

[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  
Luis Miguel Incháustegui Zevallos**

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6 March 2022

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1. My name is Luis Miguel Incháustegui Zevallos. I was born on 16 February 1970 in the city of Lima in the Republic of Peru ("Peru"). I am a Peruvian citizen, identified by National Identity Document No. 07870587, resident at Calle Simon Salguero 226, District of Santiago de Surco, Lima, Peru.
2. I was one of the Deputy Ministers of Mines<sup>1</sup> at the Ministry of Energy and Mines ("MINEM" [*Ministerio de Energía y Minas*]) from April 2018 to May 2019, and Minister of Energy and Mines from August to November 2020.
3. I am making this witness statement at the request of the Special Commission that represents the State in International Investment Disputes ("Special Commission") within the Ministry of Economy and Finance ("MEF" [*Ministerio de Economía y Finanzas*]) of Peru, within the context of the international arbitration proceedings 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 on holding the offices identified above.
4. I have read the parts that are relevant to my testimony of the Memorial filed by the Claimant on 1 October 2021 ("Claimant's Memorial"), as well as the witness statement of Luis Felipe Bravo García dated 1 October 2021. I have also consulted several additional documents from the MINEM and other sources.
5. 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.

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<sup>1</sup> Ex. R-0014, MINEM, "*Organización de Ministerio de Energía y Minas*," GOB.PE, last accessed 3 March 2022 (the Minister of Energy and Mines is the highest political authority of the Ministry of Energy and Mines. Under the Minister's supervision and direction, the Deputy Minister's Office has three deputy ministers: the Deputy Minister of Mines, the Deputy Minister of Electricity and the Deputy Minister of Hydrocarbons).

6. 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

7. I am a lawyer, having graduated from the University of Lima in 1994. I received my Master's Degree in Business Management at the University of San Ignacio de Loyola in 1998. I also took a business course at Northwestern University, Kellogg School of Management, in 2017.
8. In addition to my service in the public sector, I have over 25 years of professional experience in the private sector on mining matters, including community relations. From May 2000 to November 2004, I was head of the legal department of Volcán Cia Minera S.A.A, responsible for managing and supervising the legal departments in three mining units (Yauli, Cerre de Pasco and Chungar). From November 2004 to January 2008, I was legal and institutional relations manager of Gold Fields La Cima S.A. In that position and with regard to the Cerro Corona project, I participated in the process of negotiating with the communities in the region and in obtaining the required permits to operate the mine. From January 2009 to April 2017, I was vice chairman of government affairs of Lumina Copper SAC, a position that led me to participate in areas of institutional relations and community relations to obtain the approval of agreements with local communities with regard to the Galeno copper project. In April 2012 (up to September 2017), I returned to Gold Fields La Cima S.A. as vice chairman of corporate affairs and sustainable development, as well as secretary of the board of directors. In that position, I implemented a social strategy to garner community trust in the Cerro Corona project and maintain a peaceful and sustainable coexistence with those communities during the operation of the Cerro Corona mine.
9. From October 2017 to May 2018, I began preparing to provide services as an independent consultant on corporate affairs and sustainability.

10. In April 2018, the then Minister of Energy and Mines, Francisco Ismodes, offered me the position of Deputy Minister of Mines. I accepted the invitation and I held that position until May 2019. The matters falling within the competence of the Deputy Minister of Mines include (i) promoting the sustainable development of mining activities; (ii) authorizing exploration and exploitation activities; and (iii) proposing and evaluating the policy on formalization of the mining sector.<sup>2</sup>
11. In addition, one of the MINEM's aims was to prevent social conflicts between mining companies and local communities within the area of impact of the mining projects, to achieve the effective, peaceful development of the mining and energy sector. To this effect, one of the strategic aims of the MINEM's Strategic Institutional Plan for the period 2017–2019 was to “[p]romote harmonious relations among the parties involved in the Energy Mining Sector.”<sup>3</sup>
12. As mentioned above, from August to November 2020, I was Minister of Energy and Mines of Peru. While I held that position, I promoted opportunities for preventive dialogue and an improvement in the Ministry's social management office. I also resumed the initiatives of the Rima Energy Mining Convergence Centre [*Centro de Convergencia Minero Energéticas Rima*] and promoted the Mining Vision to 2030 [*Visión de la Minería al 2030*].
13. Since I left the office of Minister towards the end of 2020, I have worked as a consultant to international companies on corporate matters and sustainability in the extractive sector. I am currently working as an independent member of the board of directors of Candente Copper Corp. (a Canadian mining company that specializes in metals such as gold, silver, copper and zinc), providing advice on strategic and social matters. That company's Cañariaco project has a major

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<sup>2</sup> Ex. R-0015, MINEM, “*Despacho Viceministerial de Minas*,” GOB.PE, last accessed 3 March 2022.

