

[English Translation from Spanish Original]

International Centre for Settlement of Investment Disputes (ICSID)

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**Lupaka Gold Corp.**

*Claimant*

**v.**

**The Republic of Peru**

*Respondent*

ICSID Case No. ARB/20/46

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**Witness Statement of**

**Nilton César León Huerta**

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22 March 2022

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1. My name is Nilton César León Huerta. I was born on 1 October 1971 in the city of Chimbote in the Republic of Peru (“**Peru**”). I am a Peruvian citizen, identified by National Identity Document No. 32888595, residing at López de Ayala No. 778, District of San Borja, Lima, Peru.
2. Since 9 November 2017, I have been a Social Specialist for the Center Region at the Office for Dialogue and Citizen Participation (“**Social Specialist**”), ascribed to the General Office of Social Management (“**OGGS**” [*Oficina General de Gestion Social*]) of the Ministry of Energy and Mines of Peru (“**MINEM**” [*Ministerio de Enegia y Minas*]). My duties include the management of social conflicts and citizen participation processes arising in the projects in the Energy and Mining Sector.<sup>1</sup>
3. As I state in the following sections of this witness statement, I was the Social Specialist responsible for establishing dialogue tables and for promoting negotiation in the social and environmental conflict arising between the Parán Community and the company Invicta Mining Corp S.A.C. (“**Invicta**”) regarding the Invicta I mining project (the “**Project**”).
4. I submit this witness statement at the request of the Special Commission that represents the State in International Investment Disputes (“**Special Commission**”) ascribed to the Ministry of Economy and Finance of Peru (“**MEF**” [*Ministerio de Economia y Finanzas*]), within the context of the international arbitration initiated by the company Lupaka Gold Corp. (“**Lupaka**” or “**Claimant**”) against Peru, ICSID Case No. ARB/20/46 (“**Arbitration**”). This witness statement is based on my personal knowledge of the facts, acquired while holding the office identified in the paragraphs above.

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<sup>1</sup> **Ex. R-0012**, Supreme Decree No. 021-2018-EM, 18 August 2018, Art. 2 (“The Energy and Mining Sector includes all public entities at the three levels of government and private entities carrying out activities associated with compliance with the national policies on matters specific to the field of competence established in this law”).

5. I have read the parts that are relevant to my testimony of Claimant's Memorial filed by Claimant on 1 October 2021 ("**Memorial**"), as well as the witness statement of Luis Felipe Bravo García dated 1 October 2021. I have also consulted some additional documents from the MINEM and other sources.
6. The lawyers of Peru's defense team have assisted me in preparing this witness statement. I confirm that this witness statement faithfully and correctly reflects my personal knowledge and account of the relevant facts and events.
7. This witness statement was prepared in Spanish. If I am called to testify at the hearing in this Arbitration, I reserve the right to testify in that language.

#### **I. PROFESSIONAL CAREER**

8. I graduated from the Faculty of Law and Legal Sciences of the Universidad Nacional Hermilio Valdizán in 1996. I was admitted to the practice of law in January 2002. I have over 20 years of professional experience, including several positions in the public sector, in addition to my position at the OGGs.
9. I was Head of the District Register of Convictions of the High Court of Justice of Santa, Chimbote (from July 1997 to September 1999); Judicial Assistant at the Third Specialist Criminal Court of the High Court of Justice of Santa, Chimbote (from October to December 1999); a self-employed litigation attorney after fulfilling the requirements to be called to the Bar (from January 2002 to January 2006); External Legal Advisor to the Huacayo Municipal Water and Sewerage Company [*Empresa de Servicio de Agua Potable y Alcantarillado Municipal Huancayo S.A.*] (from February to December 2006); Registrar at the High Court of Justice of Junín (from May 2007 to March 2008); Reporting Assistant at the Second Decentralized Mixed Chamber of the High Court of Justice of Junín (from April to December 2008); Registrar for the Judicial District of Cañete (from May to June 2009); Legal Advisor to the Water and Sewerage Provision Company of Cañete [*Empresa Prestadora de Servicios de Agua Potable y Alcantarillado-EMAPA Cañete S.A.*] (from July to December 2009);

Legal Assistant to the Infrastructure Manager's Office of the Regional Government of Pasco (from November 2012 to April 2013); Legal Advisor to the Association of Engineers of Peru [*Colegio de Ingenieros del Perú*] (from November to December 2013); Legal Consultancy Manager of the Provincial Municipality of Marañón (from January to December 2014); and Legal Auditor in the Huaraz Regional Comptroller's Office (from January 2015 to November 2017).

10. Since I joined the OGGs in November 2017, I have always been in contact with rural communities and their social conflicts. I have assisted in prior consultation processes [*consulta previa*], promoting dialogue between the projects in the energy and mining sector and the communities impacted by these projects. I have also participated in mediation and negotiation processes to resolve social conflicts in that sector, including the negotiation processes between the *Unidad Minera Raura* (in the Province of Lauricocha) and the *Caserío* of Antacallanca; and between the *Empresa Minera Nexa Resources El Porvenir* and the San Juan de Milpo Rural Community (in the Department of Pasco).

## **II. MY PARTICIPATION IN AND KNOWLEDGE OF THE CONFLICT ARISING BETWEEN THE PARÁN COMMUNITY AND INVICTA**

### **A. My role within the OGGs of MINEM in this conflict**

11. The main function of the OGGs is to promote and strengthen harmonious relations between all actors in the Energy and Mining Sector.<sup>2</sup> In addition, the OGGs is responsible for proposing mechanisms for improving relations between these participants, including relations between the mining companies and the rural communities.<sup>3</sup> The OGGs is also responsible for monitoring, mediation and accompaniment in social conflicts arising in the Energy and Mining Sector.<sup>4</sup>

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<sup>2</sup> Ex. R-0012, Supreme Decree No. 021-2018-EM, 18 August 2018, Art. 50.

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

<sup>4</sup> Ex. R-0012, Supreme Decree No. 021-2018-EM, 18 August 2018, Art. 51(b), Art. 51(f).

