

# Holding the IDB and IFC to account on Camisea II

**A review of applicable international standards, due diligence and compliance issues**

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Tom Griffiths

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Clockwise: Camisea pipeline route (Simeon Tegel / Amazon Watch, 2004), helicopter and erosion along the Camisea Row (Adam Goldstein / Amazon Watch, 2003), Fifth pipeline rupture (COMARU, 2006), Bulldozers along the Urubamba (Simeon Tegel / Amazon Watch, 2004).

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## Executive Summary

Located in a remote, inhabited area of the Peruvian rainforest, the Camisea Natural Gas Project (“Camisea I”) is arguably one of the most controversial “development” projects currently in operation anywhere in the Amazon basin. Despite unrelenting and detailed criticism of Camisea’s environmental and social impacts, including on some of the last indigenous communities still living in isolation anywhere in the Amazon, the Inter-American Development Bank (IDB) and the World Bank’s International Finance Corporation (IFC) are considering \$1.1 billion in loans for “Camisea II”, an expansion of the natural gas project into vast new areas of pristine primary tropical rainforest.

In 2002 and 2003, amid intense national and international criticism, the IDB provided loans to the Camisea Project. The IDB pushed ahead with these loans against the advice of its own environmental auditors. It did so despite warnings by civil society that the project would endorse extractive industry operations within protected areas, undermine protections for isolated indigenous peoples, violate the rights of Native Communities, damage critical natural habitats and breach national and international standards on human rights and sustainable development. The IDB went ahead claiming that its “proactive approach” would “add value” and promote “sustainable development.”

A faulty and hastily constructed pipeline has resulted in serious soil erosion and no less than six pipeline ruptures have occurred causing damage to affected communities and the environment. Although some IDB loan conditions on the environment have been met, other key environmental measures and promised protections for isolated indigenous peoples have not been properly implemented. The Camisea project has failed to mitigate the cumulative negative impacts of the project on indigenous peoples who have suffered serious declines in the abundance of subsistence fishing and hunting resources; social and cultural upheaval; and growing pressures on their communities and forests from colonists and traders that have entered the project zone to cash in on Camisea.

After the sixth pipeline rupture, the Government of Peru and the IDB finally launched audit work of Camisea I in 2006, though they rejected calls for fully independent experts to carry out the evaluations. At the same time, developments in Camisea II continued amid serious allegations of flawed public consultation, repeated violations of national and international standards, and intimidation of local indigenous organisations critical of the project.

This study examines some of the major social and environmental problems with Camisea I and II. It traces the interconnections between the two operations and the role of the IDB in both controversial mega-projects. The analysis finds that many of the problems associated with Camisea I, based on a rainforest gas concession known as “Block 88” and which went operational in August 2004, have already been repeated in the construction phase of the upstream component of Camisea II in “Block 56”.

Extractive industry and “community engagement” activities in Block 56 are measured against just some of the key social and environmental standards of the IDB and IFC as well as applicable international standards on human rights and environmental protection. It is found that some previous and existing operations in Block 56 fail to comply with IDB and IFC standards, and have contravened other international standards on the rights of indigenous peoples (most notably prior consent and prior consultation standards).

Drawing on statements made by local indigenous organisations, official reports of Peru's Human Rights Ombudsman's Office, independent NGO reports, and interviews with indigenous leaders and NGOs working in the Lower Urubamba, the study finds:

- Questions remain over the legality of the original demarcation of Block 56 and the sale of concession rights;
- Some consultations with affected Native Communities over hydrocarbon development plans for Block 56 were rushed and conducted in an atmosphere of intimidation;
- Prior consultation processes failed to respect internal processes of affected communities for collective decision-making;
- The 2004 EIA for Block 56 was flawed in key ways (e.g., incomplete identification of “critical habitats” and superficial treatment of risks to isolated peoples);
- The indirect, cumulative and qualitative costs to communities of the expansion of the Camisea Project into Block 56 have not been properly compensated.
- A climate of latent intimidation of indigenous and civil society leaders who are critical of the Camisea Project continues.

This report examines some of the key safeguard commitments of the IDB and IFC that apply to the project. The analysis here focuses on IFI standards that must be met *prior* to the approval of the loan.

- To be credible, the IDB’s due diligence for Camisea II must pinpoint all non-compliance issues, rights violations and technical-legal shortcomings in both previous and existing business activities under Camisea I and in associated facilities in Block 56. At the time of writing this report, the IDB was in the process of publicizing the results of its “independent” audits. Initial scrutiny of the audits published in May 2007 indicates that such a comprehensive compliance analysis has *not* so far been carried out.

It is emphasised that the IDB must also:

- Make a public commitment to delay further processing of Camisea II and refrain from sending the proposal to the IDB Board until local grievances and problems associated with Camisea I have been resolved to the satisfaction of affected communities;
- Ensure full local, national and international public consultation on the forthcoming findings of the Strategic Environmental Assessment (SEA) of the Lower Urubamba being prepared under its public sector loan to Camisea I;
- Make commitments that the IDB will not finance Camisea II unless it can ascertain that the project would fully comply with IDB policies, including guarantees that indigenous peoples’ rights will be safeguarded in accordance with all applicable legal norms, including those established under ILO Convention 169 and the Inter-American human rights system.

With regard to the potential role of the IFC in this controversial mega-project, the study notes that its due diligence on Camisea II must: (a) cover “associated facilities” in Blocks 56 and 88; (b) include a separate IFC social and environmental audit as required under its Performance Standards; and (c) ensure full public consultation in Peru and internationally on its findings and due diligence before proceeding with project processing.

