COURT OF COMBINED JURISDICTION IN AND FOR CELENDÍN
SUPERIOR COURT OF JUSTICE IN AND FOR CAJAMARCA

PROOF OF SERVICE FORM
02

CASE FILE:	**2015-024-C**
ADDRESSEE:	**MINERA YANACOCHA S.R.L.**
LAWYER'S ADDRESS FOR SERVICE OF PROCESS:	**JR. SAN CAYETANO No. 156**
PLAINTIFF/AGGRIEVED PARTY:	**MINERA YANACOCHA S.R.L.**
DEFENDANT/ACCUSED:	**MÁXIMA ACUÑA ATALAYA ET. AL.**
MATTER:	**RESTRAINING ORDER PROHIBITING INTERFERENCE WITH POSSESSION OR OWNERSHIP**
RESOLUTION No.	**RESOLUTION No. 24, EXPERT'S REPORT AND WRIT**
RESOLUTION DATE:	**MARCH 16, 2017**
No. OF PAGES:	**31 (IN THE SPANISH VERSION)**

Celendín,……. (date)
In Celendín, the defendant was given appropriate notice of the attached legal document at its known address by the undersigned Court Process Server. A person who said his/her name was …… answered the door and received the notice.

I do hereby sign this document, to which I attest.

SERVICE OF PROCESS OFFICE
CELENDIN
COURT PROCESS SERVER
MARCH 31, 2017

(initialed)
Juan Cubas Carranza
Court Process Server
National ID No. 27575419

An illegible signature. A seal.

JUDICIARY

Superior Court of Justice in and for Cajamarca
Court of Combined Jurisdiction for the Province of Celendín

Case File:	**2015-24-C**
Plaintiff:	**MINERA YANACOCHA S.R.L.**
Defendant:	**MÁXIMA ACUÑA ATALAYA**
Matter:	**RESTRAINING ORDER PROHIBITING INTERFERENCE WITH POSSESSION OR OWNERSHIP**
Judge:	**JULISSA ASEIJAS SILVA**
Court Secretary:	**ANA SILVIA ESPINOZA IDROGO**

RESOLUTION No. 24
Celendín, March 16, 2017

HAVING SEEN the writs and expert's report, be these documents **ADDED** to the Case File;

I.- CONSIDERING:

ONE.- By means of a writ dated February 23, 2017, the attorney who represents the plaintiff, Minera Yanacocha S.R.L., stated that the inspection visit ordered and scheduled by the Court by Resolution No. 18 was carried out on January 30, 2017 and that during the court-ordered inspection visit the defendants, Máxima Acuña Atalaya and Jaime Chaupe Lozano, had an arrogant, hostile and defiant attitude towards the Court's representative and the plaintiff's attorney, so much so that one of the defendants, Jaime Chaupe Lozano, physically attacked the plaintiff's attorney, hitting his lower jaw with the head and causing him an injury, as shown in the video recording, for which reason the court, in accordance with the provisions set forth in Article 53, paragraph 2, of the Code of Civil Procedure, ordered that the aforesaid defendant be arrested for up to 24 hours and the police was instructed to keep him in custody, a decision which was fully justified and was not appealed by the defendant, for which reason it became a firm decision. Moreover, the plaintiff's attorney also explained **that he was very surprised to see that** that same date, after the court-ordered inspection visit ended, the Court reneged on its original decision and issued Resolution No. 22, dated January 30, 2017, pursuant to which it ordered that the defendant, Jaime Chaupe Lozano, be released a few hours after ordering his arrest, arguing this time that the defendant had not insulted, offended, threatened or coerced the Judge, neither in writing nor verbally, and, therefore the events occurred were not covered by the assumptions contemplated by Article 185, paragraph 3, of the Organizational Law of the Judiciary, so as to issue an arrest warrant, **which irrefutably proves that there is an apparent motivating reason to make the decision to revoke the arrest warrant previously ordered by the court appear lawful.** In addition, the plaintiff's attorney adds that **he does not understand the reason why the Judge stated in Resolution No. 22 that the court-ordered inspection visit ended normally because the truth is that the defendant Jaime Chaupe Lozano physically attacked the plaintiff's attorney.** The plaintiff's attorney adds that the Court has failed to read Article 185, paragraph 3, of the Organizational Law of the Judiciary in its entirety because this legal rule provides that an arrest warrant can also be issued for up to 24 hours against

whoever promotes unrest in the court or as a result of the steps taken by the court, which is precisely what the defendant Jaime Chaupe Lozano did because he physically attacked the plaintiff's attorney during the court-ordered inspection visit. As a result, the plaintiff's attorney **expresses his concern because it is necessary for resolutions to comply with the law and justice, and it is also necessary for Judges to exercise their authority independently and thoroughly complying with the principle of impartiality,** as enshrined in Article 139, paragraph 2, of the Constitution, so he asked the Court to bear that in mind.

