

Lima, Peru, 9 August 2012

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Re: Request for urgent assistance to address imminent expansion of the Camisea gas project within a Reserve for isolated indigenous peoples in South East Peru

Dear Rapporteurs

I have the honour to write to you on behalf of the national and regional council of AIDSESEP, an organisation that represents all the indigenous peoples of the Peruvian Amazon and which was established to counter the threat of invasion of these peoples' territories and expropriation of their natural resources and biodiversity.

As a result of the mandate given to us by these peoples and in representation of the indigenous inhabitants of the *Territorial Reserve in favour of the Kugapakori, Nahua, Nanti and other ethnic groups in voluntary isolation or initial contact in South East Peru*, the submitting organizations extend our deepest appreciation for your continued efforts on behalf of indigenous peoples and marginalized people around the world. Without doubt, many of these peoples are increasingly becoming victims of the indiscriminate and imposed activities of large scale extractive industries resulting in decreases in food security, adequate shelter and violations of their right to life, health, territory and culture due to threats to their ancestral territories. In 2007, the Special Rapporteur for the human rights and fundamental freedoms of indigenous peoples noted that indigenous peoples living in voluntary isolation or initial contact are particularly vulnerable to such activities; *'many of these communities are now on the brink of what some describe as genocide, owing to oil exploration, timber extraction, the introduction of vast commercial plantations, infrastructure works, missionary activity, drug trafficking and international tourism. The few contacts that may take place can turn violent and the diseases carried by the new settlers continue to wipe out a large number of these population groups'*¹.

In this light, we wish to make you aware of the imminent threat posed to the integrity of the *Territorial Reserve in favour of the Kugapakori, Nahua, Nanti and other ethnic groups in voluntary isolation or initial contact in South East Peru* by the expansion plans of the Camisea gas project.

¹ Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, UN Doc. A/HRC/4/32, 27 February 2007, pars. 42, 48.

These expansion plans include two components.

- The construction of new wells and expansion of activities within the Reserve as part of an existing concession (Lot 88).
- A new oil and gas concession within the Reserve ('Lote Fitzcarrald') whose formal creation is currently being finalized by the Peruvian government and whose exact location with respect to the Reserve is still unknown.

In this light, and on behalf of our organisations, we respectfully request your support and solidarity with the highly vulnerable indigenous peoples of the Reserve by reminding the government of Peru of its duties to comply with its obligations as a result of signing and ratifying ILO Convention 169 and other international laws regarding the rights of indigenous peoples to life, food, health, adequate housing, self-determination, property and culture, all of which consisting in their lands and natural resources, and the right not to be subject to racial discrimination in the exercise of these rights. The expansion of oil and gas exploitation in the Reserve is entirely inconsistent with the rights of the indigenous peoples living there and we urge that you recommend that Peru suspend these plans while they clarify their intentions to your rapporteurships thereby avoiding irreparable harm, the violation of their human rights and putting their very physical survival at risk.

The following points are intended to provide a brief background to the issue.

1. The 'State Reserve in favour of the Kugapakori and Nahua ethnic groups' (*the Reserve*) was established by Ministerial Resolution No 0046-90-AG/DGRAAR on the 14th February 1990 and covers an area of 443 887 hectares of lowland rainforest in the departments of Cusco and Ucayali in South East Peru. It was originally created with the 'objective of guaranteeing the right of these groups over their lands that they have traditionally occupied and protect them with respect to acts of violence or conflict perpetrated by third parties'
2. On the 25th July 2003, Supreme Decree No 028-2003-AG was issued in which the Reserve was recategorized as the *Territorial Reserve in favour of the Kugapakori, Nahua, Nanti and other ethnic groups in voluntary isolation or initial contact in South East Peru* with the objective of providing it with increased legal protection. This elevation was one of the conditions of a loan made to the Peruvian Government by the Inter-American Development Bank (*IDB*) in the context of an IDB loan for the development of the Camisea gas fields in Lot 88, three quarters of which overlapped the Reserve. The 2003 decree noted that 'the Reserve was home to the Nahua or Yora people of the Panaon language family as well as the Nanti, Kirinieri and Machiguenga of the Arawak language family alongside other as yet unidentified indigenous peoples'. The decree also noted that these populations represented a range of different levels of contact; while some had established sporadic contact others remained in voluntary isolation.

