

“ANALYSIS OF CONTROVERSIES REGARDING BLOCK 88, CAMISEA”

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Table of contents

1	<u>EXECUTIVE SUMMARY</u>	<u>4</u>
2	<u>EXPERT TEAM</u>	<u>6</u>
3	<u>BACKGROUND TO THE CONTROVERSY</u>	<u>8</u>
4	<u>REPSOL AND COMPLIANCE WITH INTERNATIONAL STANDARDS FOR THE RESPECT OF HUMAN RIGHTS</u>	<u>10</u>
5	<u>REFLECTIONS ON THE RED FLAG</u>	<u>12</u>
6	<u>INDIGENOUS PEOPLES IN VOLUNTARY ISOLATION OR INITIAL CONTACT</u>	<u>14</u>
6.1	REPSOL AND INDIGENOUS PEOPLES	14
6.2	DESCRIPTION OF THE CONTROVERSY	15
6.3	INFORMATION AND DOCUMENTATION ANALYSED	15
6.4	CONCLUSIONS ON THE BASIS OF THE INFORMATION RECEIVED	17
6.5	RECOMMENDATIONS IN ACCORDANCE WITH INTERNATIONAL STANDARDS	18
7	<u>MERCURY POLLUTION</u>	<u>21</u>
7.1	REPSOL AND ITS COMMITMENT TO THE ENVIRONMENT AND CONSERVATION OF BIODIVERSITY	21
7.2	DESCRIPTION OF THE CONTROVERSY	22
7.3	INFORMATION AND DOCUMENTATION ANALYSED	23
7.4	CONCLUSIONS ON THE BASIS OF THE INFORMATION RECEIVED	29
7.5	RECOMMENDATIONS TO BE TAKEN INTO ACCOUNT	30
8	<u>DUE DILIGENCE</u>	<u>31</u>
8.1	REPSOL AND ITS COMMITMENT TO HUMAN RIGHTS AND DUE DILIGENCE	31
8.2	DESCRIPTION OF THE CONTROVERSY	33
8.3	INFORMATION AND DOCUMENTATION ANALYSED	33
8.4	CONCLUSIONS ON THE BASIS OF THE INFORMATION RECEIVED	33
8.5	RECOMMENDATION IN ACCORDANCE WITH INTERNATIONAL STANDARDS	34
9	<u>FREE, PRIOR AND INFORMED CONSULTATION</u>	<u>36</u>

9.1	REPSOL AND THE COMMITMENT TO PRIOR, FREE AND INFORMED CONSULTATION	36
9.2	DESCRIPTION OF THE CONTROVERSY	36
9.3	INFORMATION AND DOCUMENTATION ANALYSED.....	37
9.4	CONCLUSIONS ON THE BASIS OF THE INFORMATION RECEIVED.....	37
9.5	RECOMMENDATION IN ACCORDANCE WITH INTERNATIONAL STANDARDS	38
10	<u>LEGAL ACTIONS BY NGOS</u>	<u>39</u>
10.1	DESCRIPTION OF THE CONTROVERSY	39
10.2	INFORMATION AND DOCUMENTATION ANALYSED.....	39
10.3	CONCLUSIONS ON THE BASIS OF THE INFORMATION RECEIVED.....	39
10.4	RECOMMENDATION IN ACCORDANCE WITH INTERNATIONAL STANDARDS	40

1 EXECUTIVE SUMMARY

This report focuses on the analysis of the main arguments raised by the company *Institutional Shareholder Services* (hereinafter, ISS) in order to keep a red flag open against the company Repsol for its participation in the Camisea project, operated by the company Pluspetrol, and in which Repsol has a 10% stake. It furthermore proposes various recommendations that would allow the company Repsol to improve its performance in connection with respect for international human rights standards within the context of said project.

The main issues regarding which the company ISS has identified controversies from the perspective of human rights, and that in its judgment justify maintaining the red flag, are as follows:

- Indigenous Peoples in Voluntary Isolation or Initial Contact: ISS asserts that the protection of peoples in isolation within the context of the Camisea project is not proven.
- Mercury Pollution: ISS maintains that the origin of the mercury pollution of the communities is not clear
- Due Diligence on Block 88: ISS sets out a number of declarations by the UN Special Rapporteur on the rights of Indigenous peoples regarding the actions of the Camisea Consortium failing to apply due diligence as to human rights
- Free, Prior and informed Consultation: The ISS interpretation is that in the alleged event that the Camisea project is being performed without the Peruvian State having guaranteed the right of free prior and informed consultation. The companies that are partners in the project are subject to joint liability for the violation of this right
- Complaints by NGOs: The complaints generate concern among the ISS analysts in terms of a scenario could which those involved are found guilty of violating human rights

With regard to the situation of Indigenous Peoples in Voluntary Isolation or Initial Contact, the report describes the contents of the Anthropological Contingency Plan applied to the Camisea project, the lack of sightings or undesired contact with groups in isolation over recent years, and Repsol's commitment to protect peoples in voluntary isolation or initial contact.

The section focused on mercury pollution indicates the studies conducted, both by the Peruvian Government and by the operator of the project, Pluspetrol, demonstrating that the mercury pollution of the communities is unconnected with activity in the Camisea project.

Regarding human rights due diligence in Block 88, the report emphasises the standards applied by the company Repsol in all its projects, and the positive impact on the project operator to integrate due diligence within the management of the Camisea project.

With regard to the matter of the free prior and informed consultation, the report sets out the impact actions conducted, both by Repsol and by the operator, to ensure that the Peruvian State guarantees respect for the right of free prior and informed consultation. It likewise emphasises that the conducting of consultation processes with indigenous communities in Peru is solely the responsibility of the State, and that companies cannot and must not conduct such processes on their own account.

Lastly, with regard to the complaints lodged against the project, the report concludes that currently there is no Court's judgment finding the Camisea project in breach of human rights.

In summary, the opinion is that Repsol has performed properly with regard to respect for human rights in its activities connected with the Camisea project, including the positive influence that it exerts on its partners.

The main conclusion of this report is that it has not proved possible to verify any violation of human rights associated with Repsol activities in the Camisea project, or by the operator, in connection with the issues of concern to ISS.

At the request of Repsol, this report includes additional recommendations in order to heighten social performance in Block 88 even further.

2 EXPERT TEAM

Akuaipa Transformation is an enterprise initiative aiming to promote social and economic transformation to guarantee enhanced exercise of human rights wherever it works, and promoting the integration of human rights within the context of companies. Its philosophy links in with its own name: a balance with culture, the environment, the values guaranteeing the survival of a people. It is a Wayuu name, because of the particular ties between the company and this Colombian indigenous people and their territory.

Linked to the Mondragon corporate group through the consultancy firm LKS Next, it focuses on addressing a range of issues setting international trends in order to promote a fairer society:

- Human rights: Protect, respect, remedy.
- Society: Participation by all of society and all stakeholders to identify the needs of each group.
- Vulnerable groups: Specialising in the application of specific protection frameworks for indigenous peoples and afro-descendants, with particular experience in working with peasant communities, with women's organisations in the exercise of their rights, and the protection of children.
- Environment and natural resources: Protection of the natural resources of a finite planet.
- Companies and the economy: New agents of social change, promoting the rights of communities. An economy focused on the well-being of all individuals, with business models based on shared benefits.
- Governance: Application of shared governance models to address global challenges (climatic, social, economic) and to ensure the provision of public goods.