This study concludes that the rights violations and shortcomings in previous business activities that have already taken place under the Camisea II project do not fully conform to the safeguard standards of the IDB or the performance standards of the IFC.

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**Acronyms:**

AIDSESP	Asociación Interétnica de Desarrollo de la Selva Peruana (National indigenous federation)
BCS	Broad Community Support
CBD	Convention on Biological Diversity
CEDAW	Convention on the Elimination of All Forms of Racial Discrimination Against Women
CERD	Convention on the Elimination of all Forms of Racial Discrimination
CES	Environment and Social Development Department (IFC)
CESI	Committee on Environment and Social Impact (IDB)
CESIG	Investment Support Group of the CES responsible for due diligence (IFC)
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
COD	Conditions of Disbursement (IFC)
COMARU	Consejo Machiguenga del Río Urubamba
CONAM	Consejo Nacional del Ambiente
COP	Conference of the Parties
CRC	Convention on the Rights of the Child
DGAEE	Dirección General de Asuntos Ambientales Energéticos
EIA	Environmental Impact Assessment
EMP	Environmental Management Plan
ESIR	Environmental and Social Impact Report (part of IDB due diligence)
ESRD	Environment and Social Review Document (IFC)
ESRP	Environmental and Social Review Procedures (of the IFC)
ESMS	Environmental and Social Management System (of IFC clients)
ESS	Environmental and Social Strategy (IDB)
ESSR	Environmental and Social Risk Rating (IFC)
FPIC	Free, prior and informed consent
GFN	Good faith negotiation
GTCI	Grupo Técnico de Coordinación Interinstitucional-Camisea
HR	Human rights
IACHR	Inter-American Commission on Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
IDB	Inter-American Development Bank
IFC	International Finance Corporation (of the World Bank Group)
ILO	International Labour Organization
IRM	Investment Review Meeting (of the IFC)
KNR	Kugapakori Nahua Reserve (for isolated indigenous peoples)
LS	Lead Specialist (of IFC's CES designated to review social and environmental issues)
MINEM	Ministerio de Energía y Minas
OAS	Organization of American States
OSINERGMIN	Organismo Supervisor de la Inversión en Energía y Minería
PAMA	Programa de Adecuación y Manejo Ambiental
PEMA	Programa Especial de Manejo Ambiental
PDC	Plan de Contingencias
PDS	Project Data Sheet (IFC)
PMA	Un Plan de Manejo Ambiental
PRI	Private Sector Department (IDB)
PS	Performance Standard (IFC)
PPS	Sustainability Policy and Performance Standards (IFC)
TGP	Transportadora de Gas de Perú
ZEE	Zonificación Ecológica y Económica

## I. Introduction and Background

“Camisea II” is a \$3.8 billion mega-hydrocarbon project to develop and transport gas from Block 56 in the Peruvian Amazon rainforest, across the Andes to the Pacific coast. Proponents of this mega project claim that it “...represents the largest single direct foreign investment in Peru's history.” Officially titled the *Peru - Liquefied Natural Gas Project* (Peru-LNG), Camisea II is an expansion of the controversial Camisea Natural Gas Project (“Camisea I”),<sup>1</sup> which has been repeatedly criticised for its poor environmental and social performance and multiple violations of national and international standards (Box 1). These criticisms of Camisea I have been upheld by the Peruvian Human Rights Ombudsman (Defensoria del Pueblo).<sup>2</sup>

### I.A. Overview of the Camisea II project

The overall goal of the Camisea II project is to process Camisea gas from Block 56 Pagoreni and Mipaya gas fields into LNG for export to U.S. and Mexican markets. More than 80% of the Block 56 hydrocarbon concession is superimposed on titled Native Community lands in lowland forest areas in the department of Cusco. The project is due to be fully operational by 2010 when the new LNG facility will be supplied with natural gas from both Block 88 and from new wells in Block 56.

#### *Downstream component of Camisea II:*

The downstream component will involve the laying of a new 408 km pipeline from the Chiquintirca community in the Ayacucho uplands to a new LNG Liquefaction facility and export terminal on the Pacific coast at Pampa Melchorita. The Construction of this new pipeline and the Liquefaction plant is to be conducted by a Peru-LNG consortium composed of Hunt Oil (50% and operator), Repsol-YPF (20%), and South Korean SK Corp (30%). The EIA studies for the proposed upland pipeline and coastal plant have been completed by consultants working for the Peru-LNG consortium. The Peru-LNG EIA was formally approved by the government of Peru in September 2006.

The EIA claims that its Environmental and Social Management Plan is based on IFC Performance Standards,<sup>3</sup> though curiously these do not seem to include PS7 on Indigenous Peoples (see also III. below).<sup>4</sup> Throughout the EIA the landowners are referred to as “local people”, “local residents” and “rural communities”, despite the fact that the EIA acknowledges that Andean people speak their own language, hold communal tenure over parts of the pipeline route, hold “ancestral beliefs, uses, and customs of the Andean world” and a have “cosmovision” different to outsiders. The EIA notes that the risk of disrespect for “community customs” is “somewhat significant”.

