

International Centre for Settlement of Investment Disputes (ICSID)

Lupaka Gold Corp.,
Claimant,

v.

Republic of Peru,
Defendant.

ICSID Case No. ARB/20/46

Witness Statement of
Soymán Román Retuerto

12 January 2023

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	CLAIMANT’S ACCUSATIONS REGARDING MY ALLEGED PARTICIPATION IN THE PROTEST OF JUNE 2018 AND IN THE OPPOSITION OF THE PARÁN COMMUNITY TOWARDS THE INVICTA PROJECT.....	2
A.	I did not participate in, instigate, or lead any opposition against the Project...	3
B.	I reject the accusations of my alleged participation in the protests of June 2018.....	5
III.	INVICTA’S SHORTCOMINGS IN THE HANDLING OF COMMUNITY RELATIONS.....	7
IV.	IT IS NOT TRUE THAT THE PARÁN COMMUNITY WAS NOT WILLING TO REACH AN AGREEMENT WITH INVICTA.....	10
V.	THE ENTRY OF THE WAR DOGS INTO THE INVICTA CAMP IN MAY 2019 SERIOUSLY AGGRAVATED THE CONFLICT BETWEEN INVICTA AND THE PARÁN COMMUNITY.....	11

I. INTRODUCTION

1. My name is Soyman Román Retuerto. I was born on 4 April 1959, in Santo Domingo de Apache, District of Leoncio Prado, in the Republic of Peru ("**Peru**"). I am a Peruvian citizen, identified by Identity Document No. 15.658.224, domiciled in Santo Domingo de Apache.
2. Between 1 January 2009 and 31 December 2012, I was president of the Rural Community of Santo Domingo de Apache. In holding that position, I participated in the negotiations concerning the agreements entered into by the company Invicta Mining Corp. S.A.C ("**Invicta**") with that community. Subsequently, from 17 March 2017 until 10 March 2022, I held the position of District Subprefect of Leoncio Prado, Province of Huaura, in the Region of Lima. As I will explain in the following sections of this witness statement, it was during my time in these positions that I became aware of the social conflict between Invicta and the Rural Parán Community regarding the Invicta I mining project (the "**Project**").
3. I am currently practicing as a dentist.
4. I am making this witness statement at the request of the Special Commission on International Investment Disputes ("**Special Commission**"), attached to the Ministry of Economy and Finance of the Republic of Peru ("**MEF**"), within the context of the international arbitration proceedings brought by the company Lupaka Gold Corp. ("**Lupaka**" or "**Claimant**") against Peru, ICSID Case No. ARB/20/46 ("**Arbitration Proceedings**"). This witness statement is based on my personal knowledge of the facts, acquired while holding the aforementioned positions.
5. I have read the parts relevant to my testimony on Claimant's Reply ("**Reply**") of 23 September 2022, [REDACTED]
[REDACTED]

actions of the members of the Parán Community on 19 June 2018, in opposition to the Project.

A. I did not participate in, instigate, or lead any opposition against the Project

10. It is not true that I initiated or participated in any way in a campaign of defamation and opposition against the Project.
11. Claimant bases its accusations on three letters I sent in January and May 2018, to various authorities (namely, PCM, MINEM and the Office of the Ombudsman) to argue that I had filed complaints with respect to the effects of contamination of the water being caused by the Project.⁴ Claimant is distorting the context and content of these letters.
12. *First*, it is normal for subprefects to inform the various authorities of the problems and concerns of the communities. That is precisely one of their duties. Subprefects act as a communication channel between the community and the government. Consequently, I had the task of listening to the daily problems of the citizens and reporting them to the competent authorities.
13. *Second*, contrary to what the Claimant states, my objective in performing my task was not to instigate opposition to the Project. On the contrary, in those letters I expressed my concern on the lack of rapprochement and collaboration between Invicta and the Parán Community, and I wanted the competent authorities to intervene in the conflict to help the parties initiate dialogue, precisely to look for a solution and avoid a social conflict between the parties.

⁴ Reply, ¶¶ 208, 230, 266. See **Ex. R-0081**, Letter No. 105-2018-DGIN-LMP-HUA from MININTER (S. Roman) to Ombudsman's Office (W. Gutiérrez), 8 May 2018; **Ex. R-0076**, Letter No. 79-2018-DGIN-LMP-HUA from MININTER (S. Roman) to President of Ministry Council (M. Aráoz), 4 January 2018.; **Ex. R-0165**, Letter No. 104-2018-DGIN-LMP-HUA from Huaura Subprefect (S. Retuerto) to MINEM (F. Ísmodes), 8 May 2018.; **Ex. C-0525**, Letter from MEM to OEFA, 28 May 2018[.]