The experts belonging to the Akuaipa Transformation team have more than 20 years of international experience working in the field of international cooperation, the promotion of human rights, the protection of indigenous peoples, and support for economic transformation. Within the context of companies and human rights they have built up extensive experience over the last 15 years, addressing this issue from various perspectives, such as litigation under international mechanisms to protect human rights, consultancy for social organisations and indigenous communities, advice for companies, social audits for financial and investment institutions, and consultancy with national and international

cooperation and human rights agencies. They have performed particularly notable work to promote the implementation of due diligence in human rights and the execution of impact studies and remediation plans in business projects in a range of sectors distributed worldwide (Spain, Panama, Peru, Ecuador, Colombia, Namibia and Indonesia).

They have built up lengthy experience in Peru working with indigenous organisations, public institutions such as the judiciary, and also companies, in matters related to the rights of indigenous peoples and fulfilment of business due diligence in human rights. They have worked on the protection of peoples in isolation and initial contact, on matters related to the implementation of the right to prior, free and informed consultation, intercultural aspects of the justice system and the execution of human rights impact studies in various regions of the country (including the region where the Camisea project is located).

The Akuaipa Transformation team has worked with Repsol on various projects related to the respect for human rights and the rights of indigenous peoples. It has over the years collaborated with Repsol on human rights impact studies and remediation plans, the planning of social reversions, reviews of social and human rights policies, and specialist consultancy in various aspects related to their areas of work. They have operated at all times as external consultants, helping to make human rights a horizontal element in Repsol's work, ensuring that respect for these rights is a priority at the company. This is reflected in Repsol's progress on various national and international benchmarks tracking the performance of companies in their respect for human rights, such as the Corporate Human Rights Benchmark (CHRB) and the recent national benchmark of the Ecology and Development Foundation (ECODES), on which Repsol is the best rated Spanish company¹.

¹ https://ecodes.org/images/que-hacemos/04.Produccion_Consumo/Analisis_DDHH/Informe_An%C3%A1lisis_IBEX35_Metodolog%C3%ADa_CHRBCore_ResumenEjecutivo_def.pdf

3 BACKGROUND TO THE CONTROVERSY

Since 2016 the analysis company ISS has maintained a red flag, or alert, against Repsol on the basis of various controversies claimed by third parties with regard to Human Rights performance in the Camisea project, in Block 88, in Peru.

Akuaipa Transformation learned of this red flag in mid-2021. Between the months of June and November 2021, a team of experts from Akuaipa Transformation analysed the arguments regarding the various controversies that gave rise to the ISS red flag.

Within the context of this review, Akuaipa held meetings the Repsol team, with the Pluspetrol team, and a meeting with ISS. Full background and current information provided by Repsol and Pluspetrol was likewise examined, along with a review of various public reports from Peruvian institutions, and also social and indigenous organisations.

On the basis of the review of the controversies claimed by ISS in its reports submitted to Repsol, this **analysis and recommendations report has been drawn up**. Over the course of the document, various recommendations are set out for each of the controversies raised by ISS. These recommendations will serve to improve fulfilment of international standards in respect for human rights within the context of the Camisea project.

It should in any event be clarified that the capacity of Repsol to reach decisions as to operations in a project where it is Non-Operator is limited (10% stake), since as the Operator of Block 88, Pluspetrol is solely responsible for performing joint operations, within the context of the Joint Operating Agreement signed with Repsol and the other non-operators.

The controversies analysed in this document are related with:

- Indigenous Peoples in Voluntary Isolation or Initial Contact
- Mercury Pollution
- Due Diligence on Block 88
- Free, Prior and Informed Consultation
- Complaints by NGOs

The review and conclusions for each of the aforementioned controversies are set out in this report with the following structure:

- Brief description of the controversy
- Information and documents analysed
- Conclusions
- Recommendations

4 REPSOL AND COMPLIANCE WITH INTERNATIONAL STANDARDS FOR THE RESPECT OF HUMAN RIGHTS

For Repsol, human rights respect is a priority in all its operations. This is reflected, mostly, in the issuance of policies and related operational standards applicable to all Repsol personnel and to its contractors.

All activities performed by Repsol in the various countries where it operates are aligned in compliance with the UN Guiding Principles on Business and Human Rights², irrespective of the legislation in each country. Since 2013, Repsol has publicly stated its political will to respect human rights, committing to implementation of the Guiding Principles and fulfilment of Due Diligence³.

In this regard, in 2013 Repsol issued the Human Rights and Community Relations Policy, explicitly stating this determination and commitment. The Policy was revised most recently in 2019⁴.

The Policy highlights the following objective, according to which Repsol commits to:

Respect internationally recognised human rights. These rights cover those rights set out in the International Bill of Human Rights and principles regarding the rights established in the International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work, as and the eight Fundamental Conventions that compromise them. The term "respect" involves that Repsol will make reasonable efforts to prevent its activities from causing negative impacts on human rights, and that if these occur, will endeavour to mitigate or repair the impact. Achieve and maintain strong relationships with communities where the Company has presence, based on recognition, trust, mutual respect and shared

² https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_sp.pdf

³ Repsol political commitment <https://www.repsol.com/en/sustainability/human-rights/our-commitment/index.cshmtl>

⁴ Human Rights policy https://www.repsol.com/content/dam/repsol-corporate/en_gb/sostenibilidad/policias/human-rights-and-community-relations-policy.pdf

value, through proactive engagement and responsible and transparent management of social impacts and opportunities⁵.

As a result of the application of the Policy and internal regulations for Human Rights and Community Relations⁶, in various countries where Repsol has operations, transparent, continuous and participatory dialogues are maintained with indigenous peoples and communities. The indigenous communities present in the areas of influence of operations are involved from the early stages of the projects, within a context of respect for human rights, in particular those of the most vulnerable. These dialogues are adapted with cultural characteristics of each ethnic group or community, engaging the representative bodies of the indigenous communities⁷. As demonstrated by the dialogues and relationship that Repsol has established with indigenous communities in Colombia, Ecuador, Peru and Bolivia⁸.

In fulfilment of human rights due diligence requirements, Repsol has devised and deployed operational grievance mechanisms at each of the business units that it maintains in the countries, allowing those directly affected by operations to express their concern or impacts on their rights, without fear of retaliation, within the context of a framework of understanding of and respect for human rights. Repsol thus takes care of the damages that are detected, and repairs the resulting consequences⁹. All the above allows Repsol to anticipate and respond to minor incidents derived from activities before they escalate, and to provide early means of remediation for the parties affected.

⁵ https://www.repsol.com/content/dam/repsol-corporate/en_gb/sostenibilidad/policies/human-rights-and-community-relations-policy.pdf

⁶ Human Rights Policy, op. cit.