In mid-2007, Peru-LNG reports that it is negotiating with local land owners for acquisition of the right of way (“easement acquisition”) that will for the most part run parallel to the existing Camisea pipelines, while plans to start constructing the coastal liquefaction plant are well advanced.<sup>5</sup>

Despite claims of best practice by Peru-LNG, civil society organisations in Peru note that the company that prepared the EIA (Walsh SA) is the same one that compiled the faulty EIA for Block 88. They are concerned that the environmental studies have serious gaps generating growing concerns that the specifications for the new pipeline do not meet stringent industry standards for pipeline integrity and security, leading to renewed fears of possible ruptures and spillages.<sup>6</sup>



**Box 1: The Camisea Natural Gas and Gas Liquid Project: a story of violated standards and broken promises**

During its construction and in its first few years of operation, Camisea I has been heavily criticised for its adverse impacts on affected communities and the fragile rainforest environment and has come to be labelled “one of the most socially and environmentally damaging projects in the Amazon basin”.<sup>7</sup>

***History and background:***

Plans for extraction and exploitation of natural gas in the Camisea and Urubamba basins gathered pace in the 1980s when Shell conducted exploration activities between 1981 and 1988. Early exploration work involved forced contact between Shell workers and indigenous peoples living in voluntary isolation in the headwaters of the Mishagua River and its tributaries. The forced contacts with the panoan-speaking Nahua communities tragically resulted in the deaths of over 40% to 60% of their population due to exposure to diseases to which they had little or no resistance.<sup>8</sup> In response to pressure from the local indigenous organisation COMARU, the government of Peru (GoP) established the 443,000 ha *Kugapakori-Nahua Territorial Reserve* in 1990 to protect the isolated peoples in the catchments of the Upper Camisea basin and the Cashiriari, Timpía, and Mishagua Rivers (Resolución Ministerial No.0046-90-AG/DGAAR).

Between 1994 and 1998, Shell continued exploration in Block 88 and developed more detailed EIA studies. However, the Anglo-Dutch company pulled out of the contract with the government of Peru due to disagreements over royalties. PeruPetro (state oil-licensing company) sold the rights to Block 88 in February 2000 to the upstream (extractive) *Camisea Consortium*, made up of the Argentine firms Pluspetrol and Tecpetrol, the Texan firm Hunt Oil, Spain’s Repsol, South Korea’s SK Corporation and the Algerian state oil and gas company Sonatrach. Rights to transport and distribute the gas were awarded to the downstream consortium *Transportadora de Gas de Perú* (TGP), in which Hunt Oil and Pluspetrol are also leading players. 74% of the Camisea hydrocarbon concession (Block 88) is superimposed on the Kugapakori Nahua Reserve for isolated indigenous peoples.<sup>9</sup> Seismic surveys were conducted in 2001 and 2002 and work to construct the drilling platforms San Martín I and III began soon after. A further two platforms inside Block 88, known as Cashiriari I and III, along with associated secondary flow lines are still pending construction. San Martín III and Cashiriari I and III are inside the Kugapakori Nahua Reserve. The pipelines (which consist of a 714 km duct for natural gas and a separate pipeline of 540 km for gas liquids) were completed in 2004 and began operation in August that year. The consortium has a 33-year BOOT contract (build-own-operate-transfer) and plans to eventually open 21 wells from the four platforms.<sup>10</sup>

***Flawed EIA consultations and defective EIA studies:***

The EIA carried out for Block 88 by the Camisea consortium was criticised by indigenous organisations and NGOs for its incomplete plans to eliminate and reduce indirect and cumulative impacts, inadequate social and biological baseline data, deficient treatment of isolated indigenous peoples in the Kugapakori Nahua Reserve and adjacent Megantoni Sanctuary, uninvited visits to Nanti communities in early stages of contact (putting their health at risk), the use of helicopter surveys to identify settlements of remote isolated peoples and faulty monitoring plans.<sup>11</sup> Consultation with communities on the findings of the EIA were likewise denounced for being inadequate because insufficient time was given to affected communities to study the contents of the EIA and the communities had not received technical support to help them understand and respond to the EIA, which in turn weakened their ability to make informed decisions about the project.<sup>12</sup> Indigenous organisations and social justice campaigners repeatedly complained that faulty consultations and forced contact with isolated peoples put Camisea I in violation of ILO Convention 169 from the very outset of the ill-conceived project.<sup>13</sup>



***Unequal negotiations and faulty compensation:***

A 2006 study by the Peruvian Ombudsman concluded that negotiations for compensation carried out between the Consortium and affected titled Native Communities in Block 88 violated national laws because the communities were not properly informed of potential impacts, and the negotiation and setting of compensation values were skewed in favour of the companies who refused to divulge their compensation methodology. Negotiation agreements were “inequitable” and “unfair” due to “asymmetric negotiation” processes used by the companies. Affected communities complain that agreements made orally were not incorporated into final compensation documents drawn up by company lawyers.<sup>14</sup>

***Flawed pipeline construction and repeated public calls for technical and environmental audits***

Before construction started, prior agreements with affected communities in Block 88 regarding mitigation measures were violated by the companies and their workers gained unauthorised access to community lands without prior consent. The pipeline was hastily constructed by TGP. International standards for gas pipeline safety were violated and national regulations were breached leaving the pipeline open to severe risk of rupture and dangerous corrosion.<sup>15</sup> These faults have led to six ruptures since the pipelines came into operation. (Box 2)

**Box 2: Some direct and Indirect Social and environmental impacts of the Camisea I<sup>16</sup>**

During the construction phase the project generated numerous direct negative impacts including damage to Native Community fields, gardens, fruit trees, orchards and community forests. Adverse social, cultural and health impacts have been suffered by isolated communities as well as by more settled communities on titled lands within Block 88 as a direct or indirect consequence of the project. Since becoming operational in August 2004, the structurally flawed Camisea pipeline has suffered no less than **six ruptures**.<sup>17</sup> The resulting gas liquids spills have caused air pollution and the contamination of water courses<sup>18</sup>, which affected communities complain has brought about ill-health, fire damage (in one case), death of livestock and large scale fish kills.<sup>19</sup>