TWO: In this regard, the plaintiff must bear in mind the fact that the Judge is the one who conducts the proceeding, exercising for such purpose the duties and prerogative powers contemplated in the Constitution and the law in order for the conflict of interests to be resolved or the existing uncertainty to be eliminated - both issues being legally relevant – additionally taking disciplinary and coercive action in his/her sole discretion, always in keeping with the principles of legality, reasonableness and proportionality. With this in mind, it should be pointed out that Resolution No. 22 clearly states that the Judge assessed two situations: the first one: that the inspection visit carried out after the incident caused by the co-defendant Jaime Chaupe Lozano ended normally - because there was no other verbal or physical attack which could have resulted in the interruption or suspension of the inspection visit, and also because the co-defendant's refusal to sign the inspection certificate caused no trouble at all as the inspection visit had already ended and the co-defendant's refusal to sign the certificate was simply placed on record.

The second one: the Judge also assessed the fact that the co-defendant in question did not insult, attack, threaten or coerce the Judge during the inspection visit. It should be pointed out that paragraph 3) of Article 185 of the Revised Uniform Text of the Organizational Law of the Judiciary contemplates two cases where the judge can issue an arrest warrant ordering that an individual be arrested for up to 24 hours: the first one involves four behaviors: insult, offend, threaten or coerce a Judge in writing or verbally; and the second one involves one behavior: promote unrest. Therefore, the plaintiff's statement in the sense that there is no doubt that **there is an apparent motivating reason to make legal the decision contained in Resolution No. 22 appear legal** is ill-advised because this second case or assumption was not taken into account; however, it was precisely this second assumption: **promote unrest** (as an act that disturbs[1] the duties and powers discharged by this Judge during the inspection visit) the one which was taken into account to issue the arrest warrant against the aforementioned co-defendant. Accordingly, as stated above, this Judge assessed such circumstances and, in keeping with the principles of reasonableness and proportionality, even more considering the nature of the right which was restricted (personal freedom), issued Resolution No. 22; and if the plaintiff **disagreed with the Judge's decision, then it was authorized to file an appeal against said decision according to law;** however, far from filing an appeal against the resolution, it filed a completely ill-advised writ pursuant to which it tried to call into question the Judge's independence, impartiality and professionalism (by stating that there was an "apparent motivating reason"); as a result, corrective action should be taken and a warning

[1] It comes from the verb "disturb" which, according to the Dictionary of the Spanish Language, means invest, disrupt the existing order (…).

should be issued accordingly. For these reasons and bearing in mind the provisions set forth in Articles 4, 5 and 9 of the Revised Uniform Text of the Organizational Law of the Judiciary,

II. IT IS HEREBY RESOLVED AS FOLLOWS:

1. **Concerning the writ dated February 23, 2017:** The legal representative and attorney of the plaintiff, MINERA YANACOCHA S.R.L., Ervin José Luis Albrecht Pitasig, is hereby **URGED to use the procedural remedies that he is entitled to use according to law to appeal the decisions made by this Judge, contained in the resolutions with which he disagrees; and REFRAIN** from filing ill-advised documents like the writ in question, trying to call into question the independence, impartiality and professionalism of this judge, thereby bringing his line of conduct into **AGREEMENT** with the duties set forth in Article 8 of the Revised Uniform Text of the Organizational Law of the Judiciary, which is in line with paragraphs 1 and 4 of Article 109 of the Code of Civil Proceeding, under penalty of being fined in case of non-compliance; **As to the Single Moreover Clause: Be it taken into account.**

2. **Concerning the Expert's Report:** The expert's report issued by experts Julio Javier Arroyo Ruiz and Segundo Máximo Escalante Castañeda is hereby **CONSIDERED RECEIVED**, for which reason the parties to the proceeding **MUST BE GIVEN NOTICE** thereof for all relevant purposes, and the judicial forms evidencing the payment of professional fees to the above-mentioned experts must be **ENDORSED AND DELIVERED,** keeping a certified copy of said documents, as well as the acknowledgement of receipt thereof, in the case file.