⁷ <https://www.repsol.com/en/sustainability/communities-and-shared-value/dialogue-with-communities-and-indigenous-peoples/index.cshtml>

⁸ <https://www.repsol.com/en/sustainability/human-rights/index.cshtml>

⁹ <https://www.repsol.com/en/sustainability/human-rights/operational-grievance-mechanisms/index.cshtml>

5 REFLECTIONS ON THE RED FLAG

1. Prior to an analysis of each of the controversial issues resulting in a red flag being maintained by ISS, a number of reflections should be set out with regard to these issues, and the methodology on which the report is based. The need for information to be made public is absolutely relevant in terms of good human rights practices, and more specifically, company performance. Aware of the importance of verification of any allegation through public sources, Repsol has repeatedly advised the operator to publish all the information related to the respect for human rights at Camisea.
2. In accordance with its policies, Repsol has accompanied its partner and operator in the Camisea project, Pluspetrol, to underpin respect for human rights within the project; to make public its actions and commitments with regard to human rights and due diligence; and to deepen and maintain dialogue with the communities in its area of influence, and with all other stakeholders.
3. Many of the arguments on which the red flag is based are directly connected with the performance of the consortium operator, and its responsibility as operator of Block 88. Meanwhile, these arguments are not directly connected with the actions of Repsol, which in its role as project partner has exerted and continues to exert a positive influence on the operator to ensure that its human rights standards are more consistent with international standards.
4. Most of the information on which the red flag is based corresponds to the period from 2012 to 2014. It should furthermore be mentioned that it draws on information that has not been objectively confirmed by third parties, rather than using information provided by the Peruvian Government, by the project operator, Pluspetrol, or by Repsol.
In this regard, the criteria used by ISS to give greater credibility to certain sources of information rather than others, is questionable.
5. ISS's arguments to maintain the red flag are not based on any proven violation of human rights. With regard to the allegations made as to the absence of free, prior and informed consultation processes, it should be considered that in Peru, the

implementation of consultation processes with indigenous communities is the exclusive responsibility of the Peruvian Government. Likewise, to date none of the complaints lodged against the project by alleged human rights violations have obtained a positive outcome in the Peruvian judicial system. It should lastly be borne in mind that the implementation of due diligence in human rights, and the development of human rights impact studies, continues to lie within the scope of voluntary action by companies.

Following on these reflections, and with the aim at all times of discovering any issues where improvements can be made in such a vital field as human rights, Repsol proceeded once again to conduct an analysis of each of the main arguments of the red flag so as to continue improving beyond strict compliance with national or international regulatory frameworks.

6 INDIGENOUS PEOPLES IN VOLUNTARY ISOLATION OR INITIAL CONTACT

6.1 REPSOL AND INDIGENOUS PEOPLES

Repsol maintains a constant, participatory, and transparent dialogue with the legitimate and representative authorities of indigenous communities, understanding and respecting the unique nature of indigenous peoples. This dialogue lies within the framework of compliance of its internal human rights and community relations policy in its areas of influence.

Within this context, Repsol maintains the following public commitment: *"recognise and respect the internationally recognised rights of indigenous, tribal, aboriginal peoples and first nations (Indigenous Peoples), in accordance with existing legislation and the obligations established by Convention 169 of the International Labour Organization (ILO), whether incorporated into the national legislation of the countries in which we operate or not"*¹⁰.

Social baseline studies conducted in the operational areas with the participation of organisations representing indigenous peoples and governments allow Repsol to identify indigenous communities that are in different phases of contact with the majority culture, and that could be affected by its activities.

Dialogue and respect allow Repsol to build and maintain a relationship of trust and mutual respect with communities in the vicinity of its operations, on the basis of respect for human rights and transparency.

Furthermore, the dialogue that Repsol maintains with indigenous communities in those projects where it operates are characterised by the following:

1. *Align with the cultural characteristics of each ethnic group or community, engaging the representative bodies of the indigenous communities.*
2. *Ensure representation of men and women, of different age groups, and of leaders, in accordance with their traditions.*

¹⁰<https://www.repsol.com/en/sustainability/communities-and-shared-value/dialogue-with-communities-and-indigenous-peoples/index.cshtml>

3. *Recognise and respect the right to free, prior and informed consultation (FPIC) granted to indigenous peoples through their representative institutions¹¹.*

In short, Repsol has a policy for relations with indigenous peoples that respects the international human rights standards applied in all projects directly operated by the company, irrespective of the country where they take place.

6.2 DESCRIPTION OF THE CONTROVERSY

ISS asserts that in 2015 it had access to a Pluspetrol Environmental Impact Study from 2012 which recognised that involuntary contact had occurred with persons belonging to groups in initial contact and/or peoples in isolation.

It furthermore reflects various communications maintained with the organisations Forest Peoples Programme (FPP) and AIDASEP, reporting a serious risk of contact or suffering disease because of the proximity of the project to their territories.

On the basis of these arguments, ISS asserts that the protection of peoples in voluntary isolation within the context of the Camisea project is not proven and maintains its levels of concern as to a possible infringement of their rights.

6.3 INFORMATION AND DOCUMENTATION ANALYSED

The documentation provided by Repsol includes the document: “*Anthropological Contingency Plan, environmental impact study on the gas pipeline from the Cashiriari I*

¹¹

<https://www.repsol.com/en/sustainability/communities-and-shared-value/dialogue-with-communities-and-indigenous-peoples/index.cshtml>

site to the Malvinas gas plant in Block 88, from the year 2017". This document, produced by Pluspetrol, has the following aims:

1. Provide basic information and establish the conduct and procedures to be implemented to address situations of finding, sighting or contact with indigenous peoples in isolation or a situation of interaction with an indigenous people in a situation of initial contact.
2. Safeguard the physical and socio-cultural integrity, and in general the human rights, of indigenous peoples within the Kugapakori Nahua Nanti Reserve (designated as indigenous peoples in situation of isolation and initial contact), and of the indigenous population of neighbouring communities making use of this territory.
3. Offer security to all employees and contractors deployed in the different phases of the Camisea project within the Kugapakori Nahua Nanti Reserve.
4. Fulfilment of this document will serve to establish appropriate and responsible actions so as to avoid or reduce the risks arising from a situation of finding, sighting or contact of peoples in initial contact or isolation.

The Anthropological Contingency Plan sets out the approach adopted in Peruvian national regulations as to indigenous or native people in a situation of isolation and initial contact. It likewise describes the territory of the Kugapakori Nahua Nanti Reserve, specifying that Block 88 overlaps 2/3 of the area of this reserve. The indigenous peoples inhabiting the reserve are likewise identified, with an indication of their status, whether in initial contact or as indigenous peoples in isolation.

The Anthropological Contingency Plan similarly describes in detail the operational procedure to be followed in the event of evidence of a sighting or contact with an indigenous population in isolation. The information regarding implementation of the principle of non-contact, avoiding communication with such populations by all means possible, is clear and concise.

The Anthropological Contingency Plan emphasises the role that must be played by the Vice-Ministry for Intercultural Affairs of the Ministry of Culture, and the Ministry of Health, in the event of a sighting of or contact with peoples in initial contact.

With regard to the international standards referenced in the Anthropological Contingency Plan, the following are emphasised:

1. UN Declaration on the Rights of Indigenous Peoples (2007)¹².
2. Protection Guidelines for indigenous peoples in isolation and in initial contact in the Amazon and Gran Chaco region and the Eastern region of Paraguay. OHCHR, Geneva, February 2012¹³.
3. Operational Policy of the Inter-American Development Bank (IADB) on indigenous peoples (OP-765) 2006¹⁴.
4. World Bank and IFC – Environmental and Social Performance Standards, 2012¹⁵.
5. Convention No. 169 on Indigenous and Tribal Peoples in independent countries – International Labour Organization - ILO, 1989¹⁶.