12. As Social Specialist, I provided support and monitored the conflict arising between Invicta and the Parán Community. My duties, in accordance with article 51-B of Supreme Decree 021-2018-EM,<sup>5</sup> consisted in promoting, dealing with, participating in and implementing processes and mechanisms for dialogue, mediation and negotiation so that Invicta and the Parán Community could resolve the conflict. In accordance with the OGGs's internal policy, I facilitated and coordinated the creation of opportunities for dialogue between Invicta and the Parán Community. During this process, I participated in joint sessions with the parties and I met with each party separately. Those measures aimed to favor a climate of social peace and to reach a solution beneficial to both parties.
13. In order to mediate in the conflict, I travelled from Lima to the cities of Sayán and Huacho, and to the territory of the Parán Community, to attend the meetings planned in the region. I also visited the Project area; which was connected to Lima by a single-track, unpaved and steeply sloping road of over 27 kilometers, which took 4 hours to traverse. I made those trips on at least 20 occasions, sometimes in with other Social Specialists (such as Mr. Víctor Vargas and Mr. Daniel Amaro).
14. This even occurred during weekends and public holidays because those were the days on which the Parán Community held its meetings, so we knew that it was the best time to acquire first-hand knowledge of the situation and to talk to the Community members. The OGGs also provided the necessary logistics for us to travel and go to their area.
15. My direct supervisor in this matter was Mr. César Ulloa, Coordinator for the Central Region. Above him, I also reported to Mr. Fernando Trigo and later to Mr. Miguel Kuzma, Directors of the OGGs. These were the people whom I informed of the status of the conflict between the parties, and of the progress in the negotiations in order to decide on the next steps to follow in each instance.

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<sup>5</sup> Ex. R-0012, Supreme Decree No. 021-2018-EM, 18 August 2018, Art. 51-B.

16. Throughout the negotiation process, the OGGs acted in coordination with other entities and bodies of Peru whose functions could be involved. These included, among others, the Presidency of the Council of Ministers (“PCM” [*Presidencia del Consejo de Ministros*]), the Ombudsman’s Office, the Ministry of Interior (“MININTER” [*Ministerio del Interior*]), the National Water Authority (“ANA” [*Autoridad Nacional de Agua*]), the Supervision and Environmental Assessment Organization (“OEFA” [*Organismo de Evaluación y Fiscalización Ambiental*]) and the Provincial Subprefecture of Huaura. We also had the presence of the Peruvian National Police (“PNP” [*Policía Nacional del Perú*]) during the last two meetings that we held in the city of Sayán to provide security.
17. Throughout the four years in which I have held my position in the OGGs and worked as specialist in community relations, this is the first case in which the mining company and the rural community have failed to resolve the conflict amicably.

(i) *The OGGs’s intervention between June and October 2018*

18. I became aware of the possible emergence of social conflicts with the commencement of the Project during the months of June and July 2018. Those conflicts concerned the Santo Domingo de Apache and the Parán Communities.
19. Firstly, towards the end of June 2018, the Sub-prefect of the District of Leoncio Prado of the Province of Huaura sent me a letter that Invicta had sent to the Santo Domingo de Apache Community.<sup>6</sup> In this letter, Invicta enclosed an addendum to the agreement signed with that community, which generated controversy between the two parties.<sup>7</sup> I held meetings with the Santo Domingo de Apache Community towards the end of July and August 2018, in which they showed their discontent

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<sup>6</sup> Ex. R-0156, Letter from Invicta Mining Corp. S.A.C. (D. Kivari) to the Community of Santo Domingo de Apache (O. Claros), 6 July 2018.

<sup>7</sup> Ex. R-0156, Letter from Invicta Mining Corp. S.A.C. (D. Kivari) to the Community of Santo Domingo de Apache (O. Claros), 6 July 2018, pp. 2–3.

because they considered that Invicta was defaulting on the framework agreement signed with this community.<sup>8</sup> During those meetings, we urged the Santo Domingo de Apache Community to establish dialogue tables with Invicta to resolve their differences.<sup>9</sup>

20. At the same time, the OGGs was informed of the conflict between Invicta and the Parán Community and I was assigned to this matter at the beginning of July 2018. At the time I acknowledged that part of the issues giving rise to the discontent of the Parán Community related to environmental concerns.<sup>10</sup>
21. I met members of the Parán Community in their territory on several occasions to encourage them to agree to commence negotiations and dialogue with Invicta.
22. The first meeting with the leaders of the Parán Community was on 11 August 2018. The Parán Community expressed their environmental, social and economic concerns in connection with the Project.<sup>11</sup> They conveyed their impression that Invicta had avoided them in negotiations with the communities declared to be in the area of direct social influence of the Project. They explained that Invicta had signed an agreement with the Lacsanga Community to build a road in their territory to access the Project. Once that contract had been signed with the Lacsanga Community, Invicta had not returned to the Parán Community to reach an agreement concerning the Project's social impact. They also indicated that Invicta had commenced mining activities that could be affecting the environment

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<sup>8</sup> **Ex. R-0158**, Meeting Minutes, Meeting between the Community of Santo Domingo de Apache, OGGs, and the Subprefecture of Leoncio Prado, 22 July 2018; **Ex. R-0159**, Meeting Minutes, Meeting between the Community of Santo Domingo de Apache, OGGs, and the Subprefecture of Leoncio Prado, 24 August 2018.

<sup>9</sup> **Ex. R-0158**, Meeting Minutes, Meeting between the Community of Santo Domingo de Apache, OGGs, and the Subprefecture of Leoncio Prado, 22 July 2018; **Ex. R-0159**, Meeting Minutes, Meeting between the Community of Santo Domingo de Apache, OGGs, and the Subprefecture of Leoncio Prado, 24 August 2018.

<sup>10</sup> **Ex. R-0165**, Official Letter No. 104-2018-DGIN-LMP-HUA from the Sub-prefect of Huaura (S. Retuerto) to MINEM (F. Ismodes), 8 May 2018.

