

19th February 2013

His Excellency

President Ollanta Humala Tasso

Palacio de Gobierno

Plaza de Armas

Lima 1

Peru

Plea to respect the rights of indigenous peoples in voluntary isolation and initial contact in south-east Peru

Your Excellency,

We, the undersigned organisations, are writing to you out of grave concern for some of Peru's most vulnerable indigenous peoples who are living in voluntary isolation and initial stages of contact and whose lives, livelihoods and physical and cultural survival are threatened by the imminent expansion of the Camisea gas project in the Kugapakori-Nahua-Nanti Reserve (KNN Reserve) in south-east Peru. These plans include proposals to carry out intensive seismic testing and build twenty-one wells, a flowline and associated infrastructure within 'Lot 88', and to establish a new concession, 'Lot Fitzcarrald', in the adjacent area. We respectfully request that you heed the repeated calls made by indigenous peoples' organisations in Peru since August 2012 to respect the rights of the indigenous peoples in voluntary isolation and initial contact in the Camisea region, and to prohibit expansion of operations in Lot 88 and the creation of Lot Fitzcarrald.

We wish to take this opportunity to alert you and your government to the potential serious negative impacts and human rights violations that the above plans for the expansion of the Camisea gas project would entail:

A threat to the physical and cultural survival of indigenous peoples in voluntary isolation and initial contact

Indigenous peoples in voluntary isolation are particularly vulnerable to any kind of contact with other, especially non-indigenous, people, and to the colonization and exploitation of their territories. This is for two central reasons. First, their economies are almost entirely subsistence-based, meaning that the land they live on is the source of their food, medicine and shelter, as well as being fundamental to their identities, culture and spirituality. Second, their lack of immunity to viruses and other contagious diseases unknown to their societies can turn a common cold into a lethal disease and makes it common for many of them to die once initial contact has been made. The Nahua, an indigenous group living in the KNN Reserve, are a tragic example. After contact with loggers invading their territory in 1984, almost 50% of them died within only a few months following outbreaks of respiratory infections. If expansion in Camisea is permitted, history could be repeated and the survival of indigenous peoples in voluntary isolation and initial contact in the KNN Reserve would be seriously threatened.

Violates Supreme Decree 028-2003-AG

The KNN Reserve was initially created in 1990 and given greater legal protection in 2003 by Supreme Decree 028-2003-AG. Article 3 of this Decree states that its objective is 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 prohibited.’¹ The Governing Body of the International Labour Organization (ILO) has stressed that ‘the renewal or extension of a licence. . . constitutes a ‘new action’ and as a ‘new action’ the full range of safeguards and protections must be complied with even if it solely constitutes the extension of activities pursuant to an extant permit’.² Despite this provision, 74% of Lot 88 overlaps with the KNN Reserve within which the expansion is scheduled and the proposed Lot Fitzcarrald is planned, thereby violating the terms of this Supreme Decree.

Undermines and violates international human rights norms and obligations

International human rights institutions and norms have repeatedly stressed that states must protect indigenous peoples in voluntary isolation and initial contact. In March 2007 Peru itself was issued with precautionary measures by the Inter-American Commission on Human Rights (IACHR) to protect isolated peoples of the Madre de Dios region. In 2012 the United Nations’ Office of the High Commissioner for Human Rights (OHCHR) released ‘guidelines’ on this issue which included the recommendation that ‘the areas 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.’³

Furthermore, international human rights treaties in force for Peru – and their authoritative interpretation by bodies such as the Inter-American Court of Human Rights – are incorporated into domestic law via the Constitution and stand above national laws. This requires, among others, that Peru weigh the public interest of ensuring the rights and survival of the indigenous peoples in the KNN Reserve against the public interest of obtaining revenue through extractive industry activities therein, and explicitly prohibits the state from undertaking projects that may threaten the survival of indigenous peoples or be otherwise disproportionate.⁴ In other words, Peru’s obligations are not discharged by simply declaring

¹ Supreme Decree 028 2003-AG, 26 July 2003, ‘Declaran superficie ubicada en los departamentos de Cusco y Ucayali como ‘Reserva Territorial del Estado a favor de los grupos étnicos en aislamiento voluntario y contacto inicial Kugapakori, Nahua, Nanti y otros.’

² Report of the Committee set up to examine the representation alleging non-observance by Guatemala of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), (GB.294/17/1):(GB.299/6/1) (2007)

³ OHCHR, 2012, ‘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’, para. 42.

⁴ Saramaka People v. Suriname, Ser. C No. 172, para. 129 and; Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and Reparations. Judgment of June 27, 2012. Ser. C No. 245, para. 156. In Saramaka, the Court explained that the term ‘survival’ is understood to mean their ‘ability to “preserve, protect and guarantee the special relationship that they have with their territory’, so that ‘they may continue living their

extractive operations to be in the public interest: much greater scrutiny and care is required and in some cases – such as the threats to the survival of indigenous peoples – the state is enjoined from pursuing those activities.⁵ We highlight that the IACHR specifically cites the effects of oil and gas operations on indigenous peoples in voluntary isolation or initial contact as an example of activities that threaten survival, and are thus illegitimate activities principally because of the threat posed by common diseases and environmental degradation.⁶ In conclusion, expansion of activities in Lot 88 and the creation of Lot Fitzcarrald place a disproportionate and illegitimate burden on these peoples and thus constitute illegal acts under international human rights law.⁷

Potentially violates Peru's commitments to safeguard its own 'protected' areas

In addition to including parts of the KNN Reserve, the proposed Lot Fitzcarrald could also include parts of the Manu National Park (MNP), (a UNESCO World Heritage Site and biosphere reserve) where, under Peruvian law, oil and gas operations are strictly prohibited. The MNP is also inhabited by indigenous peoples in voluntary isolation and initial contact, and in 2011 UNESCO's World Heritage Committee specifically urged Peru to protect the indigenous peoples in voluntary isolation and initial contact in the MNP 'from external pressures.'