<sup>3</sup> Ex. R-0016, Strategic Institutional Plan—PEI 2017–2019, MINEM, 2016, pp. 13, 15, 17, 67–70.

challenge: to reach a social agreement with the Rural Community of Cañaris, which owns the land on which it wishes to implement the copper mining project.

## **II. THE PROMOTION OF DIALOGUE AND NEGOTIATIONS BETWEEN THE PARÁN COMMUNITY AND LUPAKA**

### **A. The Ministry of Energy and Mines, General Office of Social Management (OGGS), and the dispute between the Parán Community and Invicta**

14. I was informed of the dispute between the Parán Community and Invicta Mining Corp. S.A.C (“**Invicta**”) by officials of the General Office of Social Management (“**OGGS**” [*Oficina General de Gestión Social*]), who were monitoring situations of conflict within their area of competence, in real time. I learned that, in October 2018, the Parán Community had installed a protest on one of the access roads to the Project, through the Community of Lacsanga (“**Protest**”).
15. In January 2019, the Minister Francisco Ismodes asked me to look into the situation between the Parán Community and Invicta. I obtained information on the situation through the Director of the OGGS, Fernando Trigoso. I learned that, at that time, Invicta wanted to act quickly, using public force, to break up the protest that the Parán Community had staged (among other reasons, due to environmental concerns) since 14 October 2018 that blocked access to the Project through the bordering Community of Lacsanga. That is, Invicta wanted the Peruvian National Police (“**PNP**” [*Policía Nacional del Perú*]) to forcefully remove the members of the Parán Community who were hampering the operation of the mine. Invicta insisted that they were not willing to engage in dialogue with the Community members while they were blocking access to the mine.
16. Although we did not agree with the way in which the Parán Community decided to show its objection to the Project, three months had elapsed since the Community members had commenced their protest outside the Project. In my experience, it may take a lot of time to resolve social disputes and the negotiating

process is not linear; these processes experience setbacks before agreements are reached. Moreover, for the reasons I will explain in the following section, experience shows that the use of force is not the way to resolve social disputes and may even prove counterproductive.

17. When a mining company does not manage to prevent a conflict in the early stages and a major social conflict arises, the MINEM (through the OGGS) tries to de-escalate the conflict and channel it towards a peaceful and long-lasting solution through dialogue and negotiation. In these situations, PNP officers are very often present, but only to ensure that the parties are able to dialogue in secured places, accompanied by the competent bodies (such as the OGGS) in this process.
18. I understand that Lupaka is alleging that it was not required to sign any agreement with the Parán Community because the Project was not located on the territory of that Community and because the company had already reached an agreement with the Lacsanga Community, to access the Project through the access road located in that Community.<sup>4</sup> In my opinion, Lupaka's strategy was incorrect and in fact demonstrates its lack of due diligence and experience in the development of mining projects in Peru. As I will explain in greater detail in the following section, mining companies have to sign agreements with the communities situated in the area of direct social and/or environmental impact of their projects.<sup>5</sup> This is a minimum requirement of social responsibility and for building relations with the communities in the area. Without these agreements, the risk of conflicts between the company and the local community increases, hampering the effective and peaceful operation of mining activities, as has

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<sup>4</sup> Claimant's Memorial, ¶¶ 67, 122.

<sup>5</sup> The communities that form the area of direct social impact are recognized in the resolution approving the Environmental Impact Study ("EIA") for the mining projects.

effectively happened in the case of the Invicta Project. Lupaka, however, failed to reach an agreement with the Parán Community despite it being in the area of direct impact of the Project.