3. **Concerning the writ dated March 07, 2017:** The petition for annulment filed by the plaintiff is hereby **CONSIDERED ANSWERED** by the defendant; and, therefore, be the relevant documents assessed in order for the case to be resolved accordingly. **Be a resolution issued** once the undersigned judge comes back from her vacation given the court's current workload in view that it is a court of combined jurisdiction. Be the resolution **NOTIFIED.**

(SIGNED)
ANA SILVIA ESPINOZA IDROGO
COURT SECRETARY
COURT OF COMBINED JURISDICTION
IN AND FOR CELENDÍN

EXPERT'S REPORT

Julissa ASEIJAS SILVA, Esq.
JUDGE OF THE COURT OF COMBINED JURISDICTION
IN AND FOR CELENDÍN
Celendín.-

JULIO JAVIER ARROYO RUIZ, a Civil Engineer identified by National ID No. 26601281 and Peruvian Engineers' Association Registration No. 23664, with usual place of residence at Guillermo Urrelo 963, Cajamarca, e-mail address 58768 and P.O. Box 93 of the Superior Court of Justice of Cajamarca, and **SEGUNDO MÁXIMO ESCALANTE CASTAÑEDA,** a Civil Engineer identified by National ID No. 26600212 and Peruvian Engineers' Association Registration No. 16501, with usual place of residence at Jr. Eten 325, Cajamarca, e-mail address 58783, in their capacity as Court Experts in relation to Case File No. 2015-024-C - an action filed by Minera Yanacocha against Máxima Acuña Atalaya et. al seeking a restraining order prohibiting interference with possession or ownership - hereby inform you as follows:

CASE FILE:	2015-024-C
MATTER:	Restraining order prohibiting interference with possession or ownership
COURT SECRETARY:	Lawyer Ana Silvia Espinoza Idrogo
PLAINTIFF:	Minera Yanacocha
DEFENDANTS:	Máxima Acuña Atalaya, Jaime Chaupe Lozano and Ysidora Chaupe Acuña

I. DESCRIPTIVE REPORT

1. APPLICANT

The Judge of the Court of Combined Jurisdiction in and for Celendín, by means of Resolution No. 9 dated March 14, 2016, requested the issuance of an Expert's Report.

2. PURPOSE

The purpose of this report is to determine the exact location of the property in dispute; who is in possession of the property in dispute and since when; whether or not any act has been performed affecting possession of the property in dispute; and, if applicable, what act has been performed and since when.

3. METHOD USED

The method used to prepare this expert's report consisted of checking the documents kept in the Court Docket in relation to the property in dispute and obtaining a copy of its registration card and title deed from the Office of Public Records. To carry out field work, the differential GPS system was used and photographs of the existing landmarks and vertices and other findings were taken. Cabinet work focused on processing the data gathered in the field and preparing maps and this report.

4. DATE OF THE EXPERT'S REPORT

The expert's report and related work were carried out in February 2017.

5. LOCATION

Region:	Cajamarca
Department:	Cajamarca
Province:	Celendín
District:	Sorochuco
Place:	-According to the information contained on the Registration Card of the property in dispute: a plot of land located between Cerro Cocañes and Perol. -According to the information provided by the Police Station of Sorochuco, included in a Court-Ordered Inspection Certificate dated January 30, 2017: Las Posadas area – Tragadero Grande.

6. INSPECTION AND DESCRIPTION OF THE PROPERTY

As ordered by the Judge, an inspection visit was carried out on January 30, 2017. Field work included measurements taken in the geographical area in dispute. To this end, a GSP unit was used, an instrument which is technically and legally appropriate for this type of work, in order to determine the coordinates of and identify the property in dispute. Representatives from the Court of Combined Jurisdiction in and for Celendín, the plaintiff and the defendants, and their lawyers, and other persons whose names are included in the respective Court-Ordered Inspection Certificate were present during the inspection. As requested by the Judge, field work was deemed completed once a supplementary inspection visit was made on February 4, 2017.