3. Despite cultural and linguistic differences as well as differing levels of contact with national society the Reserve's inhabitants do share the following features in common².
 - They maintain an almost exclusively subsistence economy based on hunting, fishing and gathering of materials for food, medicine and shelter and
 - They maintain a special relationship with their territories which are also the foundation for their identities, unique cultures and spirituality.
 - An extreme level of vulnerability to introduced diseases due to their lack of immunity to viruses and other contagious diseases not present in their societies.
 - They are people who are at risk of exploitation by external actors in the aftermath of contact (eg as a source of labour, sex, image or knowledge) as a result of their lack of experience with and knowledge of the 'outside world' which impedes the defense of their rights.

4. It is important to note that Article 2 of the Supreme Decree reiterates that the objective of the Reserve was 'to preserve the rights of said groups over the land that they have traditionally occupied as well as their right to use the natural resources in the area for subsistence purposes'. In addition it clarifies that 'the entire indigenous population located in its interior should be considered as joint beneficiaries of the territorial Reserve'. Article 3 specifies that *the objective of the Reserve was to guarantee the territorial, ecological and economic integrity of the lands comprised by the Reserve ...In this sense it remains forbidden to establish human settlements different to those of the ethnic groups mentioned within the Reserve as well as the development of economic activities. In this way the granting of **new rights** to exploit natural resources within the Reserve is prohibited³*.

5. The subsequently enacted law for the protection of isolated peoples (Law 28736, 2006) in Peru further establishes that such reserves are 'untouchable' or off-limits to any resource use other than that practiced by its inhabitants.⁴

6. Despite this, the Peruvian government has made a clear decision to expand the activities of the Camisea gas project within the Reserve. On 13 April 2012 the Ministry of Energy and Mines approved the first Environmental Impact Assessment (EIA) for the expansion of activities within Lot 88 in an area known as *San Martin Este*. These activities would **initially** consist of the construction of *inter alia*: 3 wells, drilling platforms, a water treatment plant, pumping station, heliport and pipeline between San Martin Este and one of the existing wells (San Martin 3). The activities would involve intensive 2D and 3D seismic testing and would directly affect several known settlements of the Reserve's Machiguenga inhabitants including those living in Inaroato, Shiateni and Kovantiari (See map B in annex) in addition to the wider impact it would have on the remainder of the Reserve's inhabitants and the integrity of the Reserve⁵.

² Shinai (2004) *Aqui Vivimos Bien – Kamyeti notimaigzi aka: Territorio y uso de recursos de los pueblos indigenas de la Reserva Kugapakori Nahua* Shinai, Lima

³ Our emphasis.

⁴ Article 5, Law 28736, Law for the Protection of Indigenous or original peoples in the state of voluntary isolation or initial contact

⁵ Resolución Directoral No 162-2012-MEM/AAE

7. A further EIA⁶ is also currently being developed for additional exploration within Lot 88 but the details of the scope and area that would be affected have not been made public. The submitting organisations have several concerns with the EIA process including its failure to adequately consider the *cumulative impact* of the projects, which is clearly relevant given the likelihood of further expansion within the Reserve as gas resources are depleted. This requirement was highlighted by the Inter American Court of Human Rights in the Saramaka People case, where it concluded that, “one of the factors the environmental and social impact assessment should address is the cumulative impact of existing and proposed projects. This allows for a more accurate assessment on whether the individual and cumulative effects of existing and future activities could jeopardize the survival of the indigenous or tribal people.”⁷
8. The expansion of activities of the Camisea gas project are not limited to Lot 88 as the Peruvian government has made evident its imminent plans to establish a new concession referred to as ‘Lote Fitzcarrald’. In April 2012, Jorge Merino Tafur, Minister of Energy and Mines explained that ‘Lote Fitzcarrald is the continuation of Lote 88 (esta al Norte del Manu) where there are great possibilities for finding gas...we hope (its gazetting) will be finalised after completion of some legal proceedings but in any case it will certainly be completed this year’⁸. Furthermore, the establishment of the new concession is being highlighted in the presentations made to industry by PerúPetro, the State agency responsible for establishing new oil and gas concessions⁹.
9. The precise location and extension of ‘Lote Fitzcarrald’ remains unclear but ‘Fitzcarrald’ refers to a specific geographical area in the Eastern section of the Reserve an isthmus between the watersheds of the Serjali and Mishagua rivers and the Manu river. This location is corroborated by numerous press reports which cite its location as in the vicinity of Manu National Park (See Map C in annex)¹⁰ and by a map of the proposed lot that was included within a press report on the new concession and whose source was cited as the Ministry of Energy and Mines.¹¹ Based on this information it appears that the concession will span the Eastern section of the Reserve incorporating the headwaters of the River Serjali and even part of the river Manu in the neighbouring Manu National park, a UNESCO world heritage site (See Map D in annex). This may clarify why, in April 2011, members of the Nahua people encountered environmental consultants hired by the Camisea consortium conducting unexplained investigations in the headwaters of the river Serjali¹². To date, Peruvian authorities have failed to respond to formal requests for information about this proposed concession¹³.