19. As no agreement or covenant was reached, the MINEM's aim was to facilitate dialogue between the parties to the conflict and thus contribute towards a peaceful solution. Removing the community members, by force, as sought by Invicta, would have had the opposite effect, because it would have aggravated the conflict and adversely affected any possibility of reaching a solution through negotiation. Again, at the MINEM we were focused (through the OGGS and coordinating with other State bodies) on helping the parties to set up a negotiating table in order to generate lasting consensus and agreements.
20. I understand that Lupaka is alleging that it had spent a lot of time and effort arranging the meeting at the MINEM.<sup>6</sup> That is not true. While I was in office as Deputy Minister, I was always open to receiving all companies in the mining sector, including Lupaka and Invicta. With regards to Invicta, I also kept up to date on the situation and ordered all available resources to concentrate on supporting the parties—within the scope of the competence and powers of the MINEM—in finding a solution through dialogue. At the MINEM, we received Invicta and we did what was within our reach. I myself met Mr. Will Ansley, CEO of Lupaka, on 22 January 2019, to hear the company's position. I will refer to this meeting in greater detail below.

#### **B. Meeting with Lupaka's representative, Mr. Will Ansley**

21. I received a request to meet Mr. Ansley and members of the Canadian Embassy on 22 January 2019, at the offices of the MINEM, to discuss the concerns of

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<sup>6</sup> CWS-0004, Witness Statement of Luis Bravo, 1 October 2021, ¶ 21.

Lupaka and Invicta. I accepted and I scheduled the meeting requested by the company without delay.

22. I recall that the meeting was tense. Mr. Ansley assumed an arrogant attitude, demanding the use of force to break up the Protest commenced by the Parán Community in October 2018. He threatened to bring arbitration proceedings concerning investment against Peru if the State failed to agree to his request to the use of force to remove the members of the Parán Community from the access road to the mine. It was clear that Mr. Ansley was claiming that the State should use police force to resolve the social conflict between the mining company and the Parán Community.
23. During the meeting, I tried to explain to Mr. Ansley the importance of finding a solution through dialogue, in line with the strategy followed by the State for dealing with social conflicts between mining companies and rural communities – as I will explain in the following section. I repeated to Mr. Ansley that the MINEM would take all possible measures to persuade the Parán Community not to continue blocking the road and to commence discussions to resolve the Community's doubts and concerns over the activities that the mining company was carrying out or wished to carry out. However, it was clear to me that Mr. Ansley wanted an immediate solution to a conflict that called for dialogue and that could not be resolved by force.
24. Since that meeting on 22 January 2019, I followed the matter, liaising with Messrs. Fernando Castillo and Fernando Trigoso, both of the OGGS. I recall that I told them that Invicta's attitude and position (insisting on the use of force) was not appropriate, given the nature and circumstances of the conflict. I was concerned that, if the Invicta representatives approached the Parán Community with the same arrogant and overbearing tone used by the CEO of Lupaka, Mr. Ansley, it would frustrate the attempts at dialogue and would not manage to resolve the conflict. I requested to Mr. Trigoso that the OGGS continue working

to find a solution to the dispute and that he inform the Minister and me of new developments. Besides the efforts made by the OGGS, the Ministry of Interior (“MININTER” [*Ministerio del Interior*]) was also seeking the best way of approaching the Parán Community and continuing to look for a solution.

25. On 6 February 2019, several weeks after the meeting of 22 January 2019, Mr. Ansley sent a letter to Minister Ismodes, in which he distorted what had been said at that meeting.<sup>7</sup> After thanking Minister Ismodes for the meeting he had held with me, Mr. Ansley told him that I had suggested, as an initial measure, using the police to remove the members of Parán from the area.<sup>8</sup> That is not true; I never suggested such a thing. However, I do recall that I assured Mr. Ansley that the MINEM would take all possible measures so that an agreement could be reached with the Parán Community end the Protest established by that Community. On saying that, I was referring to the promotion of dialogue between Invicta and Parán to reach a solution, not by force but through dialogue. That is what I clearly stated.
26. On reading Mr. Ansley’s letter of 6 February de 2019, my attention was drawn to his summary of the meeting of 22 January 2019. I did not consider it necessary to reply to the letter at the time, but now I understand that, with that letter and its inaccurate description of what was said at the meeting, Lupaka was trying to create documentary evidence for the international arbitration proceedings that it threatened to bring and that it has in fact brought.