14. As I will explain below, relations between Invicta and the Parán Community had deteriorated. From the outset, the Community had felt that the company was ignoring its concerns over the environmental risks that the Project might represent. The members of the Community insisted that, when it rained, the Community noticed a change in the color of the water that ran from Invicta, down the mountain, as far as its crops. For that reason, in January and May 2018, in my role as Subprefect, I informed the PCM, the MINEM and the Office of the Ombudsman of the situation, and I urged the authorities to deal with the concerns of the Parán Community and assist in the dialogue between the company and that Community.
15. Finally, contrary to what Claimant alleges,⁵ in the letters sent to the PCM, the MINEM and the Office of the Ombudsman, I did not affirm that the water had certainly been contaminated. That was to be decided by the competent authorities.⁶ I simply reported to the authorities the concern conveyed to me by the Community, in my capacity as Subprefect, because it was a concern which, if true, could affect the public health. The Community's concern was not a frivolous one. During a visit I made to the Project on 7 May 2018, together with officers of the Local Water Authority ("ALA"), we could see the greenish color of the water.⁷ The Community had no way of determining whether it was contaminated or not, as the company did not establish an environmental monitoring committee. Taking advantage of the presence of the ALA, I insisted on checking the mine entrance to inspect the sources of water in the mine. However, the company did not allow us to enter, arguing that they did not have

⁵ Reply, ¶¶ 208, 266.

⁶ **Ex. R-0076**, Letter No. 79-2018-DGIN-LMP-HUA from MININTER (S. Roman) to President of Ministry Council (M. Aráoz), 4 January 2018; **Ex. R-0081**, Letter No. 105-2018-DGIN-LMP-HUA from MININTER (S. Roman) to Ombudsman's Office (W. Gutiérrez), 8 May 2018; **Ex. R-0165**, Letter No. 104-2018-DGIN-LMP-HUA from Huaura Subprefect (S. Retuerto) to MINEM (F. Ísmodes), 8 May 2018.

⁷ See **Ex. R-0081**, Letter No. 105-2018-DGIN-LMP-HUA from MININTER (S. Roman) to Ombudsman's Office (W. Gutiérrez), 8 May 2018; **Ex. R-0165**, Letter No. 104-2018-DGIN-LMP-HUA from Huaura Subprefect (S. Retuerto) to MINEM (F. Ísmodes), 8 May 2018.

permits to allow us to enter the mine and that they would notify us when they did. We were surprised at that argument raised by the company representatives because, if it were true that the company had to have special permits to allow us to enter, they should have applied for them before a visit that had been scheduled in advance.⁸

16. Consequently, in the letter sent to the MINEM and to the Office of the Ombudsman in May 2018, I said that contamination “possibly” existed which would have to be assessed, and that relations between the company and the Community called for a dialogue process to avoid a social conflict.⁹
17. Thanks to these notifications, entities such as the ALA, the OEFA [Organization for Environmental Assessment and Monitoring] and the OGGS intervened to monitor the water flow and to promote dialogue to find agreements between the parties.¹⁰ I learned that, in July 2018, the ALA ordered the company to remove the solid waste storage facility, among other corrective measures.¹¹

B. I reject the accusations of my alleged participation in the protests of June 2018

18. It is not true that I participated in, and much less that I led, the protests initiated by members of the Parán Community in June 2018. These accusations made by Claimant are totally unfounded [REDACTED]

⁸ **Ex. R-0078**, Multiple Citation No. 003-2018-ANA-AAA.CF.-ALA-H/KHR from ANA (V. Pineda) to Invicta (J. Castañeda), 26 April 2018; **Ex. C-0408**, ANA, Technical Report No. 048-2018-ANA- AAA.CF.-ALA H/KHR, 13 July 2018, p. 1.

⁹ *Ver* **Ex. R-0081**, Letter No. 105-2018-DGIN-LMP-HUA from MININTER (S. Roman) to Ombudsman’s Office (W. Gutiérrez), 8 May 2018; **Ex. R-0165**, Letter No. 104-2018-DGIN-LMP-HUA from Huaura Subprefect (S. Retuerto) to MINEM (F. Ísmodes), 8 May 2018.

¹⁰ **Ex. R-0228**, Letter No. 1170-2018-MINAM/SG from MINAM (J. Valdivia) to MININTER (S. Román), 12 October 2018.