<sup>11</sup> **Ex. R-0065**, Meeting Minutes, Meeting between the Parán Community and MINEM, 11 August 2019.

(specifically, the sources of water in the Project's area of influence). They informed that their community was dedicated to agricultural activities and, when it rained, contaminated water flowed from the mine towards their territory. The Parán Community asked the OGGs to carry out an inspection of the Project to assess its status, with the participation of the OGGs and the Supervision and Environmental Assessment Organization ("OEFA" [*Organismo de Evaluación y Fiscalización Ambiental*]).<sup>12</sup> They also complained that Invicta had not created a good relationship with the Parán Community nor provided work for its members.

23. A few days later, on 22 August 2018, I held another meeting with the Parán Community to convince them to dialogue with Invicta and thus deal with their concerns and requests.<sup>13</sup>
24. On 10 October 2018, we received a letter from the Parán Community in which they reiterated the concerns raised at the meeting on 11 August 2018.<sup>14</sup> The Parán Community also stated that their members were impatient with the situation and that this could potentially cause a social conflict "as [Invicta] was a totally irresponsible company [sic] with regard to the social aspect."<sup>15</sup>

(ii) *The OGGs's intervention since 14 October 2018*

25. On 16 October 2018, we received a letter from Invicta. In that letter, we were informed that, on 14 October 2018, the Parán Community had commenced a protest that blocked the access road to the Project.<sup>16</sup>

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<sup>12</sup> Ex. R-0065, Meeting Minutes, Meeting between the Parán Community and MINEM, 11 August 2019, p. 2.

<sup>13</sup> Ex. R-0066, Meeting Minutes, Meeting between the Parán Community and MINEM, 22 August 2018.

<sup>14</sup> Ex. C-0163, Letter from the Parán Community (I. Palomares) to the MINEM (F. Ismodes), 10 October 2018, p. 1.

<sup>15</sup> Ex. C-0163, Letter from the Parán Community (I. Palomares) to MINEM (F. Ismodes), 10 October 2018, p. 2.

<sup>16</sup> Ex. C-0171, Letter from Invicta Mining Corp. S.A.C. (J. Castañeda) to MINEM (F. Castillo), 15 October 2018.

26. In response to the situation, we arrived to the area on 21 October 2018 to initiate conversations with both parties. We urged the Parán Community to remove the blockade and, through dialogue, resolve their differences with Invicta. We stayed in Sayán for two days to continue these conversations. I recall that the Parán Community said that they would initiate a dialogue if Invicta agreed to access the Project through its territory. Invicta mentioned that it had already decided to use the access route through the Lacsanga Community and that it was costly and unnecessary to change that route.
27. Once again, on 24 October 2018, the OGGs representatives visited the Parán Community in order to convince them to initiate a dialogue table, but the parties failed to reach an agreement.
28. I recall that, during November 2018, I mediated at least three meetings between the Parán Community and Invicta. I also recall that representatives that attended the meetings on Invicta's behalf mentioned that they formed part of its community relations team. I took part in those meetings to explain the benefits of setting up a dialogue table and of reaching an agreement through cooperation and mediation. During all these meetings, we urged the Parán Community to remove the blockade and insisted that dialogue should not take place while the blockade remained in place. I recall repeating to the Parán Community that Invicta was obtaining permits to commence mining and had to continue with its investment plan.
29. It was difficult to establish the dialogue table, as the parties remained in very distant positions and neither was willing to yield in their position. I recall that the attitude of Invicta's team was unfriendly towards the Parán Community. I felt that they always remained very inflexible in their position and distant, without making any attempts to establish better relations with the Community members. When the meetings ended, for example, I did not see them approach the Community members in a more informal environment, or talk to them about other things to establish a more harmonious relationship. The option of chatting informally when

the meetings are over is a simple, but effective, way of improving relations. That did not happen in this case. As OGGs representatives, we did the time after the meetings to talk to the Parán Community and urge them to remove their blockade. However, Invicta's position caused them a great deal of discontent.

30. At the OGGs we managed to call for a further meeting between Invicta and the Parán Community on 21 November 2018, which was also attended by representatives of the Ombudsman's Office.<sup>17</sup> The purpose of the meeting was, once again, to formally install a dialogue table, verifying the representatives of each party that would participate in the dialogue table, and discuss the removal of the blockade on the access road.<sup>18</sup> The Dialogue Table was not established because the representatives of Invicta and the Parán Community did not have the proper documents confirming them as representatives of each party.<sup>19</sup> Among the agreements reached, the Parán Community undertook to hold an extraordinary meeting on 1 December 2018, at which they would vote on ending the protest and would inform the OGGs of their decision.<sup>20</sup> It was also agreed that Invicta would maintain its willingness to negotiate.<sup>21</sup>
31. On 3 December 2018, the President of the Parán Community informed me by telephone that at the extraordinary meeting they had voted to maintain their protest measure. During December 2018, I met the representatives of the Parán Community again to promote dialogue and the establishment of a dialogue table. The Parán Community insisted that they would only participate in the dialogue

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<sup>17</sup> **Ex. R-0161**, Attendance List to the meeting between the Parán Community and Invicta Mining Corp. S.A.C., 21 November 2018.

<sup>18</sup> **Ex. C-0242**, Meeting Minutes, Meeting between Invicta Mining Corp. S.A.C. and the Parán Community, 21 November 2018.

<sup>19</sup> **Ex. C-0242**, Meeting Minutes, Meeting between Invicta Mining Corp. S.A.C. and the Parán Community, 21 November 2018.

<sup>20</sup> **Ex. C-0242**, Meeting Minutes, Meeting between Invicta Mining Corp. S.A.C. and the Parán Community, 21 November 2018.

<sup>21</sup> **Ex. C-0242**, Meeting Minutes, Meeting between Invicta Mining Corp. S.A.C. and the Parán Community, 21 November 2018.

tables if Invicta (i) changed the access route to the Project to the road in Parán; and (ii) compensated for the environmental harm it had caused.