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<sup>7</sup> Ex. C-0015, Letter from Lupaka Gold Corp. (W. Ansley) to MINEM (F. Ismodes), 6 February 2019.

<sup>8</sup> Ex. C-0015, Letter from Lupaka Gold Corp. (W. Ansley) to MINEM (F. Ismodes), 6 February 2019, p. 1.

27. The letter also suggests that, after our meeting, negotiations and dialogue tables would begin with the participation of the MINEM as mediator.<sup>9</sup> That is not true, however, because it suggests that, up till then (i.e., in February 2019), the MINEM and other State agencies had not made any effort to facilitate dialogue and negotiations between the parties. In fact, several government entities, both national and local, had been mediating between Invicta and the Parán Community, to promote dialogue and negotiations, since the early stages of the conflict in August 2018. I recall being informed that, a few days after the Parán Community began their Protest on 14 October 2018, the OGGS, the Sub-Prefecture of Huaura and the Huacho's Prosecutor for the Prevention of Crime attended and mediated at a meeting between Invicta and the Parán Community in the Project zone.
28. Contrary to what Mr. Ansley suggests in his letter, the meeting ended with the understanding that the MINEM *would continue* its efforts to facilitate dialogue for progress in negotiated agreements between Invicta and the Parán Community.
29. In fact, shortly after the meeting, through the efforts made by the MINEM (particularly the OGGS) and other State bodies, Invicta and the Parán Community reached an agreement on 26 February 2019, whereby they assumed mutual undertakings. I was also informed that the OGGS, as a specialized body, continued to represent the MINEM at the meetings and dialogue tables that took place after that date.
30. However, the final paragraph of the letter of 6 February 2019, sent by Mr. Ansley, states that Lupaka was not willing to participate in further discussions, until the

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<sup>9</sup> Ex. C-0015, Letter from Lupaka Gold Corp. (W. Ansley) to MINEM (F. Ismodes), 6 February 2019, p. 1.

Parán Community necessarily withdrew or was removed.<sup>10</sup> I understand that Mr. Ansley was referring to his position of making negotiations conditional on the removal of the Community members by force. From our point of view, this attitude did not contribute towards creating conditions for dialogue but, on the contrary, made it unviable.

31. The letter also confirms Lupaka's extreme focus. For example, it refers to the members of the Parán Community as "terrorists."<sup>11</sup> The success of the negotiations and of relations with the local community depends on a mining company being willing to negotiate respectfully with the other party, and this cannot be achieved if such a level of animosity exists.

### **III. MY EXPERIENCE IN THE IMPLEMENTATION OF A NEGOTIATING POLICY TO DEAL WITH CONFLICTS WITH RURAL COMMUNITIES IN THE MINING SECTOR**

32. As I pointed out in the previous section of this witness statement, any company with experience in the mining sector knows and understands its social responsibility and knows that it must conduct due diligence on the region and the communities in the region in which its project will be developed. It is up to the company to ensure a harmonious and peaceful coexistence with the inhabitants within that zone of influence. This is generally achieved by securing agreements with the local communities, particularly with those communities that are within the area of social impact of their mining project.<sup>12</sup>
33. Peru has norms that govern citizen participation in mining projects and that establish as principles of social management of mining projects that mining

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<sup>10</sup> Ex. C-0015, Letter from Lupaka Gold Corp. (W. Ansley) to MINEM (F. Ismodes), 6 February 2019, p. 2.

<sup>11</sup> Ex. C-0015, Letter from Lupaka Gold Corp. (W. Ansley) to MINEM (F. Ismodes), 6 February 2019, p. 2.

<sup>12</sup> See Ex. R-0006, Supreme Decree No. 040-2014-EM, 5 November 2014, Arts. 57.4, 57.9.

companies shall promote measures to increase trust among the local communities through mechanisms and processes of citizen participation, to prevent and deal with conflicts in an appropriate manner.<sup>13</sup> One of the principles of social management, established in the applicable legal framework, states that project holders *must* implement mechanisms and processes for citizen participation that involve the populations located in the area of impact of the project.<sup>14</sup> Another principle of social management involves maintaining a continuous and appropriate dialogue with the local communities and with the populations in the area of impact.<sup>15</sup> Therefore, the company must develop specific social management plans with the communities located in the area of influence of the project, which includes assuming social undertakings for the benefit of the local community (including social investment, economic development and local employment, among others).<sup>16</sup> These social undertakings made by the mining company are additional to those established in the environmental studies.<sup>17</sup> In accordance with these legislative principles, the mining company must try to secure agreements and set up means of participation with all of the communities in the area of impact, and not just with the communities in whose territory the project is located.