⁶ 10 reunion del BID con partes interesadas del Proyecto Camisea, Informe de Relatoria: 17 Futuro Sostenible:

⁷ I/A Court H.R., *Case of the Saramaka People v. Suriname. Interpretation of the Judgment of Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 12, 2008. Series C No. 185, par. 41.

⁸ <http://www.assixware.com/perupetro2/abril/prensa/gestion/dia23/molde1.html>

⁹ PetroPerú: Balance y Perspectivas’, 2011

¹⁰ <http://gestion.pe/noticia/1394248/petroperu-ya-habria-conseguido-asignacion-lote-petrolero>

¹¹ Salto al futuro como por un tubo’ Caretas 4 abril 2012.

¹² <http://www.forestpeoples.org/fr/node/2424>

¹³ Forest Peoples Programme letter to PeruPetro, 18th May 2012.

10. International human rights bodies have consistently emphasised the obligations of states to protect the rights of indigenous peoples in voluntary isolation or initial stages of contact due to their extreme levels of vulnerability ‘...and the irreparable consequences that these peoples suffer when they are affected by human rights violations’¹⁴. In February 2012, the OHCHR issued special guidelines for their protection which specified that this vulnerability is due both to their lack of immunity to introduced diseases which makes them susceptible to ‘diseases that threaten their existence’ but also because ‘they are unfamiliar with the ways in which mainstream society functions, and are thus defenseless and extremely vulnerable in relation to the various actors that attempt to approach them.....’¹⁵. In 2007 the UN Special Rapporteur on the rights of indigenous peoples recommended that ‘States should undertake to put into effect the necessary mechanisms to protect the lives and integrity of isolated peoples in order to ensure their survival with respect for their human rights’¹⁶.
11. The Nahua, one of the inhabitants of the Reserve, themselves offer a tragic example of such vulnerability. In May 1984 they were living in voluntary isolation when they experienced their first contact when a small group were captured by loggers who were attempting to access the valuable timber in their territory. Within only a few months, Nahua population had been reduced by almost 50% due to outbreaks of respiratory infections to which they had no immunity¹⁷. The diseases and resulting dependency on loggers for humanitarian aid meant they were unable to prevent their territory from being overrun by loggers.
12. Due to cases such as these the OHCHR guidelines emphasise the severe risks posed by permitting extractive industries such as logging, mining, oil or gas in their territories. *This extreme vulnerability is worsened by threats and encroachments on their territories, which directly jeopardize the preservation of their cultures and ways of life..... Their vulnerability is even further aggravated by the human rights violations which they often suffer at the hands of those who seek to exploit the natural resources in their territories and by the fact that aggression against these peoples and their ecosystems generally goes unpunished’*¹⁸ As a result, the OCHCR guidelines make it very clear to governments that ‘the area that States have delimited for peoples in voluntary isolation or initial stages of contact must be **untouchable**... (where) no rights to exploit natural resources must be granted’¹⁹.
13. It is also worth noting that on two separate occasions, the Inter American Commission on Human Rights (IACHR) has issued precautionary measures to protect the rights of indigenous peoples in voluntary isolation in Peru²⁰ and Ecuador²¹ whose existence was

¹⁴ Directrices de protección para los pueblos indígenas en aislamiento y en Contacto Inicial de La región Amazónica, el Gran Chaco y la región oriental de Paraguay, OHCHR, Geneva February 2011: Para 46.

¹⁵ Ibid: Para 62

¹⁶ Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, UN Doc. A/HRC/4/32, 27 February 2007, pars. 42, 48.

¹⁷ Shepard, G. (1999) *Pharmacognosy and the Senses in Two Amazonian Societies*, Ph.D. Dissertation: University of Berkeley, California.

¹⁸ Directrices de protección para los pueblos indígenas en aislamiento y en Contacto Inicial de La región Amazónica, el Gran Chaco y la región oriental de Paraguay, OHCHR, Geneva February 2011: Para14 c

¹⁹ Ibid: Para 42 (our emphasis)

²⁰ On March 22, 2007, the IACHR granted precautionary measures in favor of the Mashco Piro, Yora and Amahuaca indigenous peoples, in voluntary isolation in the Department of Madre de Dios, in Peru, threatened in their life and personal integrity, and at

threatened by illegal logging activities. In its decisions the commission requested that the Peruvian and Ecuadorean states adopt measures to protect their territory for purposes of effectively safeguarding the rights to life and integrity of their members.