32. On 5 January 2019, after the OGGs insisted that the Parán Community consider the possibility of negotiating, the Community voted in favor of the proposal to install a dialogue table with Invicta. On 15 January 2019, we received a letter from the President of the Parán Community informing us of this decision.<sup>22</sup> We immediately took action at the OGGs to facilitate dialogue between Invicta and the Parán Community, agreeing to a meeting on 29 January 2019.
33. On 25 January 2019, I convened a meeting to prepare the dialogue table with Invicta's representatives at the MINEM offices. From then on, Mr. Luis F. Bravo, Invicta's general manager, became the company's main representative at the scheduled meetings and with whom I had direct contact.
34. Mr. Bravo agreed to participate in the dialogue table. He informed the OGGs representatives that Invicta was willing to negotiate. However, he told us that negotiations should not substitute or suspend the execution of a police operational plan to forcibly remove the Community members who were blocking the access road to the Project. At that time and whenever Mr. Bravo suggested the use of force as a means of dealing with the protest, I personally told him that it was not a viable option for the OGGs. I explained to him that dialogue was the means authorized and promoted by the OGGs and that requesting police action would not contribute to that purpose. I also indicated that police support would not guarantee the settlement of the conflict in the long term.
35. On 29 January 2019, we arranged a new meeting between the Parán Community and Invicta in order to establish a dialogue table.<sup>23</sup> It was not possible to establish

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<sup>22</sup> **Ex. R-0104**, Official Letter No. 001 from the Parán Community (A. Torres) to MINEM (F. Ismodes), 15 January 2019.

<sup>23</sup> **Ex. R-0157**, Meeting Minutes, Meeting between Invicta Mining Corp. S.A.C. and the Parán Community, 29 January 2019.

it then either. Once again, we insisted that the Parán Community remove their blockade to be able to continue with dialogue. Invicta demanded that the Parán Community remove the blockade immediately and unconditionally.

36. After the meeting on 29 January 2019, we learned that, from the time the protest had been installed and parallel with the negotiations, Invicta had contacted MININTER officers, including officers of the General Office of Public Order (“**DGOP**” [*Dirección General de Orden Público*]), requesting police intervention to remove the Community members involved in the protest. At the OGGs, we were concerned that this course of action would only make the conflict worse. I recall informing Mr. Bravo that his position was contradictory and showed a lack of good faith in the negotiations.
37. At the beginning of February 2019, I met the leaders of the Parán Community in their territory once again, to convince them to agree to install a dialogue table. I managed to have them agree to have their requests (that is, to have the access road to the Project through their territory and for them to receive compensation for the environmental damage) dealt as part of the dialogue table and not prior to its installation, as they had previously requested.<sup>24</sup> The OGGs representatives relayed this progress to Invicta’s representatives, who finally agreed to install the Dialogue Table, while insisting that the PNP participate.
38. On 12 February 2019, I met the president of the Parán Community to inform him that Invicta had agreed to install a dialogue table and to include the Community’s requirements on the agenda for the meeting.
39. Later, Mr. Trigoso exchanged letters with the Parán Community, in which it was agreed to formally install the dialogue table on 26 February 2019.<sup>25</sup> Mr. Trigoso

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<sup>24</sup> See ¶ 31.

<sup>25</sup> **Ex. R-0013**, Official Letter No. 004 from the Parán Community (A. Torres) to MINEM (F. Ismodes), 12 February 2019; **Ex. C-0191**, Official Letter No. 0028-2019-MEM/OGGS/OGDPC from MINEM (F. Trigoso) to the Parán Community (A. Torres), 18 February 2019; **Ex. C-0198**,

was clear in reminding the Parán Community of the OGGs's duties, informing them that they had to approach the negotiations with a conciliatory spirit, urging them to remove the blockade and emphasizing that the parties to the conflict had to work to reach an agreement.<sup>26</sup> He also stated that the OGGs was willing to facilitate and mediate in the negotiations as it had done until then, informing them that they could liaise with me to that effect.<sup>27</sup>

40. In accordance with Mr. Trigoso's reply to the Parán Community and through the OGGs's coordination, a further meeting was convened for 26 February 2019. On that occasion, Mr. Ulloa, Mr. Vargas and I attended as OGGs representatives, being responsible for leading and mediating at the meeting. Mr. Trigoso attended the opening of the dialogue table. The dialogue table was finally established and the Parán Community and the Invicta representatives managed to reach an agreement (the "**26 February Agreement**").<sup>28</sup> As indicated in the meeting minutes, the Parán Community and Invicta agreed as follows:

#### AGREEMENTS

1. The parties agree to formally declare the establishment of the dialogue process between the Rural Community of Parán and the mining company Invicta Mining Corp. Ltd., with the involvement of the General Office of Social Management of the Ministry of Energy and Mines.
2. The Rural Community of Parán will submit the amount, the name and the supporting documents of its representatives to the established dialogue process at the next meeting.

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

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

<sup>27</sup> **Ex. C-0191**, Official Letter No. 0028-2019-MEM/OGGS/OGDPC from MINEM (F. Trigoso) to the Parán Community (A. Torres), 18 February 2019, p. 2.

<sup>28</sup> **Ex. C-0200**, Meeting Minutes, Meeting between the Parán Community, Invicta Mining Corp. S.A.C. and MINEM, 26 February 2019.

3. The mining company Invicta Mining Corp. Ltd. will submit the amount, the name and the supporting documents of its representatives to the established dialogue process at the next meeting.
  4. The Invicta mining company, together with the Rural Community of Parán, will identify and locate the affected land (Rural Community of Parán) through a topographic survey; such survey will take place on 20 March 2019.
  5. The parties agree that the Rural Community of Parán will suspend all coercive measures as of this date, which will be ratified by the Community Assembly on 2 March 2019. The RURAL COMMUNITY OF PARÁN guarantees the development of the activities of the mining company through the access road of the Parán Community as of the signing of [these] minutes, guaranteeing social peace with the company.<sup>29</sup>
41. The installation of the Dialogue Table and the 26 February Agreement represented a great achievement for the OGGS and meant progress in the resolution of the social conflict between the Parán Community and Invicta.
  42. Following the 26 February Agreement, on 2 March 2019 I attended a community meeting of the Parán Community and witnessed that the Community agreed to remove the protest.
  43. Despite the progress made, during March 2019 both parties accused each other of defaulting on the commitments made on 26 February 2019. Invicta alleged that the Parán Community had not cleared the access road to the Project and was demanding the payment of very high fees for the surveyor to undertake the topographical survey agreed upon.<sup>30</sup> For its part, the Parán Community

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<sup>29</sup> **Ex. C-0200**, Meeting Minutes, Meeting between the Parán Community, Invicta Mining Corp. S.A.C. and MINEM, 26 February 2019.

