

“¿People without rights? The responsibility of Repsol YPF in the Peruvian Amazon”

Executive summary

“...We got nothing from Repsol. They were here, many of them. You can see the camp they set up on the banks of the river, and in my community. They worked on some 6 seismic lines, they damaged the forest, they cut down medicinal plants, and we have received no compensation. They kept saying that would be dealt with in another meeting, but nothing ever happened. Prospection finished, they left, and we never got anything...”

Declarations of the Indigenous community leader in Cumarillo, Peru.

Peru is a country rich in natural resources (gold, silver, copper and gas), fourth in the world for its rich biodiversity and varied landscapes. It is a truly multiethnic and multicultural country: out of a population of 26 million, according to a 2005 census, more than 23% consider themselves to be indigenous peoples, mostly in the Andean and Amazon areas. But in sharp contrast to its rich natural resources, Peru is a developing country where the bulk of the population lives below the poverty line or in extreme poverty.

The Peruvian Amazon region harbours the bulk of the country's natural resources. It makes up 56% of Peru's total land area and has 60 protected areas. The Amazon is home also to numerous indigenous peoples, some of them living in voluntary isolation. But for four decades the region has been subjected to oil exploitation activities, with negative environmental and social impacts which are not being suitably addressed. Recommendations issued by institutions such as the *Defensoría del Pueblo* (Peoples' Ombudsman) for upholding decent living conditions for peoples living in the Amazon have been systematically ignored.

For more than a decade, the government's policy of promoting private investment in hydrocarbon exploration and exploitation has resulted in the carving up of indigenous land in favour of the oil companies. To date, 60 blocksⁱ of land have been assigned, and a further 18 will be assigned in 2007. Currently, around 70% of the Peruvian Amazonⁱⁱ is subjected to exploration activities by extractive industries.

This is possibly the largest number of oil concessions granted in an area with very vulnerable indigenous communities, compared to any other country of the world. Indigenous communities are denied their rights, their land and their resources, and their traditional social and financial systems are affected to such an extent that they are unable to meet their most basic needs.

Part of the problem stems from Peruvian law, which limits and restricts both the individual and the collective rights of indigenous peoples. These rights are enshrined in international law and make up the fundamental values essential to the survival of indigenous peoples. However, twelve years after Peru ratified ILO Convention 169 (the main international agreement governing the rights of indigenous and tribal peoples), Peruvian law is still to be modified to bring it in line with the spirit and principles of the said agreement. This has given rise to contradictions between Peruvian and international law, particularly as regards the right to consultation and consent.

The right to free, prior and informed consultation such as may lead to agreement being reached or consent being given (Art. 6.1 of Convention 169) is vital if indigenous peoples are to participate fully in the decisions and processes that affect them. Safeguarding this right will lead to the exercise and enjoyment of other rights also enshrined in international law, such as the right to participate in benefits, to fair compensation and to control over their own development.

This spirit has been literally translated into Spain's Strategy for Development Cooperation with indigenous peoples, which requires free, prior and informed consent when working on indigenous lands. Spain ratified Convention 169 in February 2007.

In Peru, the right to consultation is cursorily regulated in the General Law on the Environment, but this has two serious loopholes: consultation workshops take place only after permits have been granted to extractive industries, and there is no ultimate requirement to obtain the agreement of indigenous peoples themselves. As a result, in practice the process serves merely to provide information.

Repsol YPF has taken full advantage of the weaknesses of Peruvian law on this issue. Contrary to the letter and the spirit of Convention 169, it merely complies with what is in essence an administrative procedure for carrying out its exploratory activities in Peru.

Repsol YPF, a Spanish multinational company and major energy player in Latin America, has been operating in Peru since 1995. From 2001, it has been carrying out exploratory activities directly in four blocks within the Peruvian Amazon, on land belonging to indigenous peoples, protected areas and regional reserves. Shockingly, Repsol YPF works in this multiethnic and multicultural environment without having developed a policy covering relations with indigenous peoples in which their rights are taken into account.

In its policy on Corporate Social Responsibility (CSR), Repsol YPF states its "commitment to respect and promote human rights within the areas in which it works". It has ratified the Universal Declaration on Human Rights, the 10 principles contained in the Global Compact, and the OECD Guidelines for multinational corporations. In its CSR Report for 2004, it further committed to abide by "ILO Conventions" (amongst them Convention 169), although in 2005 it limited this commitment to the ILO's declaration on Fundamental Principles and Rights at Work.

The infringement by Repsol YPF of indigenous rights in blocks 57, 90 and 109 is a clear indication of such inconsistencies. Between March 2007 and May 2007, researchⁱⁱⁱ was carried out in Peru which clearly showed Repsol YPF's disregard for the protection of indigenous rights. The need to obtain approval for Environmental Impact Assessments (EIAs) prior to commencement of activities leads the company to carry out the consultation processes required for such approval in a hurried and improper manner, without taking into account the consultation and decision-making bodies set up by the indigenous peoples. Some communities complain that they had not even been consulted prior to the company moving onto their land, many complain that little information was provided. Overall, there is an obvious unwillingness on the part of Repsol YPF to hold real negotiating processes with a view to reaching agreements which will safeguard the interests of the indigenous population.