Direct Impacts during the exploration (seismic studies) and pipeline construction phases included:

- Uninvited and forced contact of isolated peoples by EIA teams and Consortium workers;
- Decline in local game abundance due to noise disturbance of project-related air and river traffic;
- Deterioration in local diets as wild meat and fish consumption declined in the project zone;
- Ill-health and morbidity increased in the communities inside the Kugapakori Nahua Reserve including Cashiriari, Marankeato, Montetoni and Santa Rosa de Serjali between 2001 and 2003;
- Pollution of air and watercourses;
- Deforestation in the Kugapakori Nahua Reserve (KNR) e.g., at San Martín III platform site;
- Soil erosion, especially at pipeline river crossings inside the KNR and along the right of way in the lowlands and uplands;
- Increased incidence of STIs in Native Communities of Camisea and Shivankoreni, among others;
- Establishment of brothels near workers camps (e.g., at Chokoriari).

Indirect and cumulative impacts include (but are not limited to):

- Influx of unemployed people from outside the area in search of work with the Consortium;
- Increase in illegal extraction of timber in the zone (drawing labour from the floating population);
- Abuse of alcoholic substances in communities due to increased disposable income and a rise in the number of itinerant river traders (trading outside project platforms and camp areas);

- Significant increase in project-related and *project-induced* river traffic on the Camisea and Urubamba rivers – making river travel hazardous for small craft used by locals, and reportedly causing crop damage in low-lying fields on river terraces used in the dry season;
- Continued decline in fish abundance – possibly due to regular and increased disturbance caused by project-induced river traffic, increased sedimentation from erosion along the pipeline right of way and/or other by other causes still to be determined;
- Continued decline in nutrition and local diets due to fish and game scarcity;
- Unresolved disputes and grievances with the Consortium over unfair terms and bad faith compensation agreements with affected communities;
- Perception of increased sickness, nausea and other illnesses in Native Communities in the project area of influence and beyond (possibly partly due to reduced nutrition and/or other project-induced impacts and/or contamination of water and food supplies).

*Impacts on isolated indigenous peoples:*<sup>20</sup>

Despite denials from Pluspetrol that forced contacts with isolated peoples have ever occurred as a result of the Camisea project, there have been local reports that confirm that such contacts have taken place – mainly during the seismic survey work. Indirect adverse impacts have continued up until the present. Reported incidents include visits by subcontractors during seismic work to the Machiguenga Paquiriano (isolated Machiguenga) settlement of Shiateni on the Camisea River which resulted in them relocating away from the area; reports of subcontractors leaving metal tools and trade goods along the seismic lines to attract isolated communities; and reports of company helicopters being used to seek contact with isolated groups (for missionaries). A 2003 health study undertaken by the Peruvian Ministry of Health<sup>21</sup>, and London School of Tropical Medicine and published in book form by the National Amazonian Federation (AIDSESEP) cautioned that the increased activity in the project zone threatened the health and well-being of isolated Nanti communities in the KNR and increased the vulnerability of isolated groups to epidemics to which they have little or no resistance (the latest epidemic to hit isolated groups occurred in late 2006)<sup>22</sup>. The study also found that mortality and morbidity had increased during the time in which seismic and construction operations began in the region. The study attributed the source of the epidemics among the Nanti to an outbreak at the work camps in January-February 2003, which was spread by local workers returning to their communities. Most of the victims during this period were children.

Long-term dietary and livelihood impacts are considered possible as field observations confirm that hunting range and frequency has declined among isolated groups (in initial stages of contact) due to the presence of strangers in their territory and noise disturbance by helicopters and motor vessels. An earlier report from the Ombudsman Office published in 2002 found that the Camisea project's activities had restricted the nomadic lifestyle of isolated indigenous groups and thus indirectly adversely affected their nutritional status.

*Upstream component of Camisea II*

Upstream activities in and around Block 56 have involved and include:

- 3D seismic surveys throughout the entire Block;
- The construction of helicopter pads, over 40 mobile camps and the detonation of up to 11,000 points along 3,300 lines cut through the forest to complete the seismic survey;
- Sub-projects to establish platforms in the Pagoreni gas field (Pagoreni A, B and C) and reactivation of ex-Shell Platform at Pagoreni 1-X;
- Drilling wells at the platforms, involving the disposal of drill tailings and waste water;
- Construction of a gas pipeline (flow line) between the platforms and wells along a 30 km deforested corridor 30 m in width from Malvinas condensation plant to Block 56;
- Laying of electrical transmission line alongside the gas flow line;
- Expansion of the Malvinas separation plant and its airport;
- All sub-projects involve deforestation, earthworks, importation of outside labour, hazardous wastes, increased river traffic, “temporary” road works and increases in noise and disturbance in the project zone.