<sup>30</sup> **Ex. C-0201**, Letter from Invicta Mining Corp. S.A.C. (L. Bravo) to MINEM (F. Trigos, *et al.*), 28 February 2019, p. 1.

maintained that Invicta had not honored the commitments made to verify the damage caused to the territory of the Parán Community.<sup>31</sup>

44. Once again, the OGGs intervened to cooperate so that the parties could settle their differences. The first thing we did was to gather information on the nature of their disagreements. During March 2019, I travelled to Sayán and I could confirm that the Parán Community had honored the commitments they had made. Specifically, I found that the Parán Community had complied with authorizing entry to the Project through the access road in the Parán Community.<sup>32</sup> Invicta told me this was not enough, as they hoped to obtain access via the access road through the territory of the Lacsanga Community as well, despite having agreed to something different in the 26 February Agreement.
45. I also witnessed that Invicta had not sufficiently cooperated with the topographical survey.<sup>33</sup> Invicta refused to pay the sum of 35,000 soles (approximately USD 9,000) to the surveyor to perform the survey. The President of the Parán Community informed me by telephone that, due to the discrepancies on this point, the visit with the presence of the surveyor scheduled for 20 March 2019 had not taken place and the Parán Community decided to reestablish their protest on that same day.
46. I have seen that, according to an internal Invicta email, Mr. Bravo mentions he informed me and Mr. Ulloa on 7 March 2019 that the Parán Community had destroyed and damaged Project equipment.<sup>34</sup> I do not recall such call. I can confirm, however, that the competencies of the OGGs with regard to this alleged

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<sup>31</sup> **Ex. R-0026**, Official Letter No. 006-2019-CCP from the Parán Community (A. Torres) to MINEM (F. Ismodes), 21 March 2019.

<sup>32</sup> *See Ex. C-0200*, Meeting Minutes, Meeting between the Parán Community, Invicta Mining Corp. S.A.C. and MINEM, 26 February 2019, p. 1.

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

<sup>34</sup> **Ex. C-0204**, Letters between L. Bravo and W. Ansley, Lupaka Gold Corp., 6 March 2019–7 March 2019, p. 1.

fact was and is very limited. The OGGs does not have any power to conduct a criminal investigation to verify these facts. What Invicta should have done was to follow the appropriate judicial channels that would have enabled it to file a formal complaint in that respect.

47. On 26 March 2020, we scheduled another meeting with the Parán Community at MINEM's offices in Lima, after this Community asked us to do so by formal letter.<sup>35</sup> Ms. Evelyn Tello, representative of the General Office of Public Order of the MININTER, also attended that meeting. The Parán Community informed us that Invicta had defaulted on the 26 February Agreement, as they had refused to perform the topographical survey. The Parán Community also requested that additional authorities attend future meetings, such as the PCM and the Ombudsman's Office. As OGGs representative, I expressly asked the Parán Community once again to remove the blockade, a request that was supported by Ms. Tello. We also asked them to resume dialogue with Invicta. I recall that, on that occasion, the Parán Community appeared to be very surprised at the company's default, and told us that they felt that the OGGs appeared to favor Invicta and to agree with its default. Our efforts at that meeting consisted in explaining that the OGGs did not favor either party, but that it was mediating so that an agreement could be reached.
48. On 28 March 2019, I called for a further meeting at MINEM's offices in Lima between representatives of the OGGs, MININTER, Invicta and the Canadian Embassy, without the presence of the Parán Community. At that meeting, Invicta's representatives stated that they would not dialogue with the Parán Community while the blockade on Project's access road remained and they reiterated that they hoped that the PNP would intervene with a police contingent to clear the road. During that meeting, as representative of the OGGs, I renewed our commitment

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<sup>35</sup> **Ex. R-0112**, List of Attendees, OGGs Meeting, 26 March 2019; *see* **Ex. R-0026**, Official Letter No. 006-2019-CCP from the Parán Community (A. Torres) to MINEM (F. Ismodes), 21 March 2019.

to facilitate a peaceful solution, through the dialogue table formally established on 26 February 2019, and by participating at the next meeting.

49. In order to continue with the dialogue table and discuss the disagreements over the implementation of the 26 February Agreement, and in spite of the existing animosity, I succeeded at convening a follow-up meeting on 1 April 2019. However, Invicta decided not to participate in that meeting, according to the letter which we received that day on 1 April.<sup>36</sup> During the meeting held on 1 April 2019, the representatives of the Parán Community said they considered Invicta's decision not to participate in the dialogue table as a matter of grave concern, which further demonstrated Invicta's lack of willingness to negotiate.<sup>37</sup> Invicta's absence also led the Parán Community to say that it would request the final closure of the Project.<sup>38</sup> This resulted in the OGGs having to convince the Parán Community to agree to resume dialogue during the weeks following that meeting.
50. On 6 May 2019, we received at the MINEM another letter from the President of the Parán Community requesting a meeting to discuss Invicta's default on the 26 February Agreement.<sup>39</sup> In particular, the President of the Parán Community noted that, in his opinion, Invicta had defaulted on the agreement to participate in the topographical survey that was to take place on 20 March 2019. He also highlighted Invicta's failure to attend the 1 April 2019 meeting.<sup>40</sup>
51. On 20 May 2019, the OGGs representatives, alongside other public entities of Peru (MININTER and Ombudsman's Office) met the Parán Community and sought to

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<sup>36</sup> **Ex. C-0209**, Letter from Invicta Mining Corp. S.A.C. (L. Bravo) to MINEM (Vice Minister), 29 March 2019.