6.4 CONCLUSIONS ON THE BASIS OF THE INFORMATION RECEIVED

1. Pluspetrol has an Anthropological Contingency Plan in place, entitled the "Environmental impact study on the gas pipeline from the Cashiriari 1 site to the Malvinas gas plant in Block 88, from the year 2017". This plan explains the conduct and procedures that must be taken into account in situations of findings, sightings or contact with indigenous peoples in isolation or a situation of interaction with an indigenous people in a situation of initial contact.
2. The aforementioned Plan sets out the regulatory principles in Peru and the international standards regarding indigenous peoples or native people in a situation of isolation or initial contact.

¹² <https://www.un.org/development/desa/indigenous-peoples-es/declaracion-sobre-los-derechos-de-los-pueblos-indigenas.html>

¹³ <https://acnudh.org/directrices-de-proteccion-para-los-pueblos-indigenas-en-aislamiento-y-en-contacto-inicial-de-la-region-amazonica-el-gran-chaco-y-la-region-oriental-de-paraguay/>

¹⁴ <https://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=2032314>

¹⁵ https://www.ifc.org/wps/wcm/connect/30e31768-daf7-46b4-9dd8-52ed2e995a50/PS_Spanish_2012_Full-Documents.pdf?MOD=AJPERES&CVID=k5LIWsu

¹⁶ https://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/documents/publication/wcms_345065.pdf

3. The Plan emphasises the implementation of the principle of non-contact, and hence avoidance by all means of establishing communication with such populations.
4. The Plan highlights the role to be played by the Peruvian State, through the Vice-Ministry for Intercultural Affairs of the Ministry of Culture, and the Ministry of Health, in the event of a sighting of or contact with an IPIC.
5. It should likewise be noted that the Anthropological Contingency Plan was approved by the corresponding authority of the Peruvian State, fulfilling the principles of international standards in this field, and there is therefore no justification for ISS to maintain its red flag against Repsol, above all as it is not the operator of the Camisea Consortium.
6. Lastly, inaccuracy has come to light over time in the complaints made in the past as to sightings and unwanted contact between project workers and communities in isolation, as indicated by the fact that none of the complaints has been upheld, and no situation has to date arisen which could place peoples in isolation at risk.
7. There have to date been no reported incidents with persons belonging to communities in isolation, and the complaints that have been brought before national courts or international mechanisms have been declared to be unfounded.

6.5 RECOMMENDATIONS IN ACCORDANCE WITH INTERNATIONAL STANDARDS

1. Influence Pluspetrol to underpin Dissemination of the Anthropological Plan for Block 88. The recommendation is to publish the anthropological contingency plan via the project website or those of the companies that are partners in the project. The Anthropological Contingency Plan should also be distributed to all workers that could have a direct or indirect relationship with the activities performed within Block 88, whether Pluspetrol employees, or those of any other company providing contracted services.
2. Updating of prior studies. The recommendation is to update the prior recognition studies, including an anthropological analysis containing an analysis of the oral tradition in the area

of influence, familial relationships with possible nearby communities and physical evidence, with a registration period of no more than three years, found by a technical fieldwork team in support of the existence of a people in isolation or in a situation of initial contact.

3. Publication of the current extent of Block 88 covered by the Camisea project. In February 2017 the Camisea consortium decided to waive all those areas of Block 88 that were not in production or development. This led to a 42% reduction in the original area of Block 88 (82% of the area waived corresponds to the RTKNN indigenous reserve), thereby substantially reducing the anthropological risks. Repsol played a crucial role in this decision, opposing any other alternative that did not include a waiver of these areas. The new extent of Block 88 has been set at 82,803 hectares, as opposed to the initial 143,500 ha.

4. Revision of the Anthropological Plan. The recommendation is to revise the content of the Anthropological Contingency Plan to ensure it is constantly kept up-to-date with regard to references to international human rights standards. These standards would be as follows:

- i. Recommendations of the General Assembly in the Action Plan for the Second International Decade of the World's Indigenous People (A/60/270, of 18 August 2005), recommending at the national level the adoption "of a special protection framework for indigenous peoples living in voluntary isolation, and for governments to establish special policies to ensure the protection and rights of indigenous peoples that have small populations and are at risk of extinction".
- ii. American Declaration on the Rights of Indigenous Peoples. Approved at the third plenary session held on 15 June 2016.
- iii. International Covenant on Civil and Political Rights ("ICCPR") and International Covenant on Economic, Social and Cultural Rights ("ICESCR").
- iv. Law No. 28736, of 24 April 2006, of the Republic of Peru, on the protection of indigenous or first peoples in a situation of isolation and initial contact. The purpose of the Law is to "establish the special trans-sectorial regime for the protection of the rights of Indigenous Peoples in Peruvian Amazonia that are in a situation of isolation or of initial contact, guaranteeing in particular their rights to life and health, safeguarding their existence and integrity". The Law indicates that the State

is responsible for protecting the life, health, culture, and traditional livelihoods of peoples in isolation and initial contact, and for recognising their right to possess the land they occupy, restricting entry by outsiders into such areas. One of the contributions made by this Law is the creation of indigenous reserves, where no population settlements may be established other than those of the peoples in isolation or initial contact, with all activity other than ancestral practices and customs of the indigenous peoples living there being prohibited.

- v. State Territorial Reserve in favour of ethnic groups in voluntary isolation and initial contact; Kugapakori, Nahua, Nanti and others” (RTKNN). The Kugapakori Nahua Nanti Reserve was created by means of Ministerial Decision No. 0046/90/AG/DGRAAR, published on 25 February 1990, with a surface area of 443,887 ha, located between the districts of Echarate and Sepahua, in the provinces of La Convención and Atalaya, Cusco and Ucayali departments. This area was declared a State Reserve in favour of indigenous peoples in isolation and initial contact. Subsequently, to afford a greater degree of legal protection, Supreme Decree No. 028/2003/AG was issued, declaring it as a State Territorial Reserve in favour of the ethnic groups in voluntary isolation and initial contact Kugapakori, Nahua, Nanti and others” (RTKNN). The supreme decree establishes an exception regarding concessions prior to the creation of the reserve. They are permitted, provided that they guarantee the traditional ways of life of the indigenous communities, and their existence. Signature of the exploration and exploitation contract between the Camisea consortium and the Peruvian State entailed definition of Block 88, covering an original extent of 143,495 hectares, of which ~105,253 hectares overlapped with the Kugapakori Nahua, Nanti territorial reserve.

7 MERCURY POLLUTION

7.1 REPSOL AND ITS COMMITMENT TO THE ENVIRONMENT AND CONSERVATION OF BIODIVERSITY

The company is absolutely committed to the protection of the environment, prioritising the actions required to minimise possible impacts both from its operations, and from the products it offers. In this regard, Repsol manages impacts on all environmental vectors, water, biodiversity, air and waste. It likewise administers the conservation of natural capital.

Respect for the environment is assumed by Repsol at the highest level, and environmental and social baseline studies are always conducted. The social and environmental baseline studies allow Repsol to understand and analyse the context and the social, economic, cultural, environmental and biodiversity specificities of the location where the operations will be performed.

Repsol proceeds with Due Diligence in human rights, conducting social, environmental and health impact studies on the basis of the internal ESHIA standard¹⁷. These studies ensure that all potential impacts and the corresponding prevention and mitigation measures are identified, as early as possible in the project life-cycle, and taken into account for the design of the project so as to mitigate or eliminate their effects. Consideration is given both to inherent impacts and those that could result from commercial relations, including Extractive Business Partners.¹⁸

We must mention that Repsol conducts sustainable water management in all areas of its operations, including the following actions, among others: risk analysis before selecting the location of wells to protect groundwater resources before, during and after drilling; recycling of water produced, to be reused in the development of new wells; safe storage of water and promotion of water transportation by pipeline rather than truck.