*Sensitive environment in Block 56*

Over 90% of Block 56 is covered by old growth tropical forests, steep upland slopes and bamboo (*Guadua sarcocarpa*) forests on the lowlands below the floodline (*pacales*). Rivers, lakes and seasonal wetlands cover up to 5% of the area. Mixed upland and lowland forests and wetlands support a rich variety of biological resources. The biological baseline study conducted for the EIA found that aquatic areas provide a habitat for more than 100 species of fish, while forests harbour more than 400 species of birds as well as nine primates listed as “critical” by CITES, including the Black-faced spider monkey (*Ateles chamek*).<sup>23</sup> Other studies in Block 56 have recorded 45 species of bats, 13 species of rodent and 9 marsupial species. Big cats also occupy the area, including jaguars and pumas, both species that have been noted as nearing endangered status by CITES and by the national environment agency (*Instituto Nacional de Recursos Naturales – INRENA*). Other rare and protected species within Block 56 include the Giant Armadillo (*Priodontes maximus*). Locally rare plant species, like the vine *Lycoseris trinervis* have also been documented

*Critical habitats*

Based on the World Bank definition of “critical habitats”, which covers sacred groves and “areas having biodiversity of significant social, economic or cultural importance to local communities” (Guidance Notes to IFC Performance Standard 6), there is a high probability that multiple critical habitats exist within the titled lands of the seven Native Communities who find their territory covered by Block 56. However, while the social baseline study for the Block 56 EIA does note potential archaeological sites that may overlap with “sacred zones” (page 4:220-221), the baseline features no systematic analysis of critical habitats as determined by local values and indigenous land use criteria.

The EIA does include some brief descriptive text on “magical-religious” (sic) beliefs and spiritually dangerous parts of the landscape, but these are not mapped or identified in any ordered way, though indirectly a few are noted in naming some creek headwaters. The land use analysis is therefore narrow because it is largely confined to lists of material uses of natural resources. Sketch maps done for the baseline study are mostly restricted to the immediate locales around settlements. This review of the 2004 EIA documents has not been able to find cultural land use maps that extend to more distant hunting and fishing grounds that may contain spiritually sensitive areas.<sup>24</sup>

*Potential impacts on indigenous peoples living in voluntary isolation*

Different anthropological studies in the lower Urubamba have documented and mapped the territories of indigenous peoples living in voluntary isolation based on reports of the presence of such groups and their movements given by neighbouring Native Communities, loggers and Camisea Consortium workers. These studies indicate that isolated groups occupy much of Block 88 as well as areas to the East and Southeast. There are also reports that such groups may occupy the NE portion of Block 56 as well as part of Block 57 in the upper Paquiría catchment.<sup>25</sup> As Swierk reports:

“...According to testimonies there are a number of unknown Matsigenka in the headwaters of the Patsani – a large tributary of the Paquiría that flows into its left bank within the communal territory of Nueva Luz. The headwaters of the Patsani are located within Shivankoreni communal territory...According to (people) from Kipatsiari, Camisea Project workers came into contact with the people of the upper Patsani and gave them gifts of tools and other manufactured goods”<sup>26</sup>

Occupation of specific areas by these mobile populations, like those on the NE portion of Block and adjacent areas in Block 57 and 88, is likely to be seasonal or sporadic in accordance with the semi-nomadic settlement pattern and land use system of these isolated groups.<sup>27</sup> It is likely that the increasing intensity of industrial gas extraction resulting from the development of Block 56 will result in growing disturbance of isolated groups within and/or *neighbouring* Block 56. The EIA for Block 56 completed in 2004 apparently disregarded these serious potential social impacts on isolated peoples (see below).

*Work in Block 56 already underway:*

By mid-2006, the same private sector *Camisea Upstream Consortium* operating in neighbouring Block 88 (involving Hunt Oil (25%) Pluspetrol (27%) Tecpetrol (10%), Sonatrach (10%), Repsol (10%) and SK Corporation (10%)) had already started the rehabilitation of Pagoreni 1 platform and had started the perforation of some wells. By mid 2007 nearly all 3-D seismic surveys had been completed, three wells had been perforated and three more are planned. Work on the expansion of the Malvinas plants was also already under way.<sup>28</sup>

I. B Questions over the legality of Block 56 and the sale of concession rights

More than 80% of Block 56 is superimposed on 7 titled Native Communities (CN Shivankoreni, CN Segakiato, CN Camisea, CN Kiriguete, CN Nueva Vida, CN Nuevo Mundo and CN Puerto Huallana) and one Rural Settlement (Asentamiento Rural de Colonos Shintorini). At this stage, it is not clear by what process the Ministry of Energy and Mines (MEM) delineated this hydrocarbon block and at what date legal designation was finally completed. Nor is it clear if such designation complied with international and national laws that require the free, prior and informed consent of potentially affected indigenous peoples (under the right to property guaranteed in the American Convention on Human Rights), prior consultation and consent (under ILO Convention 169) and the completion of *participatory social* and ecological zonification of the affected region under Peruvian environmental and sustainable use legislation. Whether or not the latter national norms requiring public participation in *Zonificación Ecológica y Económica* (ZEE) have been violated would depend on the precise date the State legally defined Block 56. However, there is little doubt that duties under inter-American human rights law and ILO 169 did apply at the time concession rights were negotiated and the contract finalised.

The said contract was signed with the Camisea consortium by Perupetro (state oil-licensing company) on September 7, 2004. Reports from Peru by local and national indigenous organisations and NGOs

indicate that prior consent and prior consultation rights were not fully respected by MEM and Perupetro prior to the sale of exploitation rights in Block 56 to private sector interests.

There is a reasonable probability that a sequential legal analysis of the steps followed by the government and the companies prior to signing the Block 56 contract would find that the process contravened several legal norms for hydrocarbon exploitation, environmental protection, public consultation and respect for indigenous rights.

The Peruvian state may thus be liable for legal action by affected communities and by Peruvian citizens for its failure to follow due process in this case. Should the courts find in favour of the plaintiffs in any such legal action, the sale of exploitation rights over the whole of Block 56 could be deemed illegal and be subject to annulment by judicial authorities.