<sup>37</sup> **Ex. R-0114**, Meeting Minutes, Meeting between the Parán Community, OGGs, MININTER, and Sayán Police Station, 1 April 2019.

<sup>38</sup> **Ex. R-0114**, Meeting Minutes, Meeting between the Parán Community, OGGs, MININTER, and Sayán Police Station, 1 April 2019.

<sup>39</sup> **Ex. R-0111**, Official Letter No. 010-2019-CCP from the Parán Community (A. Torres) to MINEM (F. Ismodes), 6 May 2019.

<sup>40</sup> **Ex. R-0111**, Official Letter No. 010-2019-CCP from the Parán Community (A. Torres) to MINEM (F. Ismodes), 6 May 2019.

get the latter to agree to resume dialogue. At that meeting, we urged the Parán Community to reconsider its request to close the mine site and to consider resuming the dialogue process. However, [the Parán Community] reiterated its discontent with Invicta. During that meeting its members also informed us that on 14 May 2019, around 50 private security agents hired by Invicta had approached the protest site with firearms, threatening and attacking the Community members in an attempt to remove them from the access road through the Lacsanga Community. The Parán Community appeared to be seriously vexed by this attack, insisting that it had considerably worsened the social conflict. The Parán Community were then sternly refusing to remove their protest while insisting that they would request the closure of the Project. They informed us that their communal assembly had decided that they no longer wanted to participate in further negotiations. The altercation caused by the private security company employed by Invicta brought the conflict to a crisis point.

52. In any event, on 27 May 2019 I coordinated a meeting at the MINEM with Invicta's representative, Mr. Bravo, and the representatives of several Government bodies (the PCM, MININTER and Ombudsman's Office).<sup>41</sup> The purpose of this meeting was to discuss with Mr. Bravo the status of the conflict and the company's position. In particular, I recall that the Government representatives inquired about the confrontation caused by the private security company acting against the Community members involved in the blockade, as we were aware that this event had hampered the negotiation process with the Parán Community, and that Invicta would need to agree to resume dialogue while making a good faith gesture in order to get the Parán Community to agree to negotiate. The Parán Community even suggested that Invicta change its community relations team. On suggesting that option to Invicta, I recall that they did not agree, although they recognized

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<sup>41</sup> Ex. R-0160, Attendance List of the Meeting between the Parán Community and Invicta Mining Corp. S.A.C., 27 May 2019.

that they had rather few employees at that time. I also recall that, during that meeting, Mr. Bravo once again insisted on his request for police intervention to end the protest. We told him, once again, that police intervention was not an option and that dialogue would have to continue as a means of finding a peaceful and long-term solution.

53. On 19 June 2019, Mr. Kuzma, as Director of the OGGs, summoned the Parán Community and the Invicta representatives to a meeting scheduled for 21 June 2019, in order to continue the process of dialogue.<sup>42</sup> In its notice, the OGGs highlighted that the importance and purpose of the dialogue process was to resolve the conflict peacefully.<sup>43</sup> That meeting was postponed to 2 July 2019.<sup>44</sup>
54. Mr. Kuzma, Mr. Ulloa and I participated as representatives of the OGGs at the meeting held at the MINEM on 2 July 2019.<sup>45</sup> Representatives of the MININTER, PCM and Ombudsman's Office also joined. Despite Invicta's insistence, I recall that the Government representatives said that we would continue to encourage dialogue and that the intervention of the use of force was not an option. At that time, it was clear that for Mr. Bravo, the only satisfactory response was that the police intervene using force. After that meeting, Invicta did not make any further approach to the OGGs to resume dialogue with the Parán Community.
55. On 8 July 2019, the OGGs organized another meeting with the Parán Community, similar to the one held with Invicta on 2 July 2019.<sup>46</sup> At that meeting, the Parán Community insisted on their request that the Project be closed, merely agreeing to

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<sup>42</sup> **Ex. C-0220**, Letter No. 033-2019-MINEN/OGGS/OGDPC from MINEM (M. Kuzma) to the Parán Community (A. Torres), 19 June 2019.

<sup>43</sup> **Ex. C-0220**, Letter No. 033-2019-MINEN/OGGS/OGDPC from MINEM (M. Kuzma) to the Parán Community (A. Torres), 19 June 2019.

<sup>44</sup> **Ex. R-0105**, Letter from Invicta Mining Corp. S.A.C. (L. Bravo) to MINEM (M. Kuzma), 21 June 2019, p. 1.

<sup>45</sup> **Ex. R-0137**, Attendance List to the meeting between the Parán Community and Invicta Mining Corp. S.A.C., 2 July 2019.

<sup>46</sup> **Ex. R-0109**, Reference Summary of Ombudsman's Office Report No. 177 on Social Conflicts, June 2021, p. 4.

submit to its communal assembly the conditions for resuming dialogue with Invicta.<sup>47</sup> Later, we learned that at the meeting held on 3 August 2019 the Community had confirmed its decision to request the closure of the Project.<sup>48</sup>

56. Despite this Community's decision, on 25 August 2019 I went to the Parán Community's territory to speak to its president and persuade him to resume dialogue with Invicta. That conversation proved to be satisfactory, as on 9 September 2019 MINEM received a letter from the Parán Community indicating the latter's willingness to attend a meeting in the city of Sayán on 13 September 2019.<sup>49</sup> By then, some time had passed without having been contacted by Invicta and we had not received any indication of further intentions to resume dialogue on their part. Unfortunately, the Parán Community maintained its position and did not remove the blockade on the Project's access road.