7. BOUNDARIES, AREA, AND PERIMETER OF THE PROPERTY IN DISPUTE

According to the documents kept by the Real Estate Register of the Cajamarca Office of Public Records:

REGISTRATION CARD No. 02281452 – ITEM 25040
THE PROPERTY BELONGS TO MINERA YANACOCHA

On the North, *the property is bordered by undeveloped land belonging to the Agrarian Community of Sorochuco, along 605 linear meters.*

On the South, *the property is also bordered by land belonging to the Agrarian Community of Sorochuco, along 465 linear meters.*

On the East, *the property is bordered by the El Perol ravine, El Perol lake, and land belonging to the Agrarian Community of Sorochuco, along 3,412 linear meters.*

On the West, *the property is bordered by private property and land belonging to the Agrarian Community of Sorochuco, along 3,153 linear meters.*

AREA: 269.52 hectares
PERIMETER: 7,635 linear meters

This Registration Card includes a map showing the delimitation of the property (called "MAP OF THE AREA TRANSFERRED BY THE AGRARIAN COMMUNITY OF SOROCHUCO TO MINAS CONGA S.R. LTDA"), which is shaped like an irregular polygon with 13 vertices. It includes its coordinates.

8. INFORMATION CONTAINED IN THE CERTIFICATE OF POSSESSION DATED JANUARY 16, 1994, ISSUED IN FAVOR OF JAIME CHAUPE LOZANO AND MÁXIMA ACUÑA ATALAYA

UPPER SIDE: *IT IS BORDERED BY LAND OCCUPIED BY HUMBERTO CABADA CASTAÑELA AS POSSESSOR, SEPARATED BY A HIGH ROW, ALONG 1,500 METERS.*
RIGHT SIDE, *IT IS BORDERED BY LAND OCCUPIED BY CLEMENTE QUILICHE CHACÓN AS POSSESSOR, SEPARATED BY CERRO COLORADO, ALONG 800 METERS.*
LOWER SIDE, *IT IS BORDERED BY LAND OCCUPIED BY SAMUEL CHAUPE RODRIGUEZ AS POSSESSOR, SEPARATED BY LANDMARKS PLACED TO MARK THE BOUNDARY, ALONG 1,500 METERS.*
LEFT SIDE, *IT IS BORDERED BY LAND OCCUPIED BY LEONIDAS FUENTES RODRÍGUEZ AS POSSESSOR, SEPARATED BY PEÑA EL AGUILA, ALONG 800 METERS.*

AREA: 18 HECTARES

II. <u>TECHNICAL ANALYSIS</u>

1. Bearing in mind the object of this expert's report and taking into account the data collected in the field using a differential GPS system, we have prepared the attached map showing the exact location of the property in dispute, using the UTM WGS84 coordinates (Exhibit I hereto). The property in dispute has an area of 269.64 hectares and its perimeter includes 7,647.47 linear meters. The map attached hereto as Exhibit 1 shows both Acts to Exercise Possession and Acts of Disturbance Possession, which can also be located using the UTM coordinates (concerning the Acts to Exercise Possession – farm earthworks – the centroid coordinates are also included).

   The area and perimeter coincide almost in their entirety with the area and perimeter shown on the map kept on the Registration Card of the property in dispute, there being a small difference which falls within the margin of error of 0.044%, which is in turn within the margin of cadastral-registration tolerance as per Directive No. 01-2008-SNCP/CNC "Cadastral-Registration Tolerances" published in the official gazette El Peruano on August 29, 2008. We proved in the field during the court-ordered inspection visit and the supplementary inspection visit carried out on February 4, 2017 that there are still some old landmarks (some stones, piles of rocks, and concrete landmarks placed there as boundaries), plus the border of the Perol Lake and the border of the Chirimayo Ravine. These landmarks coincide with the vertices shown on the map kept on the Registration Card of the property in dispute.

2. As per the instructions given by the Judge during the court-ordered inspection visit, Mrs. Máxima Acuña Atalaya was asked to verbally give her version of the location of the

property referred to in the Certificate of Possession dated January 16, 1994. It has not been possible to confirm her version against any public or official document, for which reason it's only her version, even more so if we bear in mind the fact that the Certificate of Possession makes no reference to coordinates or other data proving the location of the property and which could be technically or scientifically confirmed, nor is it included in the court dossier or in any other public or official document supporting Mrs. Acuña's version.

Anyway, based on the version given verbally by Mrs. Máxima Acuña Atalaya on the location of the property mentioned in the Certificate of Possession, we have prepared a map which is also attached hereto (as Exhibit 2).