¹⁷ <https://www.repsol.com/en/sustainability/communities-and-shared-value/impact-assessment-and-management/index.cshtml>

¹⁸ <https://www.repsol.com/en/sustainability/communities-and-shared-value/impact-assessment-and-management/index.cshtml>

In the case of Peru, the ANA ("Autoridad Nacional de Agua", or "National Water Authority") granted Repsol the Blue Certificate in Block 57, as recognition for the measurement, reporting and reduction of its water footprint, and the development of a project of shared value with communities. This project has served to perform the ecological and participatory restoration of exploration platforms, successfully restoring the ecological integrity of woodland that is essential for the conservation of local water resources¹⁹.

Another of the commitments that Repsol has publicly given is to conserve Biodiversity in Peru, in particular in the Sagari field²⁰: a team of specialists was set up for the design, execution and supervision of the programmes; an environmental impact assessment was conducted, together with an environmental management plan and a biodiversity action plan, serving better to understand the natural resources in the area, the use that local communities make of them, and how they were affected by development of the project, while furthermore allowing the necessary mitigation measures to be designed.

7.2 DESCRIPTION OF THE CONTROVERSY

ISS sets out assertions by the Ministry of Health, in 2018, and those of the UN Special Rapporteur, as well as organisations such as the Forest Peoples Programme (FPP), complaining of mercury pollution as a consequence of Camisea activities.

It likewise sets out information regarding a study commissioned by the Peruvian Government, which began in November 2019 and has not yet been published.

On the basis of this information, ISS maintains that the source of the mercury pollution suffered by the communities is unclear.

¹⁹ <https://www.repsol.com/en/sustainability/environment/water-management/index.cshtml>

²⁰ <https://www.repsol.com/en/sustainability/environment/biodiversity-protection/sagari-project/index.cshtml>

7.3 INFORMATION AND DOCUMENTATION ANALYSED

According to a press release dated 06 August 2015, the Ministry of Culture informed the public of the situation of the various Nahua patients and their relatives who were evacuated in November 2014 with diagnoses of serious respiratory infections with complications, which could not be treated at their place of origin, Santa Rosa de Serjali.

“A Nahua girl hospitalised at a private healthcare establishment in Lima was diagnosed with mercury poisoning. The same analysis was immediately performed on her mother, who likewise revealed high levels of mercury in her blood”²¹.

At the time, the Ministry of Culture requested that the Ministry of Health and the Regional Health Directorate of Ucayali perform the corresponding investigations to determine whether the poisoning affected the entire Nahua population in initial contact in the locality of Santa Rosa de Serjali, so as to identify the possible sources of pollution, and adopt any necessary corrective measures. The Ministry of Environment was likewise informed, in order for it to act within the scope of its powers.

Following the situation described, a whole series of actions were put in practice on the part of various ministerial bodies in Peru, to identify the causes behind the presence of mercury in the region. The Ministry of Health and Ministry of Environment were involved, drawing up technical reports to ascertain the source of the mercury.

A chronological account is set out below of the actions performed by state bodies in investigating the source of the mercury:

1. The Ministry of the Environment announced the start of investigations in the Santa Rosa de Serjali Community to identify the sources of mercury exposure.

The investigation plan covered an environmental assessment of mercury levels in surface water, sediment, soil, air and hydro-biological resources for human consumption. This intervention likewise required meticulous coordination with the Ministry of Culture, in accordance with the fact that the Santa Rosa de Serjali

²¹ <https://www.gob.pe/institucion/cultura/noticias/47867-ministerio-de-cultura-informa-sobre-situacion-de-la-poblacion-nahua-de-santa-rosa-de-serjali>

Community is a population in initial contact, requiring strict protocols to ensure its integrity²².

In October 2015, public officials from various institutions met to draw up the Technical Environmental Intervention Field Report on the Santa Rosa de Serjali native community in initial contact, between 19 and 28 October 2015²³. The purpose of this report was to determine the possible sources and routes of exposure to mercury among the population of the Santa Rosa de Serjali community in initial contact, with the participation of environmental specialists from the OEFA²⁴, ANA²⁵, SANIPES²⁶, DIGESA²⁷, MINAM (DGCA²⁸). The main actions conducted to draw up the report were as follows:

- I. The OEFA took soil samples at 20 points at base level, located in the exterior of the Santa Rosa de Serjali settlement in initial contact, covering plantations of yucca, plantains and other crops.
- II. The ANA took seven (07) samples of surface water and sediment from water resources located upstream and in the area of influence of the Santa Rosa de Serjali native community, specifically the River Vinuya, prior to the confluence with the River Mishahua, the River Mishahua, River Paco, River Mishahua, River Serjali, River Mishahua at the level of Santa Rosa de Serjali port, and then from the Santa Rosa de Serjali Community, with sediment samples being taken at the same points.
- III. SANIPES took samples of fish from the River Mishahua, 25 minutes downstream of the Santa Rosa de Serjali native community; the River Mishahua 30 minutes upstream of the native community, and the River Serjali 30 minutes upstream of the confluence with the River Mishahua. The "pequepeque" means of transport was used, and the "tarrafa3" and "triki4" fishing techniques.

²² <https://www.minam.gob.pe/notas-de-prensa/se-inician-las-investigaciones-en-la-comunidad-santa-rosa-de-serjali-para-identificar-las-fuentes-de-exposicion-de-mercurio/>

²³ <https://www.minam.gob.pe/oaas/wp-content/uploads/sites/49/2016/04/ACTA-4TA-REUNION-SERJALI-10-11-2015.pdf>

²⁴ OEFA. Organismo de Evaluación y Fiscalización Ambiental (Environmental Evaluation and Inspection Body)

²⁵ ANA. Autoridad Nacional del Agua (National Water Authority)

²⁶ SANIPES. Organismo Nacional de Sanidad y Pesca (National Health and Fisheries Body)

²⁷ DIGESA. Dirección General de Salud Ambiental (Directorate-General for Environmental Health)

²⁸ DGCA. Dirección General de Calidad Ambiental del Ministerio del Ambiente (Directorate-General for Environmental Quality of the Ministry of the Environment)

- IV. The Directorate-General for Environmental Health (DIGESA) monitored water for human consumption at three (03) sampling points located on the banks of the River Mishahua, which are used to collect water for human consumption; fifteen (15) soil samples in urban and recreational areas, and two (02) air quality monitoring points located within the Santa Rosa de Serjali native community.
 - V. In total, five institutions specialising in such fieldwork were involved, with a total of thirteen (13) specialist environmental professionals from the following government bodies: Ministry of the Environment, National Water Authority, OEFA (Environmental Evaluation and Monitoring Body), DIGESA (Directorate-General for Environmental Health), with the guidance of professionals from the Ministry of Culture, as this is a territorial reserve inhabited by populations in initial contact, and others in a situation of isolation.
 - VI. With the results of the activities performed, the technical report recommended that the government identify the source and routes of mercury exposure in order to be able to implement corrective measures so as to avoid chronic exposure, involving the State institutions with responsibility for the Environment and Health.
-
2. In the OEFA report "Environmental monitoring: Building trust and facilitating investment" from the year 2016, the proposal was made that the OEFA should form part of the working party for the declaration of a health emergency in the area of the Santa Rosa de Serjali native community. The OEFA asserted in this regard: *"It should be pointed out that the intervention fulfilled the task of performing the aforementioned soil monitoring in accordance with the approaches established in the Soil Sampling Guide of the Ministry of the Environment. In said monitoring, the OEFA took 20 soil samples from areas in the immediate vicinity of the settlement. At the 20 soil sampling points the concentrations of mercury metal were found to be no greater than those established in the environmental quality standards for agricultural land"*.²⁹
 3. By means of Ministerial Decision 180-2016-MC, the Ministry of Culture set up its working party responsible for undertaking activities and actions intended to protect the