**B. The 26 February 2019 Agreement and the impossibility for Invicta and the Parán Community to implement the commitments made**

57. As I mentioned in the previous section, I participated in the meeting on 26 February 2019, at which the 26 February Agreement was signed. I was also present at the Parán Community Assembly of 2 March 2019 in which they ratified their decision to remove the protest from the Parán Community access road.
58. The 26 February Agreement contained the following main undertakings: the Parán Community and Invicta agreed (i) to perform a topographical survey on 20 March 2019 in the territory of the Parán Community to determine what land was impacted; and (ii) to remove the protest as from that date, with subsequent

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<sup>47</sup> Ex. R-0109, Reference Summary of Ombudsman's Office Report No. 177 on Social Conflicts, June 2021 p. 4.

<sup>48</sup> Ex. R-0109, Reference Summary of Ombudsman's Office Report No. 177 on Social Conflicts, June 2021, p. 4.

<sup>49</sup> Ex. R-0107, Letter No. 017-2019-CCP from the Parán Community (A. Torres) to MINEM, 10 September 2019.

ratification at the Community meeting on 2 March 2019, allowing Invicta employees access to the Project through the Parán Community access road.<sup>50</sup>

59. When the meeting ended, the understanding of all participants was that, by signing the minutes, all the parties were aware of the scope of the 26 February Agreement. In particular, both the Parán Community and Invicta recognized the undertakings that the other party had acquired.
60. The meeting minutes was signed by Mr. Vargas and by me, on behalf of the OGGS. The President and the Secretary of the Parán Rural Community also signed. At the end of the meeting, I recall that Mr. Bravo delayed signing the minutes for about an hour, even though all the participants had already signed them. When I asked Mr. Bravo why he had still not signed, he commented that he had submitted the wording for the approval of the directors of Invicta in Canada and he was waiting for their instructions before signing. Finally, Mr. Bravo signed the minutes and we declared the meeting closed.
61. I am aware that Lupaka alleges that, after that meeting, the OGGS representatives endeavored to ensure that the Parán Community would comply with their obligations under the 26 February Agreement.<sup>51</sup> That is not true and we never stated so during the meeting, mainly because the OGGS does not have powers to assume such an undertaking. Moreover, as we persistently informed Invicta and the Parán Community, the parties were the ones that had to reach a final agreement and comply with it. The OGGS and the other Peruvian entities that attended the dialogue tables did so to mediate between Invicta and the Parán Community and thus bring the Parties together, but none of the entities provided guarantees that the other party would comply with its obligations under the 26 February Agreement. What the OGGS does have competence for is to monitor

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<sup>50</sup> Ex. C-0220, Letter No. 033-2019-MINEN/OGGS/OGDPC from MINEM (M. Kuzma) to the Parán Community (A. Torres), 19 June 2019.

<sup>51</sup> Claimant's Memorial, ¶¶ 155-56; CWS-0004, Witness Statement of Luis Bravo, 1 October 2021, ¶ 57.

compliance with the agreements reached and, if any disputes arise over the implementation thereof, to gather information and mediate between the parties again to discuss their differences regarding the implementation of the agreements. That was precisely what we did.

62. In my opinion, the Parán Community did comply with the 26 February Agreement and the negotiations finally collapsed due to reasons that could have been overcome if Invicta would have shown a little more willingness.

(i) *Invicta failed to pay the surveyor's fees for the topographical survey*

63. As I pointed out in Section II.A.(ii), point 4 of the 26 February Agreement expressly stated that:

The Invicta mining company, together with the Rural Community of Parán, will identify and locate the affected land (Rural Community of Parán) through a topographic survey; such survey will take place on 20 March 2019.<sup>52</sup>

64. During the 26 February 2019 meeting, it was determined that the purpose of this topographical survey was to examine which land would be affected by the works to be carried out to allow access to the Project through Parán territory. I recall that the parties agreed that Invicta would cover the costs of the surveyor appointed to conduct the survey. Invicta was also the party that would have to carry out the works to restore the land of Parán and thus obtain an access route to the Project.
65. After the 26 February 2019 meeting, the Parán Community informed Invicta that they had already identified the professional to perform the survey, and they requested that Invicta pay his fees in the sum of 30,000 soles (approximately USD 9,000). Invicta refused to pay that sum as they considered it to be too high, but did not offer any solution or alternative. I recall talking to Mr. Bravo and suggesting that he contact the Association of Engineers [*Colegio de Ingenieros*] to find a

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<sup>52</sup> Ex. C-0200, Meeting Minutes, Meeting between the Parán Community, Invicta Mining Corp. S.A.C. and MINEM, 26 February 2019, p. 1.

surveyor, but he failed to do so. Invicta limited itself to complaining about the price but did not seek a way to overcome this disagreement.

66. Although this sum might be considered high, I consider that Invicta's radical position was unreasonable and therefore did not contribute to solving the conflict, as it would have been in a position to agree with this payment or to seek alternatives, conduct the survey on 20 March 2019 and continue with the dialogue tables to continue reaching agreements and mutual understandings. The sum in question was not so significant as to have finally frustrated the dialogue process.
67. In my experience, it is generally the companies that assume these costs, as the rural communities do not have the resources to do so. If Invicta considered the price to be too high, it was inconceivable that the Parán Community could cover it (for them, it was a far more significant amount).
68. Had Invicta examined the cost and benefits of agreeing to this payment as a sign of its willingness and cooperation to comply with the 26 February Agreement and establish a better relationship with the Parán Community, the negotiations and dialogue table would have continued. I recall telling Mr. Trigo that the progress achieved by the OGGs in the 26 February 2019 dialogue table had been dismantled due to Invicta's radical objection to this request to pay the surveyor.

(ii) *The Removal of the blockade to allow access to the Project*

69. As I also pointed out in Section II.A.(ii), point 5 of the 26 February Agreement expressly stated that:

The parties agree that the Rural Community of Parán will suspend all coercive measures as of this date, which will be ratified by the Community Assembly on 2 March 2019. The RURAL COMMUNITY OF PARÁN guarantees the development of the activities of the mining company through the access road of the

Parán Community as of the signing of [these] minutes, guaranteeing social peace with the company.<sup>53</sup>

70. In accordance with the discussions held during the 26 February 2019 meeting and pursuant to the specific agreement reached by Invicta and the Parán Community, the Parán Community undertook to allow the development of the Project through the Parán Community access road. This is why the parties agreed to conduct a topographical survey: because it was intended that the road to access the Project through the Parán Community territory would be improved.
71. I witnessed that, during its community assembly on 2 March 2019, the Parán Community did ratify its decision to grant access to the Project and they did grant Invicta access. They did so through the access road on the Parán Community's territory.
72. However, Invicta appeared to ignore that this had been the scope of the undertaking made by the Parán Community in the 26 February Agreement, and insisted that the Parán Community had defaulted on its part of the agreement because they had maintained their protest.