III. CONCLUSIONS

a. On the map attached hereto as Exhibit I, we have determined the exact location of the property in dispute. The area and perimeter coincide almost in their entirety with the area and perimeter shown on the map kept on the Registration Card of the property in dispute, there being a small difference which falls within the margin of cadastral-registration tolerance as per Directive No. 01-2008-SNCP/CNC "Cadastral-Registration Tolerances" published in the official gazette El Peruano on August 29, 2008. We can therefore conclude that the property subject matter of the field inspection visit is the same property referred to on Registration Card No. 02281452 – Card 25040 of the Real Estate Register kept by the Cajamarca Office of Public Records, where Minera Yanacocha appears as owner.

b. During the court-ordered inspection visit and also during the supplementary inspection visit, we proved that Minera Yanacocha has performed some Acts to Exercise Possession, such as exploration trenches, access roads and exploration platforms, signs reading "Yanacocha's Private Property", access paths, a special yard for raising and taking care of alpacas, and alpacas wandering around the property. The map attached hereto as Exhibit 1 shows the location of some exploration trenches, access roads and exploration platforms, as well as the yard built for raising and taking care of alpacas.

c. When we visited the property in dispute, we managed to prove that Máxima Acuña Atalaya, Jaime Chaupe Lozano and Ysidora Chaupe Acuña have not done anything to exercise possession of the land. We only saw some farm earthworks which are mentioned in the certificate of inspection dated January 30, 2017, in respect of which it is also stated that Minera Yanacocha also took possessory defense action.

d. Minera Yanacocha is in possession of the property in dispute, but Máxima Acuña Atalaya and Jaime Chaupe Lozano entered part of the property, and this is precisely the reason of the dispute.

e. From the court-ordered inspection visit and the supplementary inspection, we have not been able to determine how long has Minera Yanacocha been in possession of the

property in dispute. However, the acts performed by Minera Yanacocha to exercise possession, as proved during the court-ordered inspection visit and the supplementary inspection, show that Minera Yanacocha has been in possession of the property in question for several years, although it has not been possible to accurately determine how many years.

f. During the court-ordered inspection visit, we were able to prove that some farm earthworks have been carried out in the northern section of the property in dispute. Máxima Acuña Atalaya and Jaime Chaupe Lozano admitted during the court-ordered inspection visit that they had done said farm earthworks but said that Minera Yanacocha had taken possessory defense action in this regard. In view that the earthworks were carried out on land possessed by Minera Yanacocha, it can be concluded that Máxima Acuña Atalaya and Jaime Chaupe Lozano have performed acts of disturbance of possession on said land.

g. It is not possible to technically or scientifically determine the exact location of the property referred to in the Certificate of Possession dated January 16, 1994, issued in favor of Jaime Chaupe Lozano and Máxima Acuña Atalaya. To check the possible location of the property in the field, we only used the version verbally given by Máxima Acuña Atalaya, which has not been confirmed by any public or official document, in view that the aforesaid certificate of possession lacks coordinates or other data which may allow us to scientifically conclude that the property is located in the place indicated by Mrs. Acuña. Besides, the court dossier does not include any public or official document confirming Mrs. Acuña's version.

IV. EXHIBITS

- **Exhibit 1:** The map we have prepared using the data collected in the field from the property in dispute.

- **Exhibit 2:** The map we have prepared at the request of the Judge, based on the version verbally given by Mrs. Máxima Acuña Atalaya regarding the location of the property referred to in the Certificate of Possession dated January 16, 1994.

- **Exhibit 3:** Photographs taken during the court-ordered inspection visit and the supplementary inspection to prepare this report.

Cajamarca, February 2017

(signed)
Segundo Máximo Escalante Castañeda
Civil Engineer
Peruvian Engineers' Association Registration No. 16501

(signed)
Julio Javier Arroyo Ruiz
Civil
Civil Engineer
Peruvian Engineers' Association Registration No. 23664

CASE FILE No. 2015-24-C
COURT SECRETARY: ESPINOZA I.
FILE: MAIN FILE
WRIT NO.: CORRELATIVE
PETITION FOR ANNULMENT IS HEREBY ANSWERED

TO THE COURT OF COMBINED JURISDICTION IN AND FOR CELENDÍN
SUPERIOR COURT OF CAJAMARCA

I, WALTER GUTIÉRREZ ROQUE, COUNSEL FOR THE DEFENDANTS, ACUÑA ATALAYA MÁXIMA, CHAUPE LOZANO JAIME and CHAUPE ACUÑA YSIDIORA, in relation to the legal action filed by Minera Yanacocha seeking a Restraining Order Prohibiting Interference with Possession or Ownership, do hereby respectfully state as follows:

I. PETITION

Within the deadline set by the Court of Combined Jurisdiction in and for Celendín, I do hereby request that the Petition for Annulment filed by the PLAINTIFF be declared:

- GROUNDLESS because, contrary to what has been stated by the PLAINTIFF, the court's resolution deals with the matters at issue.