²⁹ https://www.oefa.gob.pe/?wpfb_dl=17030

integrity and life of the Nahua population in initial contact on the Territorial Reserve of Kugapakori, Nahua, Nanti and others, diagnosed as having high levels of mercury.³⁰

4. The document "Analysis of the Health Situation of Indigenous Peoples" ³¹ ("ASIS Indígena"), states that the Directorate of Health Intelligence has been conducting such analyses periodically since 2001, on the basis of secondary references and site visits. The report sets out the results of the National Health Institute on mercury in urine samples.

This document states: *"The presence of mercury in the gas extracted in the Camisea project is confirmed, since the design of the Malvinas plant included the installation of a mercury removal tower, as placed on record in the Environmental Impact Study of the company Pluspetrol..."*, page 109³²

However, the conclusions of the document assert: *"...No sufficient evidence has been found to determine that the source of exposure to mercury is associated with gold mining and/or the manipulation of mercury derived from amalgams with gold, and occupational risks for some particular population or group. More extensive studies must therefore be undertaken so as to determine the source or origin thereof, and to be able to define optimal intervention strategies"*.³³

5. On 17 August 2018, in an official notice addressed to the Peruvian Health Minister, the general manager of Pluspetrol gave his pronouncement on the report: "Analysis of the health situation of the Santa Rosa de Serjali Nahua people, the Territorial Reserve of Kugapakori Nahua Nanti and others, produced by the National Epidemiology, Disease Prevention and Control Centre of the Ministry of Health in 2017", stating that: "...In this regard, the Camisea consortium rules out the presence of mercury in the blood of the Nahua population being in any way connected with Camisea Project operations".

³⁰ <https://busquedas.elperuano.pe/normaslegales/crean-grupo-de-trabajo-encargado-de-desarrollar-actividades-resolucion-ministerial-no-180-2016-mc-1377370-1/>

³¹ https://www.dge.gob.pe/portal/docs/asis/Asis_Nahua.pdf

³² https://www.dge.gob.pe/portal/docs/asis/Asis_Nahua.pdf

³³ https://www.dge.gob.pe/portal/docs/asis/Asis_Nahua.pdf

6. Various press releases with arguments that Camisea is not causing mercury pollution. The Camisea Consortium rules out any possibility that gas extraction activities could cause this problem.³⁴
7. In response to the information published in various media outlets as to mercury pollution among the Nahua People of Santa Rosa de Serjali, the Camisea Consortium rules out any possibility that gas extraction activities could cause mercury pollution either among the population or in the environment, since none of its production processes uses mercury, nor do mercury emissions occur. The following was published in a press release: Camisea denies responsibility for pollution of Nahua people. Following publication in The Guardian, the consortium asserted that it does not use mercury for gas extraction activities in the vicinity of Santa Rosa de Serjali.³⁵
8. In 2019 the Ministry of the Environment announced the Presentation of the Working Party to undertake activities and actions intended to protect the integrity and life of the Nahua population in the Santa Rosa de Serjali community diagnosed with high levels of mercury. The Bajo Urubamba Tripartite meeting of planned actions is a forum involving indigenous organisations, the State and companies.³⁶
9. According to a press release, the Ministry of Culture, Ministry of the Environment and the French Research Development Institute³⁷ (IRD) signed an agreement for the purpose of conducting the study to identify the sources and routes of mercury exposure in the Nahua indigenous population, in a situation of initial contact, located in Santa Rosa de Serjali; within the Territorial Reserve of Kugapakori, Nahua³⁸.
10. Supreme Decision No. 011-2019-MC created the multi-sectoral temporary committee responsible for monitoring implementation of the resolutions of the working party set up by means of Ministerial Decision No. 180-2016-MC, and formulating proposals focused on the adoption of priority actions and measures of a multi-sectoral and sectoral

³⁴ <https://proactivo.com.pe/camisea-no-genera-contaminacion-por-mercurio/>

³⁵ <https://elcomercio.pe/peru/camisea-niega-responsabilidad-contaminacion-pueblo-nahua-noticia-492172-noticia/>

³⁶ <https://www.minam.gob.pe/oficina-general-de-asuntos-socio-ambientales/wp-content/uploads/sites/49/2019/08/09-FICHA-SERJALI-JUN19.pdf>

³⁷ <https://es.ird.fr/peru/investigaciones>

³⁸ <https://www.gob.pe/institucion/cultura/noticias/51089-ministerio-de-cultura-identificara-causas-de-contaminacion-del-pueblo-indigena-nahua>

nature to cater for the Nahua indigenous population in a situation of initial contact on the Territorial Reserve of Kugapakori, Nahua, Nanti and others, given the problems of high vulnerability and risk to life, health and integrity through exposure to mercury.³⁹.

11. Ministerial Decision No. 038-2020-MC, of the Ministry of Culture, approved the internal regulations of the temporary multi-sectoral committee dependent on the Ministry of Culture responsible for monitoring implementation of the resolutions of the working party set up by means of Ministerial Decision No. 180-2016-MC, and formulating proposals focused on the adoption of priority actions and measures of a multi-sectoral and sectoral nature to cater for the Nahua indigenous population in a situation of initial contact on the Territorial Reserve of Kugapakori, Nahua, Nanti and others, given the problems of high vulnerability and risk to life, health and integrity through exposure to mercury, created by Supreme Decision No. 011-2019-MC, annexed to this decision as an integral part thereof.⁴⁰
12. In July 2020, the Geological, Mining and Metallurgy Institute presented the hydrogeological and geo-environmental assessment for the Santa Rosa de Serjali initial contact community, in the district of Sepahua, Atalaya province, Ucayali region⁴¹. This report is the result of the request by the Regional Government of Ucayali. The report presents the situational diagnosis to ascertain the hydrochemical composition and quality of the water, its interaction with environmental materials, and how they are being affected thereby, in addition to a chemical analysis of the sediment.

The conclusions of the report include the following:

1. According to the chemical results, the conclusion drawn is that the water samples do not reveal concentrations that exceed the Environmental Quality Standards for Soil, for the element mercury, within the Santa Rosa de Serjali initial contact community.

A sediment quality analysis was conducted, with a reference comparison against the environmental quality standards for agricultural land (Environmental Quality Standards,

³⁹ <https://busquedas.elperuano.pe/download/url/crean-comision-multisectorial-de-naturaleza-temporal-encarga-resolucion-suprema-n-011-2019-mc-1827273-3>

⁴⁰ <https://www.gob.pe/institucion/cultura/normas-legales/410779-rm-n-038-2020-mc>

⁴¹ http://sigrid.cenepred.gob.pe/sigridv3/storage/biblioteca/9898_informe-tecnico-no-a7067-evaluacion-hidrogeologica-y-geoambiental-en-la-comunidad-de-contacto-inicial-santa-rosa-de-serjali-districto-de-sepahuas-provi.pdf

Supreme Decree No. 011-2017-MINAM), in order to identify the chemical variations present in the sediment in the study area. It was found that in the six (6) samples there was no variation that exceed the limit values under the standards for the elements arsenic, barium, cadmium, mercury and lead. In the case of mercury, the concentrations are low (between 0.020 and 0.039 ppm), and within the environmental quality standard limit (6,600 ppm).