**C. Other reasons that contributed to the breakdown of the negotiations between Invicta and the Parán Community**

*(i) Invicta's community relations team appeared to lack experience*

73. My experience in the negotiation of social conflicts as a Social Specialist at the OGGs enabled me to observe with concern some of the characteristics of Invicta's community relations team, which I believe influenced the fact that they were unable to reach an agreement.
74. First, all mining companies know that they must maintain harmonious and peaceful relations with the communities that are part of the mining project's area

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<sup>53</sup> Ex. C-0200, Meeting Minutes, Meeting between the Parán Community, Invicta Mining Corp. S.A.C. and MINEM, 26 February 2019, p. 2.

of direct impact. In this case, Invicta favored signing agreements with the Lacsanga and Santo Domingo de Apache Communities because it considered that doing so was a less complicated task than with the Parán Community. The community relations team should have tried to reach an agreement with the Parán Community over a longer period of time instead of abandoning their attempts once they had signed agreements with the Lacsanga and Santo Domingo de Apache Communities.

75. Second, the community relations team that attended during the negotiation meetings in 2018 did not seek to engage closely with the Parán Community. They never came across as friendly. They limited themselves to attending the meeting in a very serious manner, and I did not perceive any desire to speak to the Community members in a less formal scenario.
76. In 2019, I noted that it was Mr. Bravo as Invicta's general manager who attended the meetings and liaised with the Parán Community. Mining companies generally have a team specializing in community relations to participate in dialogue tables, since they try to ensure that the communities perceive the negotiating team as an ally and not as an enemy. Usually, the community relations teams that interact with the communities are composed of people from the region—or people who know the region's inhabitants—and who understand and sympathize with the concerns of the community. This means achieving effective communication regarding the Project and the benefits it can bring to the community, dealing with the latter's needs. Above all, if Invicta considered that negotiating with the Parán Community was more difficult than with the of Lacsanga and Santo Domingo de Apache Communities—as I was told—that demonstrated the need to involve someone specialized in negotiation who might be closer to the Parán Community. The fact that it was only Mr. Bravo who attended, showed that Invicta's only concern was its business and not achieving harmonious relations with the Parán Community.

77. Third, I believe that after making such a significant progress as the 26 February Agreement represented, Invicta could have cooperated, given way and taken a step further to definitively resolve the conflict. However, it maintained an extremely radical position and was not willing to give way in the disagreement over the surveyor, an issue that could have been easily overcome with its cooperation.

(ii) *The Parán Community wanted to reach an agreement with Invicta, but felt that the mining company had ignored them*

78. As I explained in Section II.A, when I became involved in this conflict, the Parán Community informed me that Invicta had refused to continue negotiations with them as it had reached agreements with the Lacsanga and Santo Domingo de Apache Communities. In particular, I was informed that the Parán Community had raised their environmental concerns with the Project with Invicta, but Invicta did not recognize the need to deal with them. When Invicta secured an agreement for the access road to the Project through the Lacsanga Community, it failed to continue negotiations with the Parán Community to ensure harmonious relations with that Community, which also formed part of the area of direct social influence of the Project.

79. This issue caused the the Parán Community to resent Invicta's attitude and position, which escalated the conflict and , made the establishment of dialogue tables difficult at the outset.

(iii) *Invicta demanded the use of force to remove the protest installed by the Parán Community*

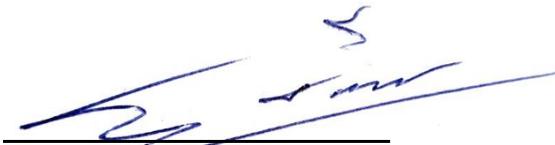
80. Initially, I recall that Mr. Bravo told us that he was open to dialogue and that he was seeking our help in establishing negotiations with the Parán Community. However, I later learned that, at the same time, the Invicta's representatives were also requesting MININTER to provide police support to remove the community members. This is a contradictory position that does not favor a long-term solution.

81. When I told Mr. Bravo that we were aware of his double stance, Invicta then requested my assistance in approving a police operation to remove the protest established by the community members. I consistently explained at each meeting with them, that the OGGs did not have the competences or the powers to order or provide police support. I also indicated that this was not an option that would enable a long-term solution to be achieved or contribute to the negotiations. In fact, I told them that neither the OGGs, nor the MINEM in general, considered this as a viable option.
82. Therefore, we always sought to promote dialogue and cooperation as the truly effective means of achieving a harmonious relationship between Invicta and the Parán Community. I also told them that dialogue was the option that actually suited Invicta, as it was the company and the Parán Community that had to reach an agreement. We wanted to dissuade Invicta from the idea of contemplating the use of force as an option, but that was not possible.
83. In my experience, when a company is willing to negotiate, it knows that the use of force is not an effective means for resolving social conflicts. Attending negotiations while at the same time pressing for the use of force is not an indicator of negotiating in good faith. The use of force could eliminate any possibility of dialogue and also worsen the conflict instead of encouraging a solution.
84. Besides insisting on the use of force, I personally witnessed that the attack the Parán Community received from the private security company on 14 May 2019 created clear discontent among the community members. They felt that Invicta wanted to attack them without weighing the consequences and regardless of the negotiating process in place. We thought that, after this altercation, Invicta would stop insisting on the use of force as it had realized that this method of removing the community members was not effective. However, after that incident, Invicta continued to insist on police support, even though we told them that Peru did not consider that to be the way to achieve a settlement to this social conflict.

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

Lima, 22 March 2022



Nilton César León Huerta