**; Letter from IMC to OEFA (SPA), 27/03/2018, at **Exhibit C-403**.

⁶⁹ MINAM, Directorial Resolution No. 2203-2018-OEFA/DFAI (SPA), 27/09/2022, at **Exhibit C-399**, p. 1.

⁷⁰ Directorial Resolution No. 02050-2019-OEFA/DFAI, Invicta Mining Corp., 17/12/2019, at **Exhibit R-0062**, p. 1.

⁷¹ MINAM, Directorial Resolution No. 2203-2018-OEFA/DFAI (SPA), 27/09/2022, at **Exhibit C-399**, p. 11.

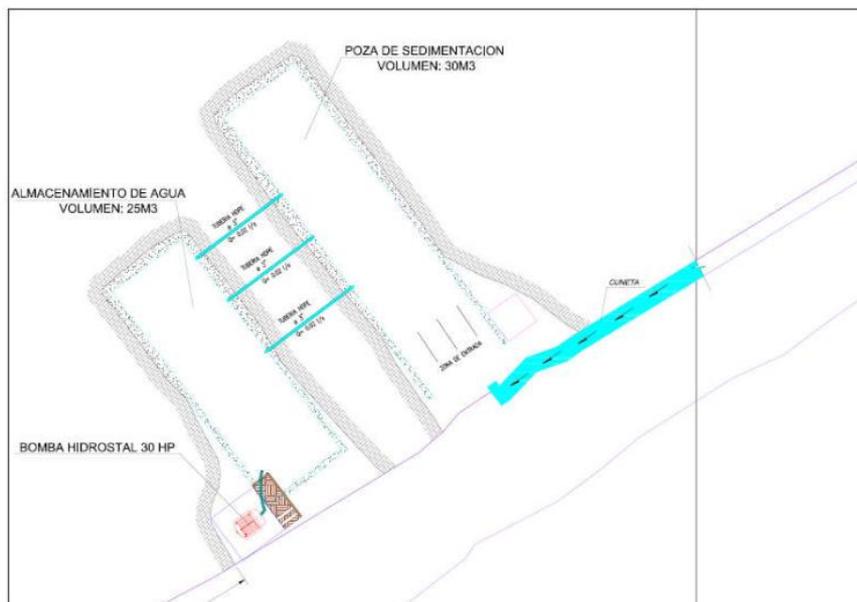
⁷² MINAM, Supervision Report No. 238-2018-OEFA/DSEM-CMIN, 27/06/2018, at **Exhibit C-404**, p. 4 (para. 10); IMC, Statement of Objections (SPA), 26/03/2018, at **Exhibit C-405**.

⁷³ Directorial Resolution No. 02050-2019-OEFA/DFAI, Invicta Mining Corp., 17/12/2019, at **Exhibit R-0062**, p. 7 (para. 24 (iii)).

identified by the OEFA, at IMC we systematically and proactively implemented the OEFA's recommendations.

- 55 In response to the excess of the MPLs, in mid-2018⁷⁴ we built a water management system inside the mine. This system consisted of two ponds, the first one for sedimentation and the second next to it for storage. The effluent from the mine entered the first pond where it sedimented and then passed – clarified and through 3 pipelines – to the second pond, from where it was pumped to the upper levels of the mine to be reused in the development works. The ponds were located at the 3400 level, which is the lowest level of the mine. The water was pumped to the upper levels as all the development was planned upwards.⁷⁵

Figura 6: Vista en planta de las pozas



Fuente: Tercer ITS UM Invicta

- 56 Once this system was implemented, we asked the external consultant J. Ramón del Perú S.A.C. to take samples of the mine effluents and run laboratory tests to see if the chemical components

⁷⁴; IMC, Statement of Objections (SPA), 20/06/2018, at **Exhibit C-406**, p. 2 and p. 10.

⁷⁵ MINAM, Report on ITS No. 3 (SPA), 12/11/2018, at **Exhibit C-226**, p. 23.

– including cadmium, copper and zinc – complied with the MPLs. The consultant confirmed to us in June 2018 that this was the case and we reported this to the OEFA.⁷⁶ I remember that J Ramón del Peru S.A.C. attempted to take samples from Parán’s water sources both in June and September 2018, but the Community did not allow it.⁷⁷

- 57 Despite the above, in September 2018 the OEFA sanctioned us saying that our effluents exceeded the MPL for the parameters of cadmium, copper and zinc.⁷⁸ We did not agree with this sanction. Indeed, despite acknowledging that laboratory tests carried out by J. Ramón del Perú S.A.C. in June 2018 showed that our effluents were within the MPLs, the OEFA ignored these tests and relied on samples taken in February/March 2018, that is to say, before the implementation of our water management system,⁷⁹ to sanction us. Furthermore, an inspection conducted by the ALA on 4 July 2018 confirmed that the Invicta mine’s effluents did not reach the Parán Community’s water sources, which made the OEFA’s decision even more inexplicable.⁸⁰
- 58 I would like to make a final comment on these water-related issues, specifically in relation to the inspection carried out by the ALA on 7 May 2018, which Peru relies on to suggest that IMC obstructed the inspection of the Invicta mine’s effluents.
- 59 By way of context, on 11 April 2018, the Parán Community requested the ALA to conduct a visual inspection to verify the quality of the Community’s water sources.⁸¹ On 30 April 2018, IMC was

⁷⁶ MINAM, Directorial Resolution No. 2203-2018-OEFA/DFAI (SPA), 27/09/2022, at **Exhibit C-399**, p. 16 (para. 42).