¹¹ **Ex. C-0408**, ANA, Technical Report No. 048-2018-ANA- AAA.CF.-ALA H/KHR, 13 July 2018, p. 10.

[REDACTED]

[REDACTED]

There are several reasons that confirm the falseness of this accusation.

19. *First*, my interest in this matter, in my position as Subprefect and even on a personal level, was always to help the parties reach an agreement and avoid any social conflict in the area. Proof of this is the fact that, on 15 June 2018, I informed the Regional Directorate for Energy and Mines of the intentions of members of the Parán Community to stage a protest. As I explained in that notification, the President of the Parán Community informed me that members of the Community were going to protest about the mining camp.¹³ In performing my duties as Subprefect, I notified the regional authorities for them to intervene and initiate “dialogue” to avoid a social conflict.¹⁴
20. *Second*, I could not have participated in or led the June 2018 protests since, by then, the Parán Community regarded me as a *persona no grata*. Some of its members considered that, as I was president of the Community of Santo Domingo de Apache (2009–2012), I might have some type of interest—favorable to the Community of Santo Domingo de Apache—in the mining company not signing an agreement with the Parán Community. On the day of the protest, I tried to get to the camp, to perform my duty as District Subprefect of Leoncio Prado, to try and mediate in the conflict and be able to inform the competent authorities of the evident social conflict. However, at a distance of 500 meters from the mining unit, several members of the

¹² [REDACTED]

¹³ Ex. C-0550, Letter from Leoncio Prado Subprefect (MININTER) to MEM, 15 June 2018, p. 3.

¹⁴ Ex. C-0550, Letter from Leoncio Prado Subprefect (MININTER) to MEM, 15 June 2018, p. 3.

Parán Community prevented me from going further, because they distrusted my relationship with the Community of Santo Domingo.

21. That was not the only time that the Parán Community was opposed to my participation as mediator in the conflict. I recall that, on 29 January 2019, on the first attempt of the parties to initiate dialogue, members of the Parán Community asked me to leave the convention center where the parties were meeting.
22. *Third*, proof of the falsehood of the Claimant's allegations is given by the fact that the Invicta representatives never filed any complaint or claim against me, of any kind, not even at an administrative or criminal level.

III. INVICTA'S SHORTCOMINGS IN THE HANDLING OF COMMUNITY RELATIONS

23. As I mentioned previously, my initial contact with Invicta was in the year 2009, as president of the Community of Santo Domingo, and later as Subprefect of Leoncio Prado starting in 2017. Between these stages, I observed the following conduct and attitudes from Invicta: (i) a change by the company in the handling of community relations from the time Claimant acquired the Project; (ii) the lack of interest of Claimant's community relations team in making social contributions and including the communities, particularly the Parán Community, in the Project; and (iii) Invicta's shortcomings in the handling of dialogue to resolve the disputes. I will explain these points below.
24. There was a significant and obvious change in the focus of Invicta's community relations team after Claimant acquired the Project. Before Lupaka's arrival, the former owners managed social relations with the communities very differently.

25. For example, in 2010, Invicta managed to reach an agreement with the Community of Santo Domingo. To reach that agreement, the company ensured that, within that community, we were familiar with Invicta's community relations personnel. They would even spend periods living with the community, despite the fact that the village was about 7 kilometers from the mining camp.
26. Moreover, we saw the effort that the company was making to strengthen relations with the community. They set up several good practices, such as installing a waste system, and organizing the entrance and exits from the community. They also set up two committees: the environmental committee, which organized training sessions on environmental issues; and the development committee, which created vegetable gardens and invited engineers to hold training workshops for the benefit of the community. In general, the community and the company maintained good relations until the end of 2012.
27. The arrival of Lupaka in October 2012 changed this dynamic completely. At that time, I held the position of President of the Community of Santo Domingo. Then, in my capacity as a member of the Community of Santo Domingo, I noticed that Lupaka had: (i) abandoned the committees and training sessions in the Community of Santo Domingo; and (ii) changed the community relations personnel. In September 2015, I attended an extraordinary general meeting of the Community of Santo Domingo, in my capacity as a member of that community, at which we discussed how Invicta was breaching the commitments previously made. At that general meeting, the community expressed its discontent with the change made by the company in the handling of community relations. The generalized opinion was that the new company personnel appeared not to have a clear idea of what they were doing, they did not become acquainted with the communities and they did not inform the community of progress in the various agreements.¹⁵ That situation created tension and distrust towards the company. Later, in my capacity as Subprefect, I attended meetings at which representatives of the Community of Santo Domingo insisted that the company

¹⁵ Ex. R-0229, Meeting Minutes of the Santo Domingo de Apache Community, September 2015.

was not complying with the commitments it had made in the year 2010.¹⁶ I recall that other communities in the region filed similar complaints of breach on the part of Invicta.

