

The extractive industry: black holes for indigenous people. Recommendations for Repsol YPF on the development of a policy and procedures for relations with indigenous people

Executive summary

The activities of extractive industries have enormous financial, social, cultural and environmental impacts which directly and indirectly affect indigenous people, their way of life and their traditions. Minimising negative impacts and promoting positive ones should be the aim of all socially responsible corporations. To do this requires an understanding, amongst others, of the reality, the aspirations and the concerns of indigenous communities. For this reason, the extractive industry in general, and Repsol YPF in particular, as the major Spanish corporation in this field, must develop a policy for relations with these communities which acknowledges their rights and will serve to provide the building blocks for strong, trust-based relationships which will reduce or eliminate possible conflicts between the parties. Intermón Oxfam wishes to help this process through a series of recommendations provided herein.

Intermón Oxfam believes that the extractive industry should develop a specific model for engaging with indigenous people which takes into account their vulnerability and the level of poverty in which they are living (mainly as a result of being denied access to their land, their territory and their resources), which is exacerbated by the presence of extractive operations. This is a fact which has been researched and acknowledged by many international institutions, amongst them the World Bank.

Moreover, international lawⁱ, enshrined principally in the International Charter on Human Rights, grants protection to indigenous people through a series of provisions which establish certain rights on which extractive industries should base their policies for relations with indigenous people, recognising and upholding existing national and international policies, standards and practices as well as national and international case law on the subject. In this regard, a substantial body of case law on the rights of indigenous people has been developed in recent years by both the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, specifically in regard to the right to land, territory and natural resources.

Furthermore, Repsol YPF itself, in its Social Corporate Responsibility Report, details a series of statements, principles and initiatives which spell out its wish to respect and uphold international labour, environmental and human rights standards. In order to live up to this commitment, the company must develop a policy for relations with indigenous people which recognises and promotes the right of indigenous people to exercise control over their own social, economic, political and cultural development.

Thus, the policy to be developed by the Spanish oil company should clearly specify the commitment which the company publicly makes on this issue and the principles by which it will be guided and which will govern its relationships with indigenous people. This policy should be applied to all company activities which may directly or indirectly affect these communities, by means of an approved procedure which sets out the necessary steps and mechanisms required therefore. All stakeholders, and indigenous people in particular, should be involved in the development process to ensure that the final procedure meets their concerns and aspirations and suitably upholds their rights.

Based on the above, Intermón Oxfam believes that the extractive industry, and Repsol YPF in particular, should develop a policy and procedure for relations with indigenous people with the following essential principles;

A policy for relations with indigenous people should

- Explicitly recognise and respect the cultural diversity and traditions of indigenous people.
- Recognise that indigenous people are essential stakeholders in their respective countries and as a collective subject of international law.
- Recognise and abide by social, labour and environmental provisions contained in current Spanish legislation, particularly where these are stricter than those contained in the relevant national legislation or in international law.
- Recognise the human and environmental rights of indigenous people, particularly as regard the right to free, prior and informed consent; the right to ownership, management and conservation of their land; the right to territory; the right to maintain their traditions; the right to a share in benefits; the right to fair compensation and redress; and the right to control their own development.
- Recognise the need to develop a procedure through a participatory process.
- Be transparent and publicly accountable.

Corporate procedure

- A corporate procedure for relations with indigenous people must be developed in a participatory manner, with involvement of the relevant stakeholders in the discussion and design process, and through proper consultation.
- The collective rights explicitly acknowledged in the policy for relations with indigenous people must be elaborated upon.
- Corporate and other specific procedures must be applied, and application thereof verified (jointly with the affected communities), in all cases in which indigenous people are affected by company activities or by the activities of any third parties related thereto.

This paper also covers some additional issues that extractive industries should consider for the development of a corporate procedure.

Intermón Oxfam further believes that this general corporate procedure would be more effective if it were used as a basis for development of specific procedures for each particular case.

ⁱ International law includes regulations which arise from agreements between States, usually known as treaties or conventions, and standards which derive from common practice in the various countries, developed over time, and which may or may not arise from treaties. The latter are known as common rules of international law.