⁷⁷ J. Ramón, Environmental Monitoring Report, September 2018 (SPA), at **Exhibit C-407**, p. 19 (Item 6.1).

⁷⁸ Directorial Resolution No. 2203-2018-OEFA/DFAI, 27/09/2018, at **Exhibit R-0074**, p. 18.

⁷⁹ MINAM, Directorial Resolution No. 2203-2018-OEFA/DFAI (SPA), 27/09/2022, at **Exhibit C-399**, p. 16 (paras. 42-44).

⁸⁰ ANA, Technical Report No. 048-2018-ANA-AAA.CF.-ALA H/KHR (SPA), 13/07/2018, at **Exhibit C-408**, p. 8 *et seq.* (paras. 5.2 and 6.3).

⁸¹ Letter from the Parán Community (W. Narvasta) to Huaura Local Water Authority, 10/04/2018, at **Exhibit R-0077**.

convened by the ALA to participate in this inspection,⁸² which took place on 7 May 2018 with the participation of ALA representatives, IMC's personnel, members of the Parán Community and the Leoncio Prado Subprefect, Mr Soyman Retuerto. The day of the inspection, once the Parán Community's water sources had been inspected, Mr Retuerto proposed accessing the mine adit to inspect the mine's water sources. However, this inspection was not possible because the participants in the inspection did not have the requisite insurance to access the adit.⁸³ Peru argues that IMC's refusal to allow this inspection would show a lack of collaboration with the authorities.⁸⁴ I disagree.

60 IMC cannot allow that people without the requisite insurance access the mine adit. In Peru, mining companies such as IMC are required by law to acquire a Supplementary Risk Work Insurance ([“*Seguro Complementario de Trabajo de Riesgo*” in Spanish or]“**SCTR**”), which provides coverage for occupational accidents and illnesses to its employees and workers engaged in high-risk activities. This insurance does not cover occasional visitors to the Project, who must take out such insurance prior to any visit. This is so because accessing the mine adit presents risks: the tunnels are excavated in the hills, so there may be landslides or rocks fall; there is also vehicular traffic inside the mine. Being insured is a delicate requirement that, if not respected, can lead to civil liability because IMC must assume any problems/damage that may arise within its facilities, and also to criminal liability in the event of an accident. For the inspection on 7 May 2018, the participants did not have SCTR insurance because the purpose of the inspection was to verify the Parán Community's water sources, not those of the Invicta mine.⁸⁵ As stated in the notice that was sent to us

⁸² MINAR, Multiple Citation No. 003-2018-ANA-AAA.CF.-ALA-H/KHR from ANA (V. Pineda) to Invicta Mining Corp. S.A.C. (J. Castañeda), 26/04/2018, at **Exhibit R-0078**.

⁸³ ANA, Record of Field Technical Verification, 07/05/2018, at **Exhibit R-0080**, p. 2.

⁸⁴ Counter-Memorial, 24/03/2022, p. 6 (para. 14).

⁸⁵ MINAR, Multiple Citation No. 003-2018-ANA-AAA.CF.-ALA-H/KHR from ANA (V. Pineda) to Invicta Mining Corp. S.A.C. (J. Castañeda), 26/04/2018, at **Exhibit R-0078**; MINAR, Multiple Citation No. 003-2018-ANA-AAA.CF.-ALA-H/KHR from ANA (V. Pineda) to the Parán Community (W. Narvasta), 26/04/2018, at **Exhibit R-0079**.

by the ALA, this was a visual inspection of “the water resources from which the Parán Community and the surrounding areas have been using water for their agricultural and population activities”.⁸⁶

- 61 The inspection of the mine adit took place shortly after. As I said above, on 4 July 2018, the ALA carried out an inspection of, among others, the mine adit, mining camp and facilities, finding that IMC was not mining ore and that there were no effluents affecting the water sources of the Parán Community.⁸⁷

Other environmental infractions identified by the OEFA

- 62 Peru refers to certain environmental infractions identified by the OEFA in relation to the Invicta Project, suggesting that these deepened IMC’s conflict with the Parán Community.⁸⁸ Mr Daniel Vela, Peru’s environmental expert, expresses the same opinion by referencing infractions listed in the OEFA’s Interactive Portal for Environmental Audit.⁸⁹ I disagree. To my knowledge, the Parán Community never complained of the issues underlying these infractions; as I said above, their concerns were focused on water contamination. But more importantly, while the OEFA indeed identified specific environmental infractions, we systematically and promptly resolved them.
- 63 For example, Peru’s environmental expert mentions that IMC failed to service the drainage ditches located on the access road to the Invicta mine, an infraction that he considers to be sensitive due to the

⁸⁶ MINAR, Multiple Citation No. 003-2018-ANA-AAA.CF.-ALA-H/KHR from ANA (V. Pineda) to Invicta Mining Corp. S.A.C. (J. Castañeda), 26/04/2018, at **Exhibit R-0078**. See also MINAR, Multiple Citation No. 003-2018-ANA-AAA.CF.-ALA-H/KHR from ANA (V. Pineda) to the Parán Community (W. Narvasta), 26/04/2018, at **Exhibit R-0079**.

⁸⁷ ANA, Technical Report No. 048-2018-ANA-AAA.CF.-ALA H/KHR (SPA), 13/07/2018, at **Exhibit C-408**, p. 8 *et seq.* (paras. 5.2 and 6.3).

⁸⁸ See *e.g.* Counter-Memorial, 24/03/2022, p. 87 *et seq.* (Section II.D.1.b).