34. During my professional career (in both the private and the public sector), I have acquired a great deal of experience on the frequent social conflicts in the Peruvian mining sector, when companies fail to ensure that they secure agreements with the communities in the area of impact of their project. During

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<sup>13</sup> See **Ex. R-0006**, Supreme Decree No. 040-2014-EM, 5 November 2014, Art. 57.4; see also **Exhibit R-0017**, Ministerial Resolution No. 304-2008-MEM-DM, 24 June 2008.

<sup>14</sup> See **Ex. R-0006**, Supreme Decree No. 040-2014-EM, 5 November 2014, Art. 57.9.

<sup>15</sup> See **Ex. R-0006**, Supreme Decree No. 040-2014-EM, 5 November 2014, Art. 57.7.

<sup>16</sup> See **Ex. R-0006**, Supreme Decree No. 040-2014-EM, 5 November 2014, Arts. 60, 62.

<sup>17</sup> See **Ex. R-0006**, Supreme Decree No. 040-2014-EM, 5 November 2014, Art. 60.

the period in which I held office as Deputy Minister of Mines, I recall that there were more than 200 social conflicts reported throughout Peru, 66% of which were related to the mining sector.<sup>18</sup> Between 2010 and 2020, around 658 new social conflicts of varying types and intensity were recorded.<sup>19</sup> Social conflicts involving the rural communities and the private sector are not a new phenomenon in Peru; on the contrary, they have had a long and tumultuous history.

35. Some of these cases of social conflict between mining companies and local communities have determined the development and definition of the Peruvian State policy for dealing with them. In particular, one tragic, historical event involved the social conflict in the province of Bagua, in June 2009. Months before the event, the Congress of Peru had authorized the government to implement regulatory changes that allowed private companies access to the Amazon rainforest for oil, gas and logging projects, under the Free Trade Agreement negotiated between Peru and the United States, which entered into force in February 2009.<sup>20</sup> The indigenous peoples of the Amazon protested against the

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<sup>18</sup> See Ex. R-0018, Ombudsman's Office 22<sup>nd</sup> Annual Report, 2018, 31 May 2019, p. 140 ("In 2018, 232 cases of social conflict were presented at national level []"), p. 143 ("[o]f the 232 cases of conflict recorded in 2018, 62.1% involved socioenvironmental matters (144 cases). Of those, 66% (95) involved conflicts relating to mining activities."); see also Ex. R-0019, Ombudsman's Office 23<sup>rd</sup> Annual Report, 2019, 29 May 2020, p. 108 ("in 2019, 222 cases of social conflict were recorded"), p. 110 ("of the 222 cases of conflict recorded in 2019, 64% involved socioenvironmental matters (142 cases). Of those, 66.2% (94) involved conflicts relating to mining activities ....").

<sup>19</sup> See Ex. R-0020, Ombudsman's Office 18<sup>th</sup> Annual Report, 2014, 2 June 2015, p. 95 (The report shows that there were a total of 833 cases of social conflict resolved, passed on for observation or new between the years 2010-2014); see also Ex. R-0019, Ombudsman's Office 23<sup>rd</sup> Annual Report, 2019, 29 May 2020, p. 109 (The report shows that there were a total of 503 cases of social conflict resolved, withdrawn or new between the years 2015-2019); Ex. R-0021, Ombudsman's Office 24<sup>rd</sup> Annual Report, 2020, 28 May 2021, p. 103 (The report shows that there were 55 cases of social conflict resolved, withdrawn or new in the year 2020).