7.4 CONCLUSIONS ON THE BASIS OF THE INFORMATION RECEIVED

1. There is evidence on the part of healthcare bodies as to mercury pollution in native communities in the Nahua community and their relatives in the locality of origin, Santa Rosa de Serjali.
2. The governmental authorities in Peru have conducted various technical and scientific studies to determine the source of this pollution.
3. There is no scientific evidence serving to determine the source of the presence of mercury in Santa Rosa de Serjali, Sepahua district, Atalaya province, Ucayali region.
4. The Peruvian Government has set up a temporary multi-sectoral committee responsible for monitoring implementation of the resolutions of the working party set up by means of Ministerial Decision No. 180-2016-MC, and formulating proposals focused on the adoption of priority actions and measures of a multi-sectoral and sectoral nature to cater for the Nahua indigenous population in a situation of initial contact on the Territorial Reserves of Kugapakori, Nahua, Nanti and others, given the problems of high vulnerability and risk to life, health and integrity through exposure to mercury.
5. The operator of the Camisea Consortium, Pluspetrol, has in its public statements ruled out any possibility that gas extraction activities could cause mercury pollution either within the population or in the environment, since none of its production processes use mercury, nor generate mercury emissions.

6. Given all the information above, Repsol has supported the Consortium operator in maintaining constant dialogue and communication with the Peruvian government, serving to determine the source of the presence of mercury in Santa Rosa de Serjali, Sepahua district, Atalaya province, Ucayali region.
7. This being the case, Repsol has conducted various actions to help clarify the source of the mercury pollution in Santa Rosa de Serjali, Sepahua district, Atalaya province, Ucayali region.

Based on these conclusions, it may be held that there is sufficient evidence to demonstrate that the Camisea consortium is not responsible for the pollution.

7.5 RECOMMENDATIONS TO BE TAKEN INTO ACCOUNT

1. Improve transparency through the publication of the studies produced by Peruvian Government bodies, the operator Pluspetrol, and other social organisations. It would in this regard be important to publicly announce the studies conducted by different governmental bodies, reaching the conclusion that no sufficient evidence has been found to determine the source of mercury exposure, hence the need to undertake more extensive studies to determine the source or origin thereof, and be in a position to define optimal intervention strategies.
2. To promote transparency around the source of harmful mercury, the Camisea Consortium will continue an ongoing dialogue with the Peruvian Government and support its efforts to determine and report on the source of the presence of mercury in Santa Rosa de Serjali, Sepahua district, Atalaya province, Ucayali región

8 DUE DILIGENCE

8.1 REPSOL AND ITS COMMITMENT TO HUMAN RIGHTS AND DUE DILIGENCE

Respect for Human Rights is a permanent priority for Repsol. The Company actively promotes respect for human rights, by following the main international standards. Repsol has a Human Rights and Community Relations Policy in place⁴² since 2013, which is duly updated.

Repsol is aware that given the nature of its activities and the conditions of certain contexts, there are some areas with a greater risk of impact on human rights, such as the following:

1. Activities derived from relations with public or private security forces.
2. Activities derived from commercial relations.
3. Activities derived from relations with the different communities where operations are performed.

The company has likewise taken on public commitments to comply with the regulatory framework and international standards for the respect of Human Rights. Within this framework, public commitments have been given to respect such various international instruments as:

1. The International Bill of Human Rights⁴³.
2. The UN Guiding Principles on Business and Human Rights⁴⁴.
3. The OECD guidelines for multinational enterprises⁴⁵.
4. The IFC Performance Standards⁴⁶.

⁴² Human Rights policy https://www.repsol.com/content/dam/repsol-corporate/en_gb/sostenibilidad/policies/human-rights-and-community-relations-policy.pdf

⁴³ <https://www.un.org/es/about-us/universal-declaration-of-human-rights>

⁴⁴ https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_sp.pdf

⁴⁵ <http://www.oecd.org/daf/inv/mne/48004323.pdf>

⁴⁶ <https://www.ifc.org/wps/wcm/connect/30e31768-daf7-46b4-9dd8->

5. The Declaration of the International Labour Organization. Specifically, the eight fundamental conventions developing the Declaration of the International Labour Organization:
- a. Freedom of association and protection of the right to organise⁴⁷.
 - b. Right to organise and collective bargaining⁴⁸.
 - c. Forced labour⁴⁹.
 - d. Abolition of forced labour⁵⁰.
 - e. Minimum age⁵¹.
 - f. Worst forms of child labour⁵².
 - g. Equal remuneration⁵³.
 - h. Discrimination (employment and occupation)⁵⁴.

For Repsol, due diligence in accordance with the UN Guiding Principles is the process serving to evaluate the real or potential effects of the activities undertaken in the different countries where it has operations. In accordance with the fulfilment of due diligence, an analysis is conducted of the context and the social, economic, and cultural specificities, evaluating impacts and acting with a commitment to maximise the positive consequences and to minimise or offset negative effects⁵⁵.

One example of respect for Human Rights and Due Diligence would be the case of the Wayuu indigenous people in the north of Colombia, where a Human Rights impact assessment was conducted for a hydrocarbon exploration activity. *“In the development of the 2D seismic project on the La Guajira Peninsula in Colombia, we conducted a human rights impact assessment between late 2014 and early 2015, as part of the human rights due diligence process”*⁵⁶

Within the context of due diligence compliance, Repsol is currently undertaking a Human Rights impact assesment in the area of influence of Block 57, operated by Repsol itself.

⁴⁷ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312232

⁴⁸ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312243

⁴⁹ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029

⁵⁰ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C105

⁵¹ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312283

⁵² https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312327

⁵³ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID,P12100_LANG_CODE:312245,en

⁵⁴ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_Ilo_Code:C111

⁵⁵ <https://www.repsol.com/en/sustainability/human-rights/our-commitment/index.cshtml>

⁵⁶ <https://www.repsol.com/en/sustainability/success-stories/no-go-decision-la-guajira/index.cshtml>

Block 57 is located within the municipality of Megantoni, as is the Camisea project, in an area close by.

8.2 DESCRIPTION OF THE CONTROVERSY

ISS sets out a number of statements by the UN Special Rapporteur on the rights of indigenous peoples, asserting that the Camisea project should be suspended unless the corresponding consultations are conducted and Human Rights impact assessments are performed.

8.3 INFORMATION AND DOCUMENTATION ANALYSED

At various meetings, Pluspetrol has stated that they do not yet have an official Human Rights policy in accordance with international standards, in particular the principles of due diligence established in the Guiding Principles on Business and Human Rights⁵⁷.

Pluspetrol is currently developing an internal analysis process to define a procedure for the application of due diligence within the Camisea project.

It is likewise true that the Camisea project maintains constant intercultural dialogue, and has signed agreements with the communities in its area of impact".