⁸⁹ Expert Report of Daniel Vela, 22/03/2022, p. 41 *et seq.* (para. 123).

importance of the correct management of the mine's effluents.⁹⁰ First, I would like to point that this last statement is inaccurate from a technical standpoint. Drainage ditches constitute surface drainage works which are used to collect and direct surface runoff in a controlled manner, minimizing the quantity of surface water flowing into unstable slopes. The drainage ditches located on the Site's access road were aimed to prevent surrounding soil from becoming wet as a result of rainwater, diminishing the risk of landslides. This is unrelated to the management of the Invicta mine effluents, which come out of the mine adit or tunnels. In any event, while it is true that the OEFA verified this infraction in its 19-20 February 2016 inspection, we took prompt measures to address it. Indeed, this infraction was notified to IMC in August 2018, *i.e.*, two and a half years following the inspection which identified it,⁹¹ and we serviced the drainage ditches two months later – I understand IMC communicated this to the OEFA on 6 November 2018, shortly after I left the company.⁹² Beyond this incident, we serviced the drainage ditches periodically, especially during the rainy season.

- 64 It is also true that, as part of an inspection conducted on 18 and 19 September 2015, the OEFA noted that IMC had failed to segregate its solid and non-solid waste, it had not properly disposed of sludge and it had installed a biodigester rather than septic tanks to dispose of human waste, contrary to its EIA.⁹³ But once again we took prompt action to address these issues. Indeed, on 4 January 2016, that is, three and a half months after

⁹⁰ Expert Report of Daniel Vela, 22/03/2022, p. 43 (para. 128).

⁹¹ OEFA, Directorial Resolution No. 1924-2018-OEFA-DFAI (SPA), 24/08/2018, at **Exhibit C-409**.

⁹² Letter from IMC to OEFA (SPA), 06/11/2018, at **Exhibit C-410**.

⁹³ Directorial Resolution No. 2005-2018-OEFA-DFAI, 29/08/2018, at **Exhibit R-0072**, p. 11 *et seq.* (Sections III.I, (III.2) and III.3).

this inspection, we sent a detailed report to the OEFA communicating the corrections undertaken further to these observations.⁹⁴

- 65 We only departed from the OEFA's recommendations in relation to the septic tanks. The OEFA asked us to install these tanks, which are essentially pits where human waste accumulates. The waste reaches these pits, where it is then necessary to add chemicals to avoid bad smells and kill germs, then dispose of the water – as it is totally contaminated – and finally take remediation measures that are consistent with the environment to close the pits. We explained to the OEFA that a biodigester is a much better system for disposing of human waste. It is a system that receives wastewater and through a physicochemical process separates the water from the solids, generating purified water that, although not suitable for human consumption, can be used for surface irrigation. Wastewater containing excrement is one of the most contaminating elements of our environment, and the biodigester virtually eliminates any soil and water contamination.
- 66 We had to make a great effort to enter the Site to address the OEFA's observations as back in 2015-2016 we still did not have a surface agreement with the Lacsanga Community – this was only signed on 18 July 2017.⁹⁵ Thanks to the efforts of the CR Team, we reached a verbal agreement with the Lacsanga Community for them to allow us to enter the mine to carry out “minor” works, including some of these corrections. Initially, the Lacsanga Community only allowed the community relations person and his driver to enter, but they then became more flexible, at our request, in exchange for us hiring Lacsanga community members to repair the damaged road.
- 67 To our surprise, on 28 August 2018, we received Directorial Resolution No. 2005-2018-OEFA/DFAI informing us that

⁹⁴ Letter from IMC to OEFA (SPA), 04/01/2016, at **Exhibit C-412**.

⁹⁵ 2017 Lacsanga Agreement (SPA), 18/07/2017, at **Exhibit C-43**.

the corrective measures we had taken were insufficient.⁹⁶ We were stunned both by the content of this Resolution, with which we completely disagreed, but also by just how belated it was, coming some two and a half years after we had addressed the OEFA's observations. Specifically, we thought it was highly suspicious to receive this Resolution at the height of the dispute with the Parán Community prior to its second invasion. Indeed, the five OEFA Resolutions that I address in this Section 4.1 and which sanctioned IMC, some of which were provided to me by Lupaka's counsel as they were issued after I had left the company, all came at the height of the conflict between the company and the Parán Community, with some notices coming when IMC was no longer in control of the Site.⁹⁷

- 68 Peru further refers to the inspection conducted by the OEFA from 27 February to 4 March 2018, which concluded that IMC had improperly disposed of its non-hazardous waste and had not implemented the waste rock deposit provided in its EIA. Lupaka's lawyers have informed me that the fines imposed on IMC for these two infractions were later annulled.⁹⁸ In any event, while it is true that the OEFA noted these issues, we again took prompt action to address them.
- 69 This inspection took place when IMC had just resumed its development activities, which is why the amount of non-hazardous solid waste we generated was moderate – and had been minimal until mid-February 2018. At that time, we were disposing of this non-hazardous waste at a sanitary landfill in the community of Quintay, which I understand had a license to receive and store

⁹⁶ Directorial Resolution No. 2005-2018-OEFA/DFAI, 29/08/2018, at **Exhibit R-0072**.

⁹⁷ Directorial Resolution No. 2005-2018-OEFA/DFAI, 29/08/2018, at **Exhibit R-0072**; Supervision Report No. 238-2018-OEFA/DSEM-CMIN, 27/06/2018, at **Exhibit R-0061**; Directorial Resolution No. 2203-2018-OEFA/DFAI, 27/09/2018, at **Exhibit R-0074**; Directorial Resolution No. 02050-2019-OEFA/DFAI, Invicta Mining Corp., 17/12/2019, at **Exhibit R-0062**.