<sup>20</sup> See Ex. R-0024, Law No. 29157, 19 December 2007.

implementation of some of the new regulations because they considered that these jeopardized the security of their natural resources and the environment. On 5 June 2009, community members and other people set up a roadblock in the area, protesting against the future mining and extraction activities.<sup>21</sup> The PNP went to remove the blockade, with the assistance of the Peruvian Army (“Army”). Their intervention resulted in a violent altercation, causing the tragic death of 33 people (23 police officers, five natives and five inhabitants of Bagua), one disappearance (PNP officer) and 200 people wounded by firearms and injuries caused by gun shots,<sup>22</sup> as well as the kidnapping of 39 police officers.<sup>23</sup>

36. This incident, known as the “*Baguazo*,” has left an indelible mark in the recent history of Peru, and since then, has defined how to deal with situations of social conflict between mining companies and indigenous communities, particularly the intervention of the PNP (and the Army) in such cases of conflict. The *Baguazo* illustrates the consequences of failing to observe prior consultation procedures with the indigenous peoples on matters concerning them, and of using the police force in situations of social conflict, particularly when dialogue has not been exhausted. That regrettable episode is a constant reminder that the use of force to resolve social conflicts may result in deaths, injuries and the loss of legitimacy of the State authority and also affect the mining activities.
37. The *Baguazo* marked a turning point in the handling of social conflicts in Peru. This incident, as well as several others, raised questions surrounding the State’s response, and particularly the response of the PNP, not only by international

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<sup>21</sup> Ex. R-0025, Ombudsman’s Office Report, “*Actuaciones Defensoriales en el marco del conflicto de Bagua*,” March 2017, pp. 37–42.

<sup>22</sup> Ex. R-0025, Ombudsman’s Office Report, “*Actuaciones Defensoriales en el marco del conflicto de Bagua*,” March 2017, p. 40.

<sup>23</sup> Ex. R-0025, Ombudsman’s Office Report, “*Actuaciones Defensoriales en el marco del conflicto de Bagua*,” March 2017.

organizations and non-governmental organizations (“NGOs”) responsible for promoting human rights, but also by State bodies, such as the Ombudsman’s Office. The disastrous consequences of these events highlighted the limits of force and the need for a new strategy where *dialogue*—and not force—would have to be the main method adopted to resolve conflicts involving the rural communities.

38. In my experience, the use of force in social conflicts with rural or country communities is not a solution but may exacerbate opposition and violence and prolong the conflict.
39. Due to the need to reconstruct the strategy for dealing with social conflicts, Peru has reinforced the application of its legal framework that guarantees systems of citizen participation for rural and indigenous communities in the decisions taken by the State or a private company with regard to matters that may affect them.<sup>24</sup>
40. To this effect, the State has reinforced its policy of devising strategies for the prevention of violence, prioritizing dialogue as a means of obtaining long-lasting solutions and, above all, to avoid the loss of human life. Peru has specialized bodies to manage social conflicts within the various ministries, which have acquired greater institutional force and prominence since the events in Bagua in 2009. Given that most social conflicts are linked to activities in the extractive sector, greater emphasis has been placed on the work of the OGGS, within the MINEM, set up in 2007 to specifically deal with social conflicts.<sup>25</sup> Its aim is to “promot[e] and strengthen[] harmonious relations among all parties involved in the sustainable development of activities in the Energy and Mining Sector.”<sup>26</sup>

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<sup>24</sup> See Ex. R-0007, Supreme Decree No. 028-2008-EM, 26 May 2008; see also Ex. R-0017, Ministerial Resolution No. 304-2008-MEM-DM, 24 June 2008.

<sup>25</sup> Ex. R-0023, Ombudsman’s Office Report, “*El valor del dialogo*,” September 2017.

<sup>26</sup> Ex. R-0012, Supreme Decree No. 021-2018-EM, 18 August 2018, Art. 50.