- GROUNDLESS because the arguments show inconsistency as regards the right that the DEFENDANT has tried to enforce in the proceeding: the right to Due Process (right of defense) – Article 139, paragraph 3, of the Political Constitution of Peru –, the constitutional principle of procedural congruence (by reason of the right to Proper Motivation enshrined in Article 139, paragraph 5, of the Constitution), the Right to Evidence and the Procedural Principle of Community of Evidence (once the evidence is produced, it no longer belongs to whoever produced it but rather to the proceeding).

II. PRELIMINARY FACTUAL GROUNDS

II.1 Allegations put forward by the DEFENDANT exercising its right of opposition

1. As the Judge can see, to support the opposition it is stated in the case file that since 1994 the DEFENDANTS have been exercising real rights (community) to the **TRAGADERO GRANDE PROPERTY OR PLOT OF LAND**, for which purpose they attached the corresponding evidence, like the Certificate of Possession dated January 1994 (among other documents). For this reason, the boundaries of the property were defined and it was therefore proved that the defendants are in possession of a total of 25.8 hectares.

2. Therefore, for the above reason it has been stated that the DEFENDANTS are fully entitled to be in possession of the 25 HECTARES COMPRISING THE TRAGADERO

GRANDE PROPERTY; consequently, IT HAS ALSO BEEN STATED THAT: MINERA YANACOCHA HAS NOT BEEN IN POSSESSION OF THE TRAGADERO GRANDE PROPERTY, for which reason IT CANNOT ARGUE THAT THERE HAS BEEN ANY ACT OF DISTURBANCE OF POSSESSION.

3. CONSEQUENTLY, in their opposition (answer) the DEFENDANTS have stated that the PLAINTIFF could have not been purportedly affected by dispossession of any given area because the DEFENDANTS HAVE ALWAYS EXERCISED POSSESSION exercising the right which was vested in them by a certificate (and more) based on which they have performed acts involving the use of the land, like PLOWING, PLANTING, SHEPHERDING, etc., as proved during the inspection visit.

4. As a result, any means of proof (irrespective of whether or not it requires the court to take action – like the court-ordered inspection visit or the expert's report), in keeping with the requirements to be met in an ACTION FOR THE ISSUANCE OF A RESTRAINING ORDER PROHIBITING INTERFERENCE WITH POSSESSION OR OWNERSHIP:
   ONE: must bear in mind not only the arguments put forward by the PLAINTIFF, but also those put forward by the DEFENDANT; TWO: both the PLAINTIFF and the DEFENDANT must prove possession or dispossession; THREE: the DEFENDANT has stated that someone who is in possession of property supported by its RIGHT of possession and its actual possession cannot be disposed of the property in question.

III. ARGUMENTS WITH REGARD TO THE PURPOSE OF THE EXPERT'S REPORT ISSUED AS A RESULT OF THE COURT-ORDERED INSPECTION VISIT (opposing the arguments put forward by the PLAINTIFF supported by facts and legal criteria)

- Contrary to what was stated by PLAINTIFF, the court has not drifted away from its resolution and has even less behaved incongruously because:

1. The Tragadero Grande property belongs to the DEFENDANTS (COMMUNAL PROPERTY) by virtue of the right of possession they hold; as a result, if the DEFENDANTS prove not only the existence of their right of possession, but also the exercise of their right of possession all over the area covered by the property (25.8 hectares), then there is no reason or argument supporting the alleged action for the issuance of a restraining order prohibiting interference with possession or ownership.

2. The fact that the location of the DEFENDANT's property has been determined does not affect at all the purpose of the proceeding and even less the purpose of the expert's report; on the contrary, reference has been made to the subject-matter of the dispute, which has been duly addressed in the answer to the complaint.

3. Accordingly, it is clear that: YES (i) **the location of the property in dispute has been determined** because, as reasonably inferred from the arguments put forward by the

parties, it can be seen from the property in dispute that both parties HOLD RIGHTS to the area purportedly affected; therefore, it has been necessary to identify the location of each right alleged by the parties (as actually done).

4. YES, it has been possible to identify (ii) **who is in possession of the property in dispute** because, as rightly stated by the Judge, it is necessary to know whether or not the arguments put forward by MINERA YANACOCHA are true or, otherwise, whether or not the arguments put forward by the DEFENDANT are true, in view that the DEFENDANT has had and still has the right to possess the property, and has even exercised said right all along the area purportedly affected.