⁹⁸ Resolution No. 158-2021-OEFA-TFA-SE ("Resolución Núm. 158-2021-OEFA-TFA-SE"), 25/05/2021, at **Exhibit DV-0010**, p. 49 (Second and Third points).

non-hazardous waste⁹⁹ (the Sayán municipality did the same, dumping in the same place non-hazardous solid waste generated in the Sayán district). We used the Quintay sanitary landfill for 3 months. This was not contrary to our EIA, which provided that we had to implement a sanitary landfill, but did not set a deadline for doing so.¹⁰⁰ In spite of this, shortly after the inspection, specifically on 26 March 2018, we informed OEFA that we were evaluating the implementation of our sanitary landfill.¹⁰¹

- 70 In relation to the waste rock deposit, the observation made by the OEFA was that according to its EIA, IMC had to implement one waste rock deposit in a precise location but instead was found to have two waste rock deposits located 50 metres and 430 metres from the correct location.¹⁰² IMC explained to the OEFA that these two waste rock deposits already existed at the time Lupaka acquired the Project,¹⁰³ and that the company had impermeabilized one of them to avoid contact with rainwater.¹⁰⁴ IMC further committed to building the new waste rock deposit as per its EIA,¹⁰⁵ which was ongoing when the blockade was set up and could not be finished because access to the Site was obstructed. The OEFA had not addressed these comments by the time I left IMC in October 2018.
- 71 Finally, Peru's environmental expert states that IMC failed to comply with its obligation to carry out water, air and noise quality testing during the first three quarters of 2018, an infraction he says

⁹⁹ SSS, Weekly Report, Project (SPA), 19/03/2018 to 25/03/2018, at **Exhibit C-413**, p. 11.

¹⁰⁰ MINAM, Supervision Report No. 238-2018-OEFA/DSEM-CMIN, 27/06/2018, at **Exhibit C-404**, p. 37 (para. 107).

¹⁰¹ IMC, Statement of Objections (SPA), 26/03/2018, at **Exhibit C-405**, p. 6.

¹⁰² MINAM, Supervision Report No. 238-2018-OEFA/DSEM-CMIN, 27/06/2018, at **Exhibit C-404**, p. 28 (para. 76).

¹⁰³ MINAM, Supervision Report No. 238-2018-OEFA/DSEM-CMIN, 27/06/2018, at **Exhibit C-404**, p. 28 *et seq.* (paras. 77 and 83).

¹⁰⁴ MINAM, Supervision Report No. 238-2018-OEFA/DSEM-CMIN, 27/06/2018, at **Exhibit C-404**, p. 32 (para. 90).

¹⁰⁵ MINAM, Supervision Report No. 238-2018-OEFA/DSEM-CMIN, 27/06/2018, at **Exhibit C-404**, p. 32 (para. 94).

would project a very negative image of IMC to the communities.¹⁰⁶ This allegation is largely incorrect.

72 IMC did not conduct environmental testing in the first quarter of 2018 because, as I explained above, our development activities only resumed in February 2018, after having been suspended for more than two and a half years. This is something that the OEFA knew.¹⁰⁷ But we did conduct environmental testing for the second and third quarters of 2018. In June 2018, we sent the environmental testing report prepared by J. Ramón del Perú S.A.C. to the OEFA.¹⁰⁸ This same consultant conducted the environmental testing for the third quarter of 2018,¹⁰⁹ although he could not conduct water testing in two of the control points due to the opposition of the Parán Community.¹¹⁰ The results of all this testing were favourable.

73 As the above description shows, we systematically and proactively addressed the observations made by the OEFA, even though as I said before, we disagreed with some of these. We were conscious of our duty of care for the environment and took prompt measures in line with it.

4.2 IMC complied with its social obligations

74 Peru argues that IMC mishandled relations with the rural communities of the Project's area of direct influence, including the Parán Community. It states this is shown by IMC's failure to comply with the social obligations contained in its Social Management Plan, which is part of IMC's EIA. In particular, Peru

¹⁰⁶ Expert Report of Daniel Vela, 22/03/2022, p. 43 (para. 127).

¹⁰⁷ Letter from IMC to OEFA (SPA), 27/03/2018, at **Exhibit C-402**; Letter from IMC to OEFA (SPA), 27/03/2018, at **Exhibit C-403**.

¹⁰⁸ MINAM, Directorial Resolution No. 2203-2018-OEFA/DFAI (SPA), 27/09/2022, at **Exhibit C-399**, p. 16 (para. 42).

¹⁰⁹ J. Ramón, Environmental Monitoring Report, September 2018 (SPA), at **Exhibit C-407**, p. 19 *et seq.* (Section "Conclusions").

¹¹⁰ J. Ramón, Environmental Monitoring Report, September 2018 (SPA), at **Exhibit C-407**, page 15 (Table 4).

refers to the inspection carried out by the OEFA from 27 February to 4 March 2018, in which the OEFA concluded that IMC did not comply with obligations linked to the preferential hiring of local staff, development of educational programs and support of health campaigns for 2016 and 2017, and fined the company for the 2017 breaches.¹¹¹ I disagree with the OEFA findings and Peru's contention for the reasons below.