41. Among the initiatives in which I participated while I was Deputy Minister of Mines, I would like to highlight the joint preparation with the Canadian Embassy in Peru of the “Communication and Community Relations Toolkit for Responsible Mining Exploration,” published in June 2018.<sup>27</sup> This document is the product of the study and compilation of best practices and international standards on relations and social responsibility under which extraction activities must be conducted.<sup>28</sup> The document highlights the importance of promoting and respecting effective citizen participation in the mining projects, and in building and maintaining an ongoing relationship with the communities in the area of the project.<sup>29</sup> Its preparation involved the coordination of other mining associations such as the Prospectors and Developers Association of Canada and the Mining Association of Canada, which had already created toolkits for best practices in responsible community relations, as well as other documents developed by the United Nations (UN), the Organization for Economic Co-operation and Development (OECD) and the International Council on Mining and Metals (ICMM), among others.<sup>30</sup>
42. In addition, on 19 September 2018, the MINEM approved the creation of the Energy Mining Management and Information Committees to increase the coordination and scope of the OGGS mechanisms at a regional level.<sup>31</sup> The approval of these Committees signalled the MINEM’s commitment to (i) inform the population proactively of the activities that were being developed; (ii) deal with the population’s concerns at early stages; and (iii) ensure compliance with

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<sup>27</sup> Ex. R-0028, Joint Publication between Canadian Embassy in Peru and MINEM, “*Kit De Herramientas De Relacionamiento y Comunicación*,” 2018 (“**Canada-Peru CR Toolkit**”).

<sup>28</sup> Ex. R-0028, Canada-Peru CR Toolkit, pp. 9-12.

<sup>29</sup> Ex. R-0028, Canada-Peru CR Toolkit, p. 10.

<sup>30</sup> Ex. R-0028, Canada-Peru CR Toolkit, pp. 9-10.

<sup>31</sup> Ex. R-0022, Ministerial Resolution No. 354-2018-MEM-DM, 19 September 2018, Art. 1.

undertakings and good practices in mining and energy activities. Appointing regional representatives alongside the MINEM representatives was also a necessary step to further decentralize the efforts made for preventing and dealing with conflicts. We have learned that decentralization and regional representation make it possible to focus more efficiently and effectively on the prevention of conflicts and the promotion of solutions. This corroborates the efforts made by various governments of Peru at least since the year 2009, to promote ongoing dialogue and interaction in finding solutions with the rural communities when social conflicts arise, instead of resorting to the use of force.

43. In recognizing the limit to the use of force, Peru has rejected the use of force as a means of intervention in dealing with a social crisis—even when the actors use forceful strategies such as roadblocks, stoppages and mass protests, among others. In such instances, the government has promoted dialogue and negotiation among the various parties to find long-lasting solutions. During my term within the MINEM, the understanding was always that the use of force should be limited to extreme circumstances or when required by law.
44. Beyond the fact that the MINEM's duties did not include authorizing or approving the use of force in social conflicts, we have always stressed that force should not be used in cases of social conflict. Taking this course of action would not only give rise to more violence and would jeopardize human life (including that of the police officers, as happened in Bagua), but would not resolve the conflict to the satisfaction of the mining company either. Rather, the MINEM's policy on social conflicts was to cooperate with all the parties involved in a mining project to ensure the *prevention* of conflict—including through citizen participation, particularly that of the communities situated in the area of

influence of the project.<sup>32</sup> The purpose of that policy is to detect conflicts in the early stages and to promote a process of *dialogue* to enable the parties to the conflict to find constructive and long-lasting solutions, through negotiation and collaboration.

45. Another of the many examples of social conflict between a mining company and the local community, but which fortunately had a very different result from that of Bagua, was the conflict that arose in 2015 with regard to the Las Bambas project, which led to a strong protest by the local community. Even though the Government declared a state of emergency, there was no recourse to the use of force by the Army or the PNP. The declaration of a state of emergency was useful as a means of dissuading violence, in order to encourage the parties to show willingness to talk and reach an agreement. The mining company even stopped its operations, but then decided to continue with the negotiations and, finally, after a long process of dialogue, managed to resolve the conflict.<sup>33</sup>

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<sup>32</sup> Ex. R-0012, Supreme Decree No. 021-2018-EM, 18 August 2018, Art. 51-B; Ex. R-0016, Strategic Institutional Plan – PEI 2017-2019, MINEM, 2016, pp. 44-45.

<sup>33</sup> Ex. R-0009, Ombudsman's Office Report No. 214 on Social Conflicts, December 2021, p. 41 ("On 3 January, the company MMG Limited announced the resumption of operations at the Las Bambas mine following the removal of the blocks on the access roads in the province of Chumbivilcas.").

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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 is in accordance with what I truly believe.

Lima, 6 March 2022



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Luis Miguel Incháustegui Zevallos