### I.C Concerns over seriously flawed EIA analysis and prior consultation process

Scrutiny of the EIA for Block 56 by indigenous and civil society organisations has raised serious concerns regarding serious gaps and problems with the EIA analysis (Box 3). In addition to an apparent failure to analyze potential impacts on critical habitats as defined in World Bank and IDB environmental policies (see above)<sup>29</sup>, the EIA gave superficial and dismissive treatment of potential impacts on isolated indigenous groups.

#### *Failure to address potential impacts on isolated indigenous peoples:*

The social baseline study for the EIA is seriously deficient in its analysis of isolated indigenous peoples that may be impacted directly or *indirectly* by the development of Block 56. The EIA social baseline study claims unequivocally that there is a “lack of evidence of the presence of uncontacted or isolated groups within Block 56” and argues this is because almost the entire area of Block 56 falls within the titled territories of Native Communities.<sup>30</sup> However, the low intensity of land use in the most remote areas of large titled lands like those of Shivankoreni might well allow co-existence of isolated peoples, who are highly adept at avoiding contacts with outsiders.<sup>31</sup>

EIA researchers also appear to have overlooked (or to have unreasonably dismissed) the multiple local and documented sources that suggest that there may be occasional presence of isolated groups in the NE portion of Block 56 and perhaps in other areas of the same concession.

This finding suggests that EIA consultants did not review all sources of existing information, such as that compiled through 16 months community mapping undertaken by the NGO Shinai prior to the completion of ERM’s EIA study (during 2002 and 2003).

In addition, this desk review has not been able to find evidence that the 2004 EIA dealt with the potential adverse indirect and cumulative impacts of the Block 56 sub-projects, including the seismic survey, on isolated groups known to be in close proximity to Block 56, in Block 57 and Block 88. Analysis of impacts seems to have been incorrectly restricted to social and cultural impacts on titled Native Communities and narrowly confined to the limits of the concession.<sup>32</sup>

#### *Problems with public consultations*

There are likewise disturbing signs that due process was not followed during the prior consultation and official approval of the companies’ EIA for Block 56. Communities and support NGOs working in the zone report that company liaison officers approached individual communities to discuss access, easements and compensation for the seismic survey and other sub-projects in 2004 *before* the EIA consultation was complete and before the final approval of the EIA. Such community engagement

was thus in direct breach of requirements under ILO Convention 169 and other legal instruments that prior consultation be based on *informed* participation (Annex I.A)

*Demands for prior resolution of problems caused by Camisea I:*

In 2004, COMARU and its member communities demanded that the EIA study involve consultation with all communities in the Lower Urubamba potentially affected by Block 56 development and that indigenous peoples' right to free, prior and informed consent be fully respected and be obtained *collectively* (among all COMARU members) before approval of Camisea II. COMARU's position was reaffirmed after the first gas liquids spill caused negative impacts on indigenous and local communities in December 2004. After a series of internal meetings the constituent member communities of COMARU collectively agreed in late 2004 and 2005 that they would not accept plans to proceed with Block 56 development nor attend public hearings on the Block 56 EIA until problems with Camisea I had been resolved to their satisfaction.

COMARU condemned the companies and EIA consultants for failing to conduct genuine consultation and for incorrectly documenting their PR (information-sharing) presentations to communities as "consultations".<sup>33</sup> It is documented that company and MEM meetings with community leaders sometimes occurred on the same date as internal community meetings and congresses, thus undermining the collective decision-making by affected communities within Block 56.<sup>34</sup>

In January 2005, protests by Machiguenga communities succeeded in delaying the public hearing of the EIA for Block 56 – which the MEM had scheduled to take place in the community of Shivankoreni.<sup>35</sup> During the protest, COMARU statements were passed to MEM officials and representatives of Pluspetrol explaining why the hearing was rejected and setting out 8 points requiring immediate attention by the State and the companies, including the need to undertake an independent technical and environmental audit of the all the operations in Block 88 and the whole length of its pipelines and to compensate and pay for damages inflicted on indigenous communities by Camisea I.<sup>36</sup> Although the government did extend the consultation period by a few months, it pushed ahead with the public hearing in CN Shivankoreni in May 2005 – despite continuing opposition by COMARU and many of its members, including the community of Shivankoreni.<sup>37</sup>

Officials of the consortium and MEM allegedly put severe pressure on some indigenous leaders to ensure the hearing would go ahead, threatening that any opposition would be considered "anti-State" and "anti-development" policies and would be met with an imposition of permits for seismic surveys and easements on indigenous lands that would be enforced by the police if necessary. Leaders were apparently warned that rejection of the public hearings might result in the loss of any rights to compensation.<sup>38</sup>

As a result of this indirect coercion, in early May 2005 some indigenous leaders traveled to the affected communities, conveyed the MEM warnings and so persuaded some people from the 7 affected communities within Block 56 to attend the public hearing, which was held in an atmosphere of controversy in Shivankoreni on 9 May (leaders from the host community refused to participate). Indigenous organisations protested that the EIA was seriously deficient on multiple counts (Box 2), while an independent assessment by the non-profit engineering consultancy, E-Tech International found the EIA "entirely inadequate".<sup>39</sup> Indigenous and other participants present at the hearing complained that their queries and concerns were not properly answered by the Consortium and government official – in contravention of national laws setting down standards for such public hearings.