- 75 As I explained in my first witness statement,¹¹² in 2016 and 2017 we were in critical negotiations with the communities of Lacsanga and Parán to secure an access road to the mine Site. This was obviously our priority given that without an access to the Site we would simply not be able to develop the Project. Our activities at the Project were suspended during these negotiations, something of which the OEFA was aware. While it is true that our EIA included general obligations to preferentially hire local workers, develop educational programs and support health campaigns, it did not set a specific timeframe to execute these commitments – and with reason. Peru's Environmental Mining Regulation also provides that we were obliged to preferentially hire local staff but in accordance with the needs of the project, which were almost nonexistent while our activities were suspended.¹¹³ To me it seems unjustified to be sanctioned for not carrying out certain social activities in 2017 when we had not yet secured an access road that allowed us to develop the Project, our community relations efforts were focused on achieving this and all our development activities were suspended.
- 76 The OEFA's decision further ignored that our negotiations with the rural communities were also aimed at defining the commitments that we would assume on the hiring of personnel,

¹¹¹ Counter-Memorial, 24/03/2022, p. 85 *et seq.* (paras. 174-177); Directorial Resolution No. 02050-2019-OEFA/DFAI, Invicta Mining Corp., 17/12/2019, at **Exhibit R-0062**.

¹¹² Witness Statement of Julio F. Castañeda, 01/10/2021, p. 14 *et seq.* (Sections 5.2 and 5.4).

¹¹³ Supreme Decree No. 040-2014-EM, 05/11/2014, at **Exhibit R-0006**, p. 11 (Art. 57.5).

education and health-related activities – *i.e.*, the same issues for which the OEFA sanctioned us. Again, it seems unjustified to me to be sanctioned for not carrying out certain social activities in 2017 when during this period we were negotiating with all three communities about these very same issues.

- 77 As a result of our negotiations with the rural communities in the Project's area of direct influence, in July 2017 we signed a surface rights agreement with the Lacsanga Community and in early 2018 we finalised the draft addendum to the agreement with the Santo Domingo Community. These agreements, as well as a number of provisions enshrined in the Santo Domingo Framework Agreement signed in 2010 – which would remain in force as long as they were not being modified by the addendum – reflected our commitments in terms of labour,¹¹⁴ education and health issues.¹¹⁵
- 78 In any event, in 2016 we held workshops on agricultural topics for the exclusive benefit of the Parán Community. These included workshops on the management of peach, organic avocado and agricultural hydrogel crops, on micro-reservoirs and technified irrigation systems.¹¹⁶

5 PERU'S KNOWLEDGE OF A POTENTIAL INVASION OF THE PROJECT BY THE PARÁN COMMUNITY PRIOR TO 2018

- 79 In its Brief, Peru states that IMC only requested the intervention of the State in the conflict with the Parán Community in June 2018, when the

¹¹⁴ 2017 Lacsanga Agreement (SPA), 18/07/2017, at **Exhibit C-43**, p. 9 (Article 8.7); Framework Agreement (SPA), 22/10/2010, at **Exhibit C-64**, p. 4 (Art. 5.3).

¹¹⁵ Framework Agreement (SPA), 22/10/2010, at **Exhibit C-64**, p. 2 *et seq.* (Arts. 2, 3.1, 5.3); 2017 Lacsanga Agreement (SPA), 18/07/2017, at **Exhibit C-43**, p. 6 *et seq.* (Arts. 6.1, 6.2, 6.3 and 6.4).

¹¹⁶ SSS, Monthly Report, Project, October 2016 (SPA), at **Exhibit C-393** (full version of **C-149**); SSS, Monthly Report, Project, November 2016 (SPA), at **Exhibit C-394**.

conflict had already escalated.¹¹⁷ With this, Peru appears to suggest that IMC did not communicate with State authorities before June 2018 to address the situation with Parán or try to prevent what would come next. This is incorrect.

- 80 As IMC's general manager, my responsibilities included directing the operational management of the Project and overseeing all aspects of its development, including the work of our community relations team. [REDACTED] the SSS team, kept me abreast of progress and developments on the community front, both by word of mouth (usually, by telephone) and through written reports, on the basis of which I would then discuss with the rest of IMC management the actions to be taken, would give the instructions to the community relations team, and follow up.
- 81 In October 2017, [REDACTED] a group of Parán community members were planning to access the Site without authorisation, under the pretext that we were already extracting ore from the mine. Upon learning of this, we contacted Major PNP Andrés Rosales Andrade (chief of police of Sayán), PNP Superior Lezcano and PNP Colonel Fernández (Chief of DIVPOL) to request them to take action to anticipate and counteract the possible attack.¹¹⁸ Colonel PNP Fernández also ordered Major Rosales to conduct investigations in the Parán Community's Huamboya area, because it was considered a "red zone" due to the fact that former terrorists and drug smugglers lived there – Colonel Fernández seemed to think that these people could be behind the attack.¹¹⁹
- 82 In early November 2017, Rómulo Zarauz, head of the SSS community relations team, sent a letter to Wilber Narvasta, then President of the Parán Community, to inform him of

¹¹⁷ Counter-Memorial, 24/03/2022, p. 342 *et seq.* (para. 728).

¹¹⁸ SSS, Weekly Report, Project (SPA), 06/11/2017 to 11/11/2017, at **Exhibit C-414**, p. 6.