8.4 CONCLUSIONS ON THE BASIS OF THE INFORMATION RECEIVED

1. Pluspetrol has been developing management and social investment plans within each of the communities of the area of direct influence. These initiatives include the implementation of local employment programmes, community environmental

⁵⁷ <https://acnudh.org/principios-rectores-sobre-las-empresas-y-los-derechos-humanos/>

monitoring programmes in Bajo Urubamba, biodiversity monitoring programmes and the fulfilment of the agreements defined with the communities.

2. Pluspetrol engages in processes of intercultural dialogue with all indigenous populations involved in the areas of influence of its operations. These dialogues are conducted prior to the commencement of any hydrocarbon activity that is to be undertaken. The dialogue is maintained throughout the life-cycle of the activity or project. One example that may be cited would be the intercultural dialogue that Pluspetrol maintained with the communities and other agents in the years 2010, 2011 and 2013 through the organisation *Futuro Sostenible*⁵⁸.
3. The dialogues conducted by Pluspetrol are based on principles of good faith, transparency, flexibility, intercultural awareness and respect for community customs, recognition, and respect for participation by indigenous representatives, serving at all times to establish consensus and agreement with communities as to compensation for the activity performed within the Camisea project.

8.5 RECOMMENDATION IN ACCORDANCE WITH INTERNATIONAL STANDARDS

1. Influence on Pluspetrol. Continue the influence on Pluspetrol as a partner in the Camisea consortium, for the adoption of policies of respect for human rights in accordance with international standards, including: political commitment; human rights policies and regulations; due diligence; human rights risk and impact assessments, mitigation and remediation plans, and assessment plans.
During the process of drawing up the report, Akuaipa witnessed various meetings between Repsol and Pluspetrol with the aim of offering assistance in this field.

⁵⁸ <https://futurosostenible.org/portfolio-item/publicaciones/#toggle-id-18>

2. Support for human rights due diligence integration processes. Support Pluspetrol in its processes of integrating human rights due diligence based on the experience that Repsol has built up on other projects, in particular Block 57, which borders the Camisea project. And conduct socio-environmental monitoring within the communities in the area of influence of the Camisea project to perform pre-identification of human rights impacts and underpin knowledge of these communities in accordance with international human rights standards, with a particular emphasis on due diligence in human rights.

9 FREE, PRIOR AND INFORMED CONSULTATION

9.1 REPSOL AND THE COMMITMENT TO PRIOR, FREE AND INFORMED CONSULTATION

In its Human Rights and Community Relations Policy, Repsol undertakes to understand and respect the rights of indigenous communities, in accordance with the existing legislation and Convention 169 of the International Labour Organization (ILO), whether or not incorporated within the legislation in each country. This includes, among others, rights to land, territories and resources, organisation, social and economic structure, and free, prior and informed consultation.

9.2 DESCRIPTION OF THE CONTROVERSY

ISS sets out the statements by international mechanisms (CERD, Special Rapporteur on rights of indigenous peoples) and social entities (FPP, IDL, AIDASEP) to assert that the rights of free prior, and informed consultation of the communities in the area of influence have been infringed.

The issue of the right to free, prior, and informed consultation is a controversial one, since in legal terms it is not the responsibility of companies to perform this, but rather governments. Aside from this legal consideration, the ISS interpretation is that in the event that the Camisea project is being performed without guaranteeing these rights, the project partner companies are jointly responsible for the infringement of said rights.

9.3 INFORMATION AND DOCUMENTATION ANALYSED

Regarding the absence of prior consultation processes within the Camisea project, Repsol and Pluspetrol have presented the following information:

1. Rapporteur reports on various socialisation workshops within the Camisea project in the years 2010 and 2011 conducted by the organisation *Futuro Sostenible* with various agents (governmental, social and indigenous representatives)⁵⁹.
2. A public document of the Ministry of Energy and Mines, in which a public authority considers that the prior consultation process for the Camisea project was fulfilled by means of the actions performed by the company.
3. A document of the Vice-Ministry for Intercultural Affairs, questioning the prior consultation process in the Camisea project, and asserting that the authority to determine whether a prior consultation process has been successfully performed lies with said Vice-Ministry.

On the basis of this documentation it would be difficult to assert that the right to prior consultation was guaranteed in the manner set forth in international standards.

9.4 CONCLUSIONS ON THE BASIS OF THE INFORMATION RECEIVED

Notwithstanding the above, following a review of the operator's information as to its relations with the communities in the area of influence; the development projects promoted in the area; and having ascertained that no complaints have been lodged by the communities in the area of influence of the project, it is likewise important to assert the following conclusions:

1. None of the rights protected by the right to free, prior and informed consultation (territory, autonomy, cultural rights, etc.) has been infringed in execution of the Camisea project.

⁵⁹ Documents in the author's archive.

2. The relations between the project operator and the communities in the area of influence are good. There is communication through the community relations teams, they have reached agreements, and social development projects are being implemented, with a response given to all demands received from the communities.

9.5 RECOMMENDATION IN ACCORDANCE WITH INTERNATIONAL STANDARDS

1. Influence on Pluspetrol. Recommend Pluspetrol to draw up a report in accreditation of the company's good faith with regard to the implementation of the right to prior consultation in the Camisea project, and the absence of any infringements of indigenous rights that are protected through the implementation of prior consultation processes.

10 LEGAL ACTIONS BY NGOS

10.1 DESCRIPTION OF THE CONTROVERSY

ISS sets out the existence of two legal actions against the Camisea project that were filed by the IDLADS (Institute for Legal Defence of the Environment and Sustainable Development). One of these complaints was filed in 2012 and the other one in 2013 (concluded).

These complaints generate concern among the ISS analysts in terms of a scenario which those involved are found guilty of violating human rights.

10.2 INFORMATION AND DOCUMENTATION ANALYSED

With regard to the complaints filed with the courts by IDLADS against Pluspetrol and the Camisea project, the 2012 complaint remains in progress (before the Judiciary), with no judgment having been issued. Meanwhile, the 2013 complaint was declared inapplicable at the 2 instances of the Peruvian Judiciary, and was subsequently referred to the Constitutional Court (IDLADS filed a constitutional violation appeal, for the Constitutional Court to consider its claims), and the latter court also declared the complaint to be inapplicable, on 7 December 2021⁶⁰.

10.3 CONCLUSIONS ON THE BASIS OF THE INFORMATION RECEIVED

1. There is currently only one complaint filed by IDLADS in progress, which is being reviewed by the Judiciary. The other complaint was declared inapplicable by the Constitutional Court ⁶¹

⁶⁰ CASE 1460-2015 (20685-2013) (which reached the Constitutional Court and was declared inadmissible, and therefore terminated) an CASE 14910-2012, (which is being reviewed in the 2nd Constitutional Court)

⁶¹ Judgment 926/2021 CASE No. 01460-2015-PA/TC <https://tc.gob.pe/jurisprudencia/2021/01460-2015-AA.pdf>

2. To date, only one of the complaints has reached the Constitutional Court. In the appeal before said Court, an infringement of the right to prior consultation was added.
3. To date no judgment has been issued against the Camisea project because of an infringement of human rights.

10.4 RECOMMENDATION IN ACCORDANCE WITH INTERNATIONAL STANDARDS

1. Notification of ISS. Issue notification to ISS, questioning the liabilities they attribute to Repsol in this situation, requesting greater clarity with regard to its expectations, bearing in mind that Repsol is not the defendant in any case, and that no judgment has been issued against the Camisea project for an infringement of human rights.