When complaints were voiced that questions were not being answered, participants were asked to put their concerns and comments in writing, which many did.<sup>40</sup> However, while DGAA did note some of

the submissions, many of the substantive issues raised were not addressed or were dismissed in the formal written approval of the EIA dated 12 July 2005.<sup>41</sup>

*Company pressure to conclude easement agreements:*

Shortly after the controversial public hearing, company representatives began once again approaching communities individually to strike deals on compensation for the construction of roads, electrical transmission lines and other works on their lands. Isolated, without technical advice and only occasional independent support, communities were persuaded to sign agreements. There are allegations that community members were not well informed and there was little clarity regarding the negotiations and the status of different meetings.<sup>42</sup>

The apparent pressure put on community leaders to reach agreements with the Consortium and company efforts to weaken collective bargaining and collective organisation are alluded to in a statement issued by COMARU in July 2005:

“Once again the Native Communities of the Upper and Lower Urubamba make known publicly that the crisis COMARU is suffering stems from a (company) strategy to weaken those indigenous and community organisations that maintain independent positions with regard to the Camisea project; We cannot give way to pressure exercised by representatives of the State (MEM-DGAA) and the Companies so that leaders take “urgent” decisions, which induces clashes with community and organisational norms and procedures for decision-making, which according to each case, must be approved by their respective assemblies...”<sup>43</sup>

*Continued community protests in 2005:*

Following the conclusion of the public hearing, COMARU reiterated its calls for resolution of environmental and livelihood problems stemming from Camisea I before proceeding with any developments in Block 56. COMARU made known its objections to the MEM approval of the EIA in July 2005, but this objection was dismissed. Calls for timely prior resolution of existing grievances went unheeded by MEM and the Consortium continued to engage with communities individually to negotiate easements to advance with their activities within Block 56. In October 2005, downstream indigenous communities in solidarity with the Machiguenga blockaded the river and detained Camisea-related river vessels in protest of contamination of the Urubamba and Ucayali rivers.<sup>44</sup> These high-profile protests and direct actions persuaded the government to engage in direct talks with indigenous organisations in Lima, and to acknowledge publicly (i) the need for an audit for Camisea I; (ii) the need to give more attention to unresolved grievances, and (iii) the need for a serious study of the impact of Camisea I on fisheries and indigenous livelihoods in the project zone.

*Mixed experience with compensation agreements:*

In 2006 some Native Communities in Block 56, including Shivankoreni, did obtain some technical support from local NGOs and were able to secure reasonable levels of compensation for easements on their titled lands, while others reportedly had little or no assistance before deals were signed with Pluspetrol.

In mid-2007 COMARU reports that most communities have not been given training in negotiation measures and technical literature for calculating fair compensation for damage to livelihood resources and natural habitats in lowland Peru is lacking. Indigenous organisations express concern that compensation values calculated by the company do not properly account for total monetary and non-monetary costs absorbed by their communities and fail to properly address the long-term adverse impacts of the Camisea project on affected communities.



In particular, intangible assets are difficult to quantify and are usually left out of the equations e.g., harm to cultural integrity and overall damage to local landscapes. In the same way, the negative cumulative impacts resulting in declining returns from fishing and hunting are not counted in compensation, which tends to narrowly focus on locally damaged assets relating to rights of way or construction works.<sup>45</sup>

*Problems over compensation for damages relating to Camisea I remain:*

In 2007, while Pluspetrol has in most cases reportedly compensated communities in good time for damages caused by their operations, TGP is criticised for major delays in attending to community claims for damages resulting from previous pipelines ruptures in 2004 and 2005.<sup>46</sup>

Meanwhile, according to information available in mid-2007, there is still no detailed study underway of the health and dynamics of the aquatic ecosystems and fisheries in the lower Urubamba region, which is necessary to try to identify possible causes for declines in fish abundance. Communities complain that Pluspetrol and the consortium are still reluctant to accept that the fall in fish stocks in the Urubamba and Camisea watersheds may be directly or indirectly related to the Camisea Project.

**Box 3: Some problems with Block 56 EIA (2004)**<sup>47</sup>

Although some parts of the EIA completed by ERM consultants for Pluspetrol in 2004, like its biological baseline study, had been quite thorough, other chapters of the EIA, such as the social baseline study, contained serious gaps. In late 2004 and early 2005, indigenous organisations and independent experts criticised the environmental assessment for Block 56 due to a number of shortcomings, including:

- Poor social baseline studies
- Inadequate criteria for fair and adequate compensation to affected communities who suffered 5 months of seismic testing resulting in earth tremors, noise, damage to forest and water resources
- Narrow focus on mitigation rather than *prevention* and *avoidance* of negative impacts
- Superficial community and civil society communications plans that lacked operational details
- Little evaluation of potential social, cultural and health impacts of increasing river trade and commerce
- Defective plans for monitoring and controlling effluent discharges to watercourses
- Superficial plans to control access, that failed to identify high risk zones
- No proposals to control the influx of river traders from Sepahua
- Incomplete list of potential adverse impacts that could result from access routes and other activities
- Inadequate assessment of potential negative impacts caused by liquid gas spills, fuel and grease leakages, increased riverine traffic between Pucallpa and Iquitos on the Urubamba, Ucayali and Camisea rivers
- Absence of mitigation measures for temporary access routes
- Few proposed measures to protect fishery resources
- Inadequate integration of local views as required by law into the EIA and mitigation plans: The EIA incorrectly and unjustly dismissed local concerns based on experience with Block 88 (explosions, influx of colonists, increase in illness and disease, male migration, pipeline spills and decline in local abundance of flora and fauna) as unfounded “fears”
- No detailed estimate of potential benefits (employment rates, pay scales, percentage of population that might find paid work as a result of the project)
- Excessive treatment of theoretical issues and insufficient treatment of substantive issues
- Defective baseline biological indicators (that are difficult to measure and verify)
- Incomplete and vague monitoring plan
- **Incomplete analysis of alternative projects**
- Failure to recommend water quality monitoring upstream and downstream of all river-crossings
- No emergency monitoring plan to evaluate the impacts of spills or pollution events
- Gaps in the Environmental Management Plan (EMP)
- Failure to require monitoring of soils along the pipeline route
- Inadequate prevention and mitigation measures for temporary storage of solid wastes and dangerous substances
- No comprehensive study of ancestral and customary use and occupation of land and resources by Native Communities superimposed by the concession (just local sketch maps of land use in the immediate vicinity of community settlements)
- Superficial treatment of potential risks to isolated peoples that may occasionally/seasonally occupy the NE section of Block 56 as well as those isolated groups known to occupy adjacent areas in the proximity of Block 56.