¹¹⁹ SSS, Weekly Report, Project (SPA), 06/11/2017 to 11/11/2017, at **Exhibit C-414**, p. 6.

the possible attack and the coordination we had undertaken with the police.¹²⁰

- 83 The Police knew very well how dangerous some of the community members and families of Parán were. As I said before, the Police knew that former terrorists and drug smugglers lived in Parán, some of whom had outstanding arrest warrants,¹²¹ and that Community members had weapons which were misused shortly after, during the invasion of 19 June 2018, to attack IMC personnel and members of the Lacsanga Community who were at the mine camp that day.¹²²

6 THE THWARTED INVASION OF THE PROJECT SITE BY THE PARÁN COMMUNITY IN SEPTEMBER 2018

- 84 In paragraph 74 of my first statement, I expressed, in relation to the thwarted invasion by Parán in September 2018, that “[w]e knew that the Parán Community would not be deterred for a long time, and that when the Police left, there would be again a risk of invasion of the Site. For this reason, we persisted in securing an agreement with the Parán Community”.¹²³ Peru says that my comment confirms that the use of police force would not have led to a lasting solution to the conflict. Peru misinterprets my comment.
- 85 With this comment, I simply sought to emphasise how important it was for us to reach an agreement with the Parán Community, nothing more. We always made efforts to reach such an agreement, but the situation at this point had worsened and the issue had become urgent such that we considered that the situation would become unmanageable unless the Police intervened. The Police should have dealt

¹²⁰ Letter from IMC to the Parán Community (SPA), 07/11/2017, at **Exhibit C-118**.

¹²¹ SSS, Weekly Report, Project (SPA), 06/11/2017 to 11/11/2017, at **Exhibit C-414**, p. 4.

¹²² SSS, Special Report, seizure of the Invicta Mine Camp and Facilities (SPA), 19/06/2018, at **Exhibit C-129**, p. 2.

¹²³ Witness Statement of Julio F. Castañeda, 01/10/2021, p. 27 (para. 74).

with the underlying problem of drug trafficking and illegal possession of weapons. Without this, indeed, the risk of another armed invasion was evident.

- 86 My professional relationship with IMC was about to finish when Parán invaded the Invicta mine on 14 October 2018, but I firmly believe that the State should have intervened and lifted the blockade. By that time, Parán had taken a very violent stance and had no intention of reaching an agreement with IMC. I stopped working at the company at the end of October 2018.

7 THE MINE WAS READY TO COMMENCE PRODUCTION AT THE TIME OF THE BLOCKADE

- 87 Peru explains in its Brief that, prior to commencing production, IMC had to comply with three outstanding issues:¹²⁴ (i) implement a water management system certified by the Directorate for Environmental Assessment of Natural and Productive Resources Projects (“**DEAR**” [the Spanish acronym for “*Dirección de Evaluación Ambiental para Proyectos de Recursos Naturales y Productivos*”]), (ii) obtain the MEM’s approval of the amendment to IMC’s Mine Closure Plan and (iii) pass the MEM’s final inspection, which had to confirm that the development of the mine was carried out in accordance with the 2014 Mining Plan. Peru argues that IMC would have faced difficulties to comply with these requirements, and that start of production would have suffered considerable delays.¹²⁵ I disagree for the reasons I explain below.
- 88 As I explained in Section 4 above, we built a water management system in mid-2018 to comply with the OEFA’s requirements and put to rest the Parán Community’s water contamination concerns.¹²⁶ By way of reminder, this system consisted of two ponds, the first one for sedimentation and the second one for storage. The effluent from the mine entered the first pond where it sedimented and then passed to the second

¹²⁴ Counter-Memorial, 24/03/2022, p. 148 *et seq.* (Section II.F.1.a.).

¹²⁵ Counter-Memorial, 24/03/2022, p. 146 *et seq.* (Section II.F.1.).

¹²⁶ IMC, Statement of Objections (SPA), 20/06/2018, at **Exhibit C-406**, p. 10; MINAM, Report on ITS No. 3 (SPA), 12/11/2018, at **Exhibit C-226**, p. 25.

pond, from where the effluent was pumped to the upper levels of the mine to be reused in our development works.

- 89 In June 2018, our external consultant J. Ramón del Perú S.A.C. took samples of our mine effluents and carried out laboratory tests, confirming that our effluents complied with the MPLs.¹²⁷ As I mentioned before, the ALA also conducted an inspection of the Project on 4 July 2018 where it confirmed that no mine effluents reached Parán's water sources, and thus that our system effectively ensured the reuse of all the water in our mine development works. The only outstanding issue was for our water management system to be certified by the DEAR, which we did not expect to be problematic or to take a lot of time, given the favourable results of our testing and the ALA's inspection. In my experience, even accounting for some delay, we should have been able to obtain this certification in one month, approximately. Obtaining this certification would not have represented additional costs.
- 90 In relation to the amendment of IMC's Mine Closure Plan, in my first statement I indicated that IMC should have submitted and the MEM approved such an amendment without major problems.¹²⁸ Peru criticizes my statement, saying that I did not participate in the preparation of said amendment and I have not explained the basis of my belief.¹²⁹ I stand by my statement and explain why below.
- 91 Although, as I said in my first statement, I did not directly participate in the preparation of the amendment to IMC's Mine Closure Plan (ACOMISA was our consultant in charge of these issues), I was aware of the progress both in my role as IMC's general manager and also because this was an important matter for me. I recall that ACOMISA sent us

¹²⁷ MINAM, Directorial Resolution No. 2203-2018-OEFA/DFAI (SPA), 27/09/2022, at **Exhibit C-399**, p. 16 (para. 42).

¹²⁸ Witness Statement of Julio F. Castañeda, 01/10/2021, p. 9 (para. 21).

¹²⁹ Counter-Memorial, 24/03/2022, p. 151 (para. 298).

their budget to prepare the amendment in September 2017.¹³⁰ We approved this budget shortly thereafter. When I left IMC more than a year later, in October 2018, the draft amendment of the Mine Closure Plan was ready.