5. YES, it has been possible to prove (iii) **the existence or non-existence of acts of disturbance of possession of the property in dispute and, at the same time, identify said acts** because, now that the location of the right of possession of the DEFENDANT has been identified, it can be inferred that the DEFENDANT cannot be accused of disrupting its own right of possession, even more so if, as proved in a document contained in the case file, its right of possession has existed and still exists.

6. YES, it has been possible to prove (iv) **since when the DEFENDANT has been in possession of the property in dispute** (foreseeing the existence of dispossession or the continuation of possession supported by a right) because bearing in mind the date of the document which proves the DEFENDANT's right of possession, which was issued in 1994 (and this document is in full force and effect), it is necessary to establish the extent to which said right should be exercised, which supports the exercise of its right of possession.

7. **YES, it has been possible to enforce compliance with Articles 272 and 274 of the Code of Civil Proceeding** because, as stated above, the events alleged by the parties cannot be limited to the arguments put forward by the PLAINTIFF, but should also include the arguments put forward by the DEFENDANT in its OPPOSITION; accordingly, the court-ordered inspection visit has NECESSARILY proved not only the purported right of the PLAINTIFF, but also the DEFENDANT's RIGHT based on which the DEFENDANT HAS ALWAYS EXERCISED ITS RIGHT OF POSSESSION. It is clear then that, for such purpose, the extent to which said right can be exercised should be known.

   Therefore, it is enough reason to prove the efficacy of the statements made in relation to the place where the inspection visit was made, including events, objects, etc., because, as far as the boundaries of the Tragadero Grande property are concerned, they have been PRECISELY determined in the area where the DEFENDANT, as admitted by the DEFENDANT itself, was DISPOSSED of its right of possession (which fact has been denied).

8. Accordingly, the reference to Article 606 of the Code of Civil Proceeding only proves that the court's decision has been in line with the right alleged by the parties, both in the complaint as well as in the answer to the complaint. A different understanding would be like pretending that the PLAINTIFF is trying to have the Judge make a decision which AFFECTS THE FULL EXERCISE OF THE RIGHT OF DEFENSE AND, THEREFORE, DUE PROCESS. Moreover, it is obvious that it fully complies with Cassation Appeal 1698-97-ICA.

9. Mrs. Judge, you will see that THE PLAINTIFF'S ARGUMENTS ARE QUITE LIMITED because if, determining the matters at issue, requires:

   ONE: knowing whether or not the PLAINTIFF exercises the right of possession, then it can also be understood (as stated in the answer to the complaint) that it is possible for the DEFENDANT to prove that in view that it really and actually is in possession of the property, then it should be allowed to prove that the DEFENDANT NEVER EXERCISED ANY POSSESSION (sic) or that when the events in question occurred it was not in possession of the property.

   TWO: knowing whether or not the DEFENDANTS have performed any ACT OF DISTURBANCE OF POSSESSION, then IT SHOWS that it is not only necessary to know if the PLAINTIFF has been in possession of the property, but also prove that the DEFENDANT: in view that it has had the right of possession and further in view that it has exercised said right, it cannot be accused of any act of disturbance of possession. It makes the inspection visit absolutely logic because it is necessary to know the location of the property owned by the DEFENDANT.

10. We can see then that the Judge and the court experts have fully addressed all the CONTROVERSIAL MATTERS, as provided for in Article 50, paragraph 1, of the Code of Civil Proceeding.

A. <u>Legal grounds</u>

- The PLAINTIFF's petition affects the right to Due Process (right of defense) – Article 139, paragraph 3, of the Political Constitution.

  The Constitution Court resolved as follows in Tax Court Resolution No. 0023-2005-AI/TC, paragraph 43:

  "(…) the fundamental rights inherent in the right to due process and effective court protection are enforceable from any court (regular, constitutional, electoral or military court) and this also applies, to the extent applicable, to all acts performed by other State or private entities (administrative proceedings, legislative proceedings, arbitration proceedings and relations between private companies, etc.)". (…) Paragraph 48: *"(…) there are formal and substantive requirements. As regards formal requirements, the applicable principles and rules refer to the established formalities, such as those established by judges, the pre-established procedure, <u>the</u>*

*right of defense and proper motivation; and, as regards substantive requirements, they refer to the standards of reasonableness and proportionality which must be complied with in every court decision" (*emphasis added).