28. In the case of the Parán Community, Invicta had signed and defaulted on certain agreements with the Community before Claimant's arrival. With the arrival of Lupaka as the new owner of Invicta, the Parán Community expected to reach a similar agreement to the one the company had reached with the communities of Lacsanga and Santo Domingo. However, as I mentioned previously, Claimant had a different attitude. The Parán Community perceived that, far from trying to reach an agreement, the company was ignoring the Community's concerns and needs. That perception was confirmed when the company signed an agreement to build an access road to the Project through the territory of the Community of Lacsanga. From then on, it was clear to the Community that Invicta was ignoring the community closest to the Project and those who would suffer the greatest environmental and social impact.
29. The foregoing was made worse by the fact that Claimant did not show a conciliatory attitude towards resolving the conflicts. In my role as Subprefect I was able to see that Lupaka wanted quick solutions in order to begin operating the mine as soon as possible. For that reason, when the Parán Community began the road block in October 2018, it came as no surprise to me that, instead of investing the necessary time to reach an agreement with the Parán Community, the company urged the PNP to use force.
30. To conclude, as Subprefect I saw that the Parán Community perceived a clear change in the company's handling of community relations when

¹⁶ **Ex. R-0158**, Meeting Minutes, Meeting between Santo Domingo de Apache Community, OGGS, and the Leoncio Prado Subprefecture, 22 July 2018.

Claimant took the reins of the Project. This company did not initiate any dialogue nor did it try to understand the communities' needs. On the contrary, it showed little to no interest in liaising with the communities and sought quick, but not lasting, solutions to the conflicts.

IV. IT IS NOT TRUE THAT THE PARÁN COMMUNITY WAS NOT WILLING TO REACH AN AGREEMENT WITH INVICTA

31. I have read in the Reply that, according to Claimant, the Parán Community had no intention of reaching an agreement with Invicta and that, on the contrary, the Community's intention was to frustrate the Project, keeping the police away from the area, in order to protect its alleged marijuana business.¹⁷ I do not agree with this theory or speculation.
32. At no time did I hear the company allege that the Parán Community had a business in marijuana and that that was the reason for its opposition to the Project. In any event, I have no knowledge that the Parán Community has any business in marijuana. I understand that there are marijuana crops in the region. However, that does not mean that the Parán Community is the owner or that it exploits those crops, and far less that that was the reason for which the Parán Community opposed the Project and did not want to negotiate with Invicta.
33. On the contrary, from what I could see, the Community did want to reach an agreement with Claimant, and had good reasons for wanting to. Geographically, the Parán Community is situated just below the mining camp which is located at the top of the mountain. Of the three rural communities that inhabit the area, the Parán Community is the population situated closest to the Project. From a social or urban development perspective, it is reasonable and understandable for the Parán Community to have expected to be included in the development of the Project. For its

¹⁷ Reply, § 2.1.

part, at an environmental level, it was clear that that community would suffer the greatest impact in the event of any environmental damage caused by the Project. These concerns arose even before mining took place. Members of the community informed me that, during the rainy season, they could clearly see that the water that flowed down the side of the mountain had a different color. As the Parán Community is mainly an agricultural one, it had a greater concern over possible environmental damage. Consequently, the Parán Community sought to negotiate with Invicta to ensure that it was involved in the development of the Project and to obtain some type of benefit, particularly if the Project was going to harm its agriculture-centred economy.

V. THE ENTRY OF THE WAR DOGS INTO THE INVICTA CAMP IN MAY 2019 SERIOUSLY AGGRAVATED THE CONFLICT BETWEEN INVICTA AND THE PARÁN COMMUNITY

34. However, I could see that, in May 2019, after the War Dogs advanced on the camp, this was a turning point in the Parán Community's desire to negotiate. I went to the Sayán Police Station after the PNP had detained the War Dogs. The police informed me that the persons entering the camp had sophisticated weapons and appeared to be trained and instructed to shoot. In my opinion, these facts were perceived by the Parán Community to be a direct attack on the negotiating process and they sent a message to the Community to the effect that its interests would not be heeded. After the company lost the trust of the Community, it was very difficult for them to resume negotiations and reach an agreement.

* * *

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

Thursday, 12 January 2023

[Signature]

Soymán Román Retuerto