- 92 In my first statement, I stated that the approval of the amendment of the Closure Plan by the MEM was one of the “outstanding issues” at the time the Blockade occurred.¹³¹ By this I did not mean that the approval of such amendment was a condition for IMC to start production, as Peru seems to interpret.¹³²
- 93 This issue is regulated in article 20.1 of Supreme Decree No. 033-2005-EM, which basically establishes that once a Mine Closure Plan is approved, it has to be updated for the first time in the following 3 years, and then subsequently every five years.¹³³ Our Mine Closure Plan was approved on 17 February 2012¹³⁴ and updated for the first time on 3 December 2015.¹³⁵ The next update was due five years thereafter, meaning, in December 2020 at the earliest. Therefore, IMC could have started production at any time before this date without having the amendment to its Closure Plan approved.
- 94 What we did have to present to start operations was the guarantee associated with the Closure Plan. This was not a problem. The updated value of the Closure Plan, approved in 2015, was USD 805,036 and the annual guarantee, on average, USD 105,000 for a period of 6

¹³⁰ ACOMISA, Proposal for Mine Closure Plan Modification (SPA), 06/09/2017, at **Exhibit C-415**.

¹³¹ Witness Statement of Julio F. Castañeda, 01/10/2021, p. 9 (para. 21).

¹³² Counter-Memorial, 24/03/2022, p. 148 (para. 292).

¹³³ Supreme Decree No. 033-2005-EM, Regulations for Mine Closure, Approved (SPA), 15/08/2005, at **Exhibit C-416**, p. 11 (Art. 20.1).

¹³⁴ MEM, Report No. 154-2012-MEM-DGAAM/LCD/MPC/RPP (SPA), 08/02/2012, at **Exhibit C-417**, p. 31.

¹³⁵ MEM, Directorial Resolution No. 467-2015/MEM-DGAAM (SPA), 03/12/2015, at **Exhibit C-418**, attached to MEM, Report No. 161-2015/MEM-DGM-DTM-PCM (SPA), 19/11/2015, at **Exhibit C-419**.

years, including VAT.¹³⁶ These values were considerably lower than those applicable under the 2012 Mine Closure Plan, where the value of the Closure Plan had been set at USD 16'519,682 and the annual guarantee at USD 2'756,089, including VAT¹³⁷ - *i.e.*, more than 26 times the annual amount of the 2015 updated guarantee.

- 95 In relation to the MEM's final inspection of the Invicta mine, Peru says that it could not be carried out in September 2018 because IMC had not submitted the mine's construction quality assurance certificate.¹³⁸ This is not correct. The MEM's final inspection could not be carried out due to the blockade.
- 96 On 6 September 2018, we informed the MEM that we had completed the preparation and development works of the mine, and requested it to schedule the final inspection to confirm that our works were consistent with the 2014 Mining Plan.¹³⁹ On 17 October 2018, we informed the MEM that the Parán Community had blocked access to the Site and thus asked to suspend the final inspection.¹⁴⁰ The MEM accepted our request for suspension and indicated that before the inspection could take place we had to present a "certificate of quality assurance of the construction and/or installations". In other words, before the date of the inspection was even scheduled, the MEM agreed to suspend it due to the Blockade and reminded us that we had to send the assurance certificate as a condition for the inspection to take place.
- 97 I am surprised at the importance Peru gives to this issue, especially since IMC sent the assurance certificate on 14 December 2018, that is to say, well before the new date set for the

¹³⁶ MEM, Report No. 161-2015/MEM-DGM-DTM-PCM (SPA), 19/11/2015, at **Exhibit C-419**

¹³⁷ MEM, Report No. 154-2012-MEM-DGAAM/LCD/MPC/RPP (SPA), 08/02/2012, at **Exhibit C-417**, p. 29 *et seq.*, attaching Directorial Resolution No. 044-2012-MEM-AAM of 17 February 2012.

¹³⁸ Counter-Memorial, 24/03/2022, p. 149 (para. 295).

¹³⁹ Letter from IMC to MEM (SPA), 06/09/2018, at **Exhibit C-81**.

¹⁴⁰ MEM Resolution (SPA), 23/10/2018, at **Exhibit C-82**, p. 1 (para. 1.7).

inspection – that is, from 23 to 25 January 2019¹⁴¹ but which could not take place due to the blockade.¹⁴² Passing the MEM inspection would not have represented additional costs for IMC.

- 98 Lastly, Peru states in its brief that IMC needed to reach an agreement with the Parán Community in order to commence production.¹⁴³ This is not correct. We wanted to reach an agreement with said Community and made persistent efforts to achieve it, but that was not a condition to moving forward with the Project. This was also the understanding of the authorities, who never requested such an agreement from us in order to commence production.

8 THE PROCESSING OF ORE FROM THE INVICTA MINE

- 99 In my first statement, I mentioned the issues we found in the offsite processing plants we were testing, in 2018, as potential options to outsource the processing of the Project's ore.¹⁴⁴ Peru refers to these issues to support its conclusion that Lupaka would not have been able to process 355 t/d¹⁴⁵ or meet its gold delivery obligations to PLI Huaura.¹⁴⁶ I disagree.
- 100 We could have overcome the issues we identified when testing the offsite processing plants – *i.e.*, Huancapeti, Coriland and San Juan Evangelista. It was a matter of refining internal procedures to avoid operational errors, repairing mechanical failures, which would not have meant incurring in delays or high costs, and something of the sort.¹⁴⁷ It should be borne in mind that we were testing these plants for the first time.