Consequently, the PLAINTIFF's petition intends to curtail the DEFENDANT's right of defense, as it pretends to prevent the production of evidence that proves the areal extent of the property owned by the DEFENDANT, a circumstance duly explained in the answer to the complaint.

- The PLAINTIFF's petition affects the constitutional principle of procedural congruence (by reason of the right to Proper Motivation enshrined in Article 139, paragraph 5, of the Constitution).

Because if the court-ordered inspection visit was allowed to corroborate the location of the DEFENDANT'S property, IN VIEW THAT THIS FACT was duly argued and supported in the ANSWER TO THE COMPLAINT, then it is consistent not only with the facts alleged, but also with the subject matter of the dispute, for which reason it should be proved by all the means of evidence that can be offered in proceedings. Accordingly, it proves that the acts performed are basically CONGRUOUS; therefore, if a resolution contrary to this conclusion were issued, the court would be performing INCONGRUOUS ACTS, which would be therefore contrary to law.

Accordingly, we can see that your Court, Mrs. Judge, is fully complying with the LAW, bearing in mind the resolution issued by the Supreme Court:

"*…in keeping with the principle which calls for the proper motivation of court resolutions, the judge must explain the reasons why the events are mapped into the hypothetical assumptions contemplated in the legal rules, issuing a clear and congruous court resolution to resolve the legal conflict according to the Constitution and the law, bearing in mind the issue in dispute explained by the parties to the proceeding…" (Cassation Appeal No. 1308-2001-CALLAO, published on January 2, 2002 in the Official Gazette El Peruano).*

We can see then that the resolution in question has been ***properly motivated.***

Even more so if, as established in Cassation Appeal No. 60-20120-LA LIBERTAD:
"The requirement on the issuance of properly motivated decisions, *as explained, is regulated in Article 139, paragraph 5, of the Constitution, so it should be borne in mind that the procedural guarantee which calls for the issuance of properly motivated decisions is in turn part of the guarantee of jurisdictional protection which is in turn related to due process, for which reason* ***every court decision must be logically, clearly and congruously motivated, which will allow understanding the reason of the court's decision"***.

This reasoning is reflected in the court's resolution.

- What the PLAINTIFF has done is contrary to the Right to Evidence and the procedural principle of Community of Evidence (once the evidence is produced, it no longer belongs to whoever produced it but rather to the proceeding).

The Supreme Court has resolved as follows:
The right to evidence is an element of due process and includes five specific rights: a) the right to offer evidence…; b) the right to have the evidence accepted…; c) the right to have the court take action with regard to the evidence offered and accepted in a timely fashions; d) the right to contest…; and e) ***The right to have all the evidence assessed jointly and in a reasoned manner****, which is in line with the rules of healthy criticism. Therefore, it can be noticed that the right to evidence not only includes the rights inherent in the evidence itself, but also rights exercisable against the evidence produced by the other parties, even evidence in respect of which the court has taken action at its own initiative, and also* ***the right to have the court issue a sufficiently and properly motivated decision based on a joint and reasoned assessment of the evidence.***

The DEFENDANT's right to evidence can be affected in view that the PLAINTIFF pretends to be the only beneficiary of the evidence in respect of which the court has taken action, forgetting that once the EVIDENCE is produced, it becomes part of the probatory right inherent to both parties to the proceeding, for which reason Minera Yanacocha's petition involves violating the DEFENDANT's right not only to make statements to prove, making use of the means of proof offered by the parties, but also benefit from the evidence produced. Therefore, every court resolution will address the feasibility of a joint and reasoned assessment NOT ONLY OF THE EVIDENCE ITSELF, but also of the manner in which THE COURT MUST TAKE ACTION WITH REGARD TO THE EVIDENCE PRODUCED (as in the case of the EXPERT'S REPORT OR COURT-ORDERED INSPECTION VISIT).

TO CONCLUDE: THERE ARE NOT FACTUAL OR LEGAL REASONS supporting THE PETITION FOR ANNULMENT FILED BY THE PLAINTIFF, for which reason the PETITION FOR ANNULMENT must be declared GROUNDLESS.

WE ARE ATTACHING HERETO:

- Notice form evidencing payment of the applicable rate.

For the above reasons:

We hereby request, Mrs. Judge, to issue a resolution bearing in mind the above arguments, which are in line with the law.

Cajamarca, March 07, 2017

(signed)
Walter Gutiérrez Roque, Esq.
Cajamarca Bar Association No. 2385