14. Furthermore, in its 2000 report on the situation of human rights in Peru, the Inter American commission addressed the severe impact of large-scale exploitation of natural resources and raw materials in indigenous territories throughout the Peruvian jungle. It noted that, ‘the actions of the lumber and oil companies in these areas, without consulting or obtaining the consent of the communities affected, in many cases lead to environmental degradation and endanger the survival of these peoples’²².
15. The existing Camisea gas project in Lot 88 has already had a severe impact on the Reserve’s inhabitants. Since the Camisea project began there have been reports of undesired contact and forcible relocation of some of its inhabitants. To date, the pipeline has ruptured on at least seven separate occasions resulting in fish deaths and sickness amongst Machiguenga communities bordering the Reserve²³. In 2002 a Peruvian Ministry of Health report concluded that an outbreak of diarrhoea that killed several Nanti in the heart of the Reserve was directly related to an outbreak of an epidemic in one of the Camisea work camps.²⁴
16. In light of the above, the development of further oil and gas exploitation through the expansion of activities both within Lot 88 and any neighboring areas threatens irreparable harm to all the Reserve’s inhabitants by increasing *inter alia*; the likelihood of undesired contact, the transmission of potentially lethal diseases and the displacement of the reserve’s indigenous people as they seek refuge in neighbouring areas and triggering subsequent conflict with neighbouring groups. This phenomenon has already been extensively noted in the neighboring Manu National Park as increasing pressure from extractive activities have displaced isolated indigenous peoples into the Park triggering conflicts with Machiguenga inhabitants²⁵.
17. The Peruvian State has a positive obligation to protect the right of indigenous peoples to the lands and natural resources traditionally used and occupied by them which are essential for the survival of their way of life.²⁶ As highlighted by the Special Rapporteur on the right to

risk of disappearance, because of the illegal logging activities carried out in their territory. For more information see <http://www.cidh.org/medidas/2007.eng.htm>.

²¹ On May 10th, 2006, the IACHR granted precautionary measures in favor of the Tagaeri and Taromenani indigenous peoples in voluntary isolation in the Amazon forest of Ecuador, who were directly threatened in their very existence as groups by the actors who carried out illegal logging in their territories, and had suffered several murders in the course of said conflict. For more information see <http://www.cidh.org/medidas/2006.eng.htm>.

²² Second report on the situation of human rights in Peru, 2000. Chapter X: 26. Oea/ser.l/v/ii.106 doc. 59 rev.

²³ Tom Griffiths (2007) Holding the IDB and IFC to account on Camisea II: A review of applicable international standards, due diligence and compliance issues.

²⁴ Oficina General de Epidemiología (2003) *Pueblos en situación de extrema vulnerabilidad: El caso de los Nanti de la Reserva territorial Kugapakori Nahua, Río Camisea, Cusco*. Ministerio de Salud, Lima.

²⁵ Shepard Jr., Glenn H., Rummenhoeller, Klaus, Ohl-Schacherer, Julia and Yu, Douglas W.(2010) 'Trouble in Paradise: Indigenous Populations, Anthropological Policies, and Biodiversity Conservation in Manu National Park, Peru', *Journal of Sustainable Forestry*, 29: 2, 252 — 301.

²⁶ See for example in the Inter-American Court of Human Rights judgment *Case of the Saramaka People v. Suriname*, 28 November 2007, paragraphs 120 – 123.

adequate housing; ‘forced evictions constitute a “gross violation” of several internationally protected human rights “including the human rights to adequate housing, food, water, health, education, work, security of the person, security of the home, freedom from cruel, inhuman and degrading treatment, and freedom of movement”, which should only be carried out in exceptional circumstances and in full compliance with international human rights’.²⁷ The Peruvian government’s planned gas and oil development would have the likely effect of displacing the indigenous peoples of the Reserve from the affected land as well as preventing their use of the lands and natural resources impacted (including those affected by likely down-stream contamination) thus threatening their physical and cultural survival as a people, and in violation of the right to adequate housing and related cross-cutting human rights.