¹⁴¹ MEM, Report No. 011-2019-MEM-DGM-PM, fixing a date and inspector to carry out the final audit to enter the exploitation phase (SPA), 17/01/2019, at **Exhibit C-231**.

¹⁴² Letter from IMC to MEM (SPA), 22/01/2019, at **Exhibit C-232**.

¹⁴³ Counter-Memorial, 24/03/2022, p. 41 (para. 85).

¹⁴⁴ Witness Statement of Julio F. Castañeda, 01/10/2021, p. 30 (paras. 85-88).

¹⁴⁵ Expert Report of AlixPartners on Damages, 24/03/2022, p. 56 *et seq.* (para. 158).

¹⁴⁶ Counter-Memorial, 24/03/2022, p. 155 (paras. 307 and 766).

¹⁴⁷ IMC Management Call Notes, 24/08/2018, at **Exhibit C-420**, p. 2.

It is normal to identify some obstacles and risks at the beginning, which can be solved by further testing and adjustments until reaching optimal processing of the ore. I remember that the plant that seemed most promising to us when we carried out the tests was Huancapeti.

101 Below I discuss in more detail some of the issues we identified at the time and how we intended to address them.

8.1 The Huancapeti plant

102 When processing started at this plant, we found some technical problems such as the concentrate filters being designated for high-grade lead and zinc ore (while the IMC ore was low-grade). This lengthened the drying time of the concentrates and, thus, their delivery time, affecting cash flow. This obstacle could be solved without major problems and without incurring in high costs by making adjustments during the process, *i.e.*, in real-time. So we did and this issue was fixed soon after.¹⁴⁸ As I said before, we were in the trial stage of processing and everything could be fixed.

103 In Huancapeti it was also required to obtain a licence to purchase cyanide in the quantities necessary to process the IMC ore, a permit that had to be obtained from government authorities. The plant owner informed us that he could have this permit approved within a period of three weeks.¹⁴⁹

104 I also recall that on one occasion processing at this plant was suspended for 8 days due to a mill failure caused by a broken pinion.¹⁵⁰ I recall from my conversations at the time with Dan Kivari, Chief of Operations at IMC, that this pinion was replaced at a cost of approximately USD 5,000, after which ore processing resumed normally.

¹⁴⁸ IMC Management Call Notes, 24/08/2018, at **Exhibit C-420**.

¹⁴⁹ Internal Lupaka email chain 26/09/2018-27/09/2018, at **Exhibit C-421**.

¹⁵⁰ Internal Lupaka email chain 26/09/2018-27/09/2018, at **Exhibit C-421**.

8.2 The Coriland and San Juan Evangelista plants

105 As I explained in my first statement, the Coriland and San Juan Evangelista plants lacked an ore cyanidation treatment option in its tailings facility, which meant potentially losing recoverable gold. I also mentioned that the San Juan Evangelista plant had limited processing capacity.¹⁵¹

Cyanide-base treatment

106 When testing these offsite processing plants, the processing of the ore normally was first crushed and ground and then passed to flotation cells, which through the use of chemical reagents allows to separate the valuable material (precious metals), which floats to the surface, from the other components. This was done in different flotation circuits to recover gold, lead, zinc, etc.

107 During the flotation process, our metallurgists noted that we could be losing gold due to the mix of chemical reagents used in the process.¹⁵² In particular, they noted that we may have to add more cyanide, one of the reagents used in the flotation process which is particularly useful to recover low-quality gold such as that present in Invicta's ore, to ensure the proper separation of gold from less valuable components and its recovery in the concentrates. In practical terms, this meant that we would need to have more cyanide to use during the flotation process.

108 There were also discussions as to the possibility that we were losing gold in the tailings, which could also be recovered using cyanide. As a result, the possibility of adding an additional step to the process was considered so that the tailings pass through cyanide tanks where the gold could be recovered. In my experience, implementing this additional step was simple, low cost and does not require stopping plant operations. For example, for a 200 t/d plant such as Coriland the cost of implementing this stage

¹⁵¹ Witness Statement of Julio F. Castañeda, 01/10/2021, p. 31 (para. 88).

¹⁵² IMC Management Call Notes, 24/08/2018, at **Exhibit C-420**, p. 2.

should not exceed USD 130,000, and for a 350 t/d plant such as Huancapeti the cost should not exceed USD 250,000.

Other issues

- 109 Although San Juan Evangelista had processing capacity problems due to commitments with other mining companies, this could be solved in the short term as San Juan Evangelista's eventual suppliers could be substituted by IMC's constant production, which would give that plant continuity of treatment.
- 110 In the case of Coriland, there were also some processing problems, such as loss of fine particles and spillage in the flotation tanks due to poor operation.¹⁵³ As I said before, these problems could be solved as testing progressed and internal procedures were refined.

¹⁵³ IMC Management Call Notes, 24/08/2018, at **Exhibit C-420**, p. 2.

* * *

This second witness statement has been drafted with the assistance of LALIVE, lawyers for Lupaka Gold Corp. on the basis of several several discussions and exchanges of communications. I have carefully reviewed the statement (in the Spanish language)¹⁵⁴ and confirm that it correctly reflects my recollection of the facts described and my opinions. I am willing to appear before the Arbitral Tribunal to confirm the content of this second statement, preferably testifying orally in Spanish (my mother tongue).

[signature]

Julio Félix Castañeda Mondragón

Signed on 23 September 2022

¹⁵⁴ I understand that an English version of this witness statement has also been prepared.