A representative of Repsol YPF in Peru stated that EIAs are simply an administrative procedure that must be met. But in practice this procedure has an impact on the very survival of the communities involved. If indigenous peoples are denied the right to consultation in the manner ("free, prior and informed") and spirit ("such as may lead to agreement being reached or consent being given") of Convention 169, their culture, their traditions and their livelihoods will be affected. Some of the consequences uncovered in Peru are the following:

- Repsol YPF does not negotiate or reach agreements with affected communities when determining compensation or redress for damages they have caused. *"The seismic line went straight through my mother's house, and the company only paid her 50 soles [12.5 euros]. Dynamite exploded close to the houses and the earth shook."* The company acknowledges that there is a certain confusion between the terms compensation and indemnity, and also in regard to the criteria used for assessing same. Perhaps the reason for this is that Repsol YPF does not have, or at least has not disclosed, a policy on indemnity and compensation.
- Repsol YPF's lack of transparency and unwillingness to engage in explaining potential impacts and agreeing measures for prevention, mitigation and compensation creates frustration amongst indigenous communities, which at times reaches critical levels: *"We went out to the hill, we found a camp, the hill has been blown up, plants cut down. They have also dug out 'trochas' [prospection routes], 500 metres long and 1 metre wide, we've found two lines. We held a meeting between ourselves and decided to request compensation from the company, but we are holding engineer Luis Quispe [Repsol's man*

responsible for community relations] in order to pressure the company and negotiate compensation”.

- Repsol YPF implements some social projects, but does not heed requests for “community development projects” in line with indigenous peoples’ cultural beliefs and aiming to meet the development needs they themselves have identified. There are also complaints regarding the manner in which such social activities are implemented. *“In 2004, they gave us medicines which had passed their expiry date. We complained, but they have only just given us new supplies, which we are now distributing”,* and regarding Repsol YPF’s true commitment: *“The company has not done what it promised, it has all been minuted, but nothing has been done. So if the company now wants to come in to drill a well, they will first have to do what they promised”.*
- The rights of indigenous peoples who have been hired to work on the blocks are violated in various ways: the wages they receive are lower than agreed, no time limit is specified on the contract, and working hours are longer than allowed by law, *“...we complained to the company, we have demanded that our workers receive the wages they have been offered, that is 800 soles per month [200 euros] but Global (a company subcontracted by Repsol) has drawn up contracts for 500 soles [125 euros].”*

Repsol YPF has an internal procedure governing its relations with indigenous peoples, a procedure which, according to the company, is still to be finalised. But no consultation has been carried out with indigenous communities themselves (and it is therefore highly unlikely that such procedures will meet their concerns and aspirations). Moreover, company representatives in Madrid have stated that the company will develop a policy before the end of 2007, though they seem unable to specify what such policy will cover. It seems surprising, to say the least, that although a policy has yet to be developed, the procedure for implementing such policy is as good as ready.

This report therefore makes the following recommendations to both the Peruvian government and the company itself:

The government of Peru should

- Bring both its Constitution and its domestic legislation into line with the contents and the spirit of ILO Convention 169.
- Amend current legislation such that the consultation process aimed at agreement being reached or consent being given must be followed prior to the granting of a licence, in order that involvement of affected communities throughout the life-cycle of the project is guaranteed and the decisions reached with indigenous peoples are upheld.
- Take into account the recommendations of the Peoples’ Ombudsman as set forth in Report 103, namely to uphold the rights of indigenous peoples who have decided to live in voluntary isolation; to improve and extend the mechanisms for information and participation of indigenous peoples; to develop clear criteria for damage assessment in order to guarantee just compensation; and to improve monitoring and control of environmental impacts.
- Enforce compliance with the Guidelines on Community Relations issued by the General Office of Energy and Environmental Affairs (DGAAE), which guidelines are currently voluntary. These guidelines specify how consultation is to be carried in order to take the views of indigenous populations into account, and gives advice on the development and contents of a Plan for Community Relations and policies for compensation and redress.

Repsol YPF should:

- Publicly state its commitment to ILO conventions (and Convention 169 in particular), as it did in 2004.

- Promise to uphold and comply with Spanish legislation (on labour, environmental and human rights issues), particularly where such legislation is stricter than relevant national laws.
- Develop and implement a corporate, public, transparent and accountable policy for relations with indigenous peoples, which acknowledges and upholds indigenous rights, in particular the right to free, prior and informed consultation in order that agreement may be reached or consent may be given; the right to ownership, management and conservation of their land; the right to maintaining their traditions; the right to a share in benefits; the right to fair compensation and indemnity, and the right to control their own development.
- Develop a corporate procedure for relations with indigenous peoples which serves to guarantee protection of the rights acknowledged in the Policy for Relations with Indigenous Peoples. This procedure must be developed with the agreement of all stakeholders, and particularly of affected communities.
- Develop plans for compensation and redress to cover all stages of its activities. Such plans must be transparent and provide fair and objective mechanisms for establishing financial amounts for compensation, indemnities and way-leaves. Care should be taken to avoid confusion between the concept of fair payment and that of a policy of good relations or social action which may lead to voluntary contributions for social projects.
- Provide training to all of its employees, as well as to managers, directors and Community Relations officers of all subsidiaries, branches and subcontractors in countries with indigenous communities, on the contents and spirit of ILO Convention 169.
- Repsol YPF should demand and verify that their subcontractors comply with all company commitments and policies.

ⁱ A block is each of the plots into which land is divided.

ⁱⁱ Of the 78 million hectares comprising the Peruvian Amazon, around 52 million contain hydrocarbon blocks. Source: *Instituto del Bien Comun*. See also www.perupetro.gob.pe

ⁱⁱⁱ *Escuela para el Desarrollo*. Field work carried out by Melisa Luyo between March and May of 2007. Research was commissioned by Intermón Oxfam for the preparation of this report. www.escuela.org.pe