In light of the above, we the undersigned organisations urge you to prohibit expansion of operations in Lot 88 and the creation of Lot Fitzcarrald in order to safeguard the rights and ensure the survival of indigenous peoples in voluntary isolation and initial contact in the Camisea Region and uphold Peru's human rights and environmental obligations. Specifically, we urge you to take the following immediate steps to halt this potentially destructive development:

- Retract the approval already granted for the Environmental Impact Assessment for operations in San Martin Este.
- Annul the process of a second Environmental Impact Assessment for further expansion in San Martin Norte, Kimaro Este, Kimaro Oeste, Kimaro Centro, Armihuari Sur and Armihuari Norte.

traditional way of life, and that their distinct cultural identity, social structure, economic system, customs, beliefs and traditions are respected, guaranteed and protected".'

⁵ See Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources, OEA/Ser.L/V/II. Doc. 56/09, Inter-American Commission on Human Rights, 30 December 2009, at para. 232 (summarizing international jurisprudence and stating that "The State may not grant a concession or approve a development or investment plan or project that could affect the survival of the corresponding indigenous or tribal people, in accordance with its ancestral ways of life").

⁶ Id. at p. 92-3.

⁷ For instance, the UN's Human Rights Committee held in 2009 in a case against Peru that, in the case of indigenous peoples, states 'must respect the principle of proportionality so as not to endanger the very survival of the community and its members.' *Angela Poma Poma v. Peru*, CCPR/C/95/D/1457/2006, 24 April 2009, at para. 7.6.

- Issue a public clarification that the inviolability of the KNN Reserve and the Manu National Park will be respected and no further expansion of the Camisea gas project will take place.

If this does not happen, and expansion continues as planned, your government will not only be violating domestic and international law, but will be presiding over a development project whose consequences for some of Peru's most vulnerable citizens could be lethal.

We look forward to hearing how your government plans to address these concerns.

Yours sincerely,



Dr Marcus Colchester
Director, Forest Peoples Programme

CC:

Luis Alberto Moreno: President, Inter American Development Bank

Eduardo Vega Luna: Defensor del Pueblo, Peru

Signed by:

1	Organisation	Country
2	Alerta Amazónica	Spanish state
3	Almáciga	Spain
4	Alternativa Intercambio con Pueblos Indígenas	Spain
5	Alyansa Tigl Mina	Philippines
6	Amazon Watch	USA
7	Asia Indigenous Peoples Pact	Thailand
8	Asociación Ambiente y Sociedad	Colombia
9	Asociación ANAI	Costa Rica
10	Associació Catalana d'Enginyeria Sense Fronteres	Spanish state
11	Both ENDS	The Netherlands
12	Carbon Trade Watch	Spain
13	Chirapaq	Peru
14	Columban JPIC Office	UK
15	Coordinación por los Derechos de los Pueblos Indígenas (CODPI),	Spanish state
16	Consejo Nacional de la Mujer Indígena	Argentina

17	CooperAcción	Peru
18	Crude Accountability	USA
19	Earthrights International	Peru
20	Euronatura - Center for Environmental Law and Sustainable Development	Portugal
21	FERN	UK
22	First Peoples Human Rights Coalition	USA
23	Flemish Centre for Indigenous Peoples	Flemish Centre for Indigenous Peoples
24	ForestAction	Nepal
25	Forest Peoples Programme	UK
26	Friends of the Earth, France	France
27	The Gaia Foundation	UK
28	Global Witness	UK
29	Identité Amérique Indienne	Belgium
30	Indigenous and Community Conserved Areas Consortium	Switzerland
31	Indigenous Peoples Links	UK
32	La Red Xicana Indígena	USA
33	Mangrove Action Project	USA
34	Mujeres indígenas por Ciarena, A.C.,	Mexico
35	Natural Justice: Lawyers for Communities and the Environment, South Africa	South Africa
36	Nepal Federation of Indigenous Nationalities	Nepal
37	Non-Timber Forest Products - Exchange Programme for South and Southeast Asia	Philippines
38	Observatorio por la Autonomía y los Derechos de los Pueblos Indígenas en Colombia	Spanish state
39	Peru Support Group	UK
40	Platform	UK
41	Rainforest Foundation Norway	Norway
42	Rainforest Foundation UK	UK
43	Re:Common	Italy
44	Red Indígena de Turismo de México,	A.C., Mexico
45	Red Mexicana de Acción Frente al Libre Comercio	Mexico
46	Repsolmata	Spain
47	Saami Council,	Finland
48	Sierra Club	USA
49	Soldepaz Pachakuti	Spain
50	St. Thomas University's Anthropology Department	Canada
51	Survival International	UK
52	The Corner House,	UK
53	Transition Network	UK
54	TReeS	UK
55	War on Want	UK
56	World Development Movement	UK
57	World Rainforest Movement,	Uruguay
58	Xarxa de l'Observatori del Deute en la Globalització	Catalonia, Spanish state

	(ODG-Debtwatch),	
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