18. As your Rapporteurships are well aware, it is settled international law that any changes in land use on the traditional territories of indigenous peoples including forced eviction or projects of this nature can only occur with their free, prior and informed consent²⁸. The indigenous communities of the Reserve living in voluntary isolation have elected to pursue their social, cultural and economic development on their traditional territory in this context, pursuant to their right to self-determination. As a result, their consent cannot be sought and is not granted with respect to the government’s proposed and uninvited gas and oil project on their land. In the circumstances the development would therefore be in violation of the resident peoples’ right to self-determination and the rights derivative thereof.
19. As the land and natural resources of the Reserve constitute the means of subsistence of its indigenous peoples, the planned exploitation would directly deprive its indigenous inhabitants of access to their sources of food through the likely destruction and contamination of hunting, fishing, and gathering grounds as a result of project-related construction, transport and exploitation activities, thereby ‘depriving the local populations from access to productive resources indispensable to their livelihoods’²⁹.
20. In conclusion, the prospect of expanding oil and gas activities within the Reserve would put at risk the physical survival of these peoples and would compromise its ability (and in turn the state’s responsibility) to guarantee a range of fundamental rights including the right to life; to adequate food, housing and health; to self-determination, property and the cultural identity and integrity of its inhabitants, and their rights not to be subject to racial discrimination in the exercise of these rights.

²⁷ ‘Basic principles and guidelines on development-based evictions and displacement’ as contained in Annex I of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, A/HRC/4/18, para 6, (5 February 2007). See also Committee on Economic, Social & Cultural Rights Committee General Comment 4, *The right to adequate housing* (Sixth session, 1991) U.N. Doc. E/1992/23, annex III at 114 (1991), and General Comment 7, *Forced evictions, and the right to adequate housing* (Sixteenth session, 1997), para. 14, U.N. Doc. E/1998/22, annex IV at 113 (1998).

²⁸ ‘Large-scale land acquisitions and leases: A set of core principles and measures to address the human rights challenge’, Special Rapporteur on the right to food, 11 June 2009, pages 13 and 14.

²⁹ Special Rapporteur on Food, Olivier de Schutter: ‘Large-scale land acquisitions and leases: A set of core principles and measures to address the human rights challenge’ (2009), page 2.

IN VIEW OF THE ABOVE

While the EIAs for the expansion of activities within Lot 88 are yet to be finalised and the proposed 'Lote Fitzcarrald' is yet to be made formal, a window of opportunity still exists for prompt action. Such action could prevent irreparable violations of fundamental human rights before it is too late and the project gains irreversible momentum. In light of the above and given the likelihood of imminent and irreparable harm and the fundamental human rights threatened, the submitting organizations respectfully request that your offices:

1. Send an Urgent Appeal to the Government of Peru:
 - a. **Expressing grave concern** about the violations of rights to life, health, food, shelter and other fundamental rights of indigenous peoples to lands, resources and culture that would result from any continued expansion within Lot 88 and any further concessions including 'Lote Fitzcarrald';
 - b. **Seeking clarification regarding the exact status of the proposed development of gas and oil exploitation and exploration within Lot 88 and 'Lote Fitzcarrald'** including the precise location of any proposed activities or planned concessions that may impact on the Reserve and those indigenous peoples who derive a living from its land and resources
 - c. **Requesting suspension** of all planned expansion within Lot 88 and any further concessions including 'Lote Fitzcarrald' pending consideration of all and any clarification received from the Government of Peru.
2. Subsequently, send a further Urgent Appeal by way of follow up to the Government of Peru **seeking cancellation** of any planned expansion within Lot 88 and any further concessions including 'Lote Fitzcarrald', if in the judgment of your Rapporteurships on the basis of any clarification received pursuant to (1)(c), the protection of the range of human rights engaged remain threatened and inadequately protected.
3. Take any other measure that your office deems appropriate given the facts and the competencies bestowed on the Rapporteurship by the UN Human Rights Council.

On behalf and in support of the indigenous inhabitants of the *Nahua, Nanti and Kugapakori State Reserve*, the undersigned submitting organizations thank you for your continued efforts on behalf of indigenous peoples and we remain available not only to receive you should you visit Peru, but also to answer any additional questions you may have regarding the situation described herein.

We take this opportunity to express our sincere appreciation.

Signed by:

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Josué Faquín Fernández, President, ORAU
Emerson Sandy Tapuy, President ORPIO

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CC: Mr Edward John, Chairperson, UN Permanent Forum on Indigenous Peoples, indigenous_un@un.org; Mr. José Carlos MORALES (Costa Rica), Expert Mechanism on the Rights of Indigenous Peoples, expertmechanism@ohchr.org