## II. Public International Financial Institutions and Camisea II

In 2007, both the Inter-American Development Bank (IDB) and the International Finance Corporation (IFC) of the World Bank Group are considering providing finance for the downstream natural gas pipeline and liquefaction plant component of Camisea II.<sup>48</sup> The IDB signed its agreement letter to proceed with due diligence on the project in July 2006 and is proposing to loan up to US\$800 million to the project. Camisea II project companies have requested a US\$300 million loan from the IFC to help finance a portion of the capital expenditure program. The IFC is also currently conducting its due diligence process.

### II. A The role of the Inter-American Development Bank

Potential IDB support for Camisea II is especially controversial given public criticisms over the Bank's support for Camisea I, which has caused and continues to generate serious environmental and social problems – some of which are unresolved (Boxes 1 and 2). It is crucial to examine the issues relating to IDB involvement in Camisea I in order to identify the problems with IDB plans to finance its expansion under Camisea II.

#### *Controversy over IDB funding for Camisea I:*

Against strong public opposition and against the advice of its own environmental auditors, the Inter-American Development Bank (IDB) provided a \$5 million from its public sector department, a direct loan of \$75 million from its private sector department (PRI), and a syndicated loan of \$60 million to the Camisea Natural Gas project in September 2003.

Many environmental and social justice organisations had stressed that the IDB should not finance a project that would approve hydrocarbon exploration and extraction within a legally designated reserve established to protect isolated indigenous peoples and diverse and high conservation value natural habitats. Many experts argued that, as an absolute minimum, the IDB should not get involved unless it placed a condition that drilling should not take place within the Kugapakori Nahua Territorial Reserve because the project would not be able to deliver acceptable guarantees that the rights and health of isolated peoples would be protected.<sup>49</sup>

Independent scientists and conservation organisations had classified most of the landscapes in Block 88 as “critical natural habitats” according to World Bank definitions. They argued that the IDB should not engage in the project because, at that time, the Bank did not have proper standards to safeguard biological resources and protect critical habitats.

NGOs emphasised that the whole Camisea project falls within the tropical Andes biological “hotspot”, and extensive “high conservation value forest” defined by its high species richness, a large diversity of habitats, biogeographical evolutionary processes and a high level of species endemism.<sup>50</sup> The IDB was warned that the Camisea project EIA and management plans did not take account of potential deforestation risks posed by indirect and cumulative impacts.<sup>51</sup>

Other critics highlighted that the IDB should not get involved in a destructive project already underway as a matter of principle due to serious violations of the rights of isolated peoples during seismic operations, and well-documented evidence of failures in the prior EIA, public consultation and community compensation processes.

Those doubtful of the “added value” of IDB involvement also warned that the Bank was ill-equipped to safeguard indigenous peoples' rights because, at that time, it had no specific operational policy on

indigenous peoples.<sup>52</sup> It was stressed that the project had already violated international standards like ILO Convention 169, and that IDB engagement would endorse public IFI support for extractive projects that were in clear violation of national laws and international standard on indigenous peoples' rights and environmental protection.

For all these reasons several other public and private financial institutions, including the Overseas Private Investment Corporation (OPIC), the United States Export-Import Bank, ABN-AMRO and Citigroup, all rejected financing for the project.

In 2002 the IDB provided a public sector loan of \$5 million for a *Program for Institutional Strengthening and Environmental and Social Management Support for the Camisea Gas Project* in an effort to quell external criticism.<sup>53</sup> In 2003, the IDB proceeded to make large private sector loans to the Camisea project despite widespread public criticism and a conviction among many critics that the IDB should not provide direct support to the project. Pressure by indigenous organisations and civil society had, however, persuaded the IDB to apply a series of social and environmental loan conditions to the project, including the need for an effective project monitoring system (Box 4).

Public criticisms of the violation of peoples' rights by the Camisea I Project have since been substantiated by the Peruvian Ombudsman Office, which after thorough investigations based on field visits in the project zone concluded in 2006 that:

“...during the implementation of the Camisea Project the rights of indigenous communities have not been respected in their totality due to deficient consultation, the existence of an asymmetric ‘negotiation’ process and inadequate compensation proposals”.<sup>54</sup>

#### *Impacts on peoples' rights*

The 2006 Ombudsman report affirms that Camisea Natural and Gas Liquids Project has negatively impacted on the rights of affected communities. The report concludes that the fundamental rights guaranteed under the Peruvian Constitution and under international human rights law that have been adversely affected by this extractive project, include the:

- right to a healthy environment<sup>55</sup>
- right to health<sup>56</sup>
- right to participation in public life
- right to access to information

With regard to direct and indirect impacts on indigenous peoples living in voluntary isolation and in the initial stages of contact with national society, the Ombudsman notes that Camisea I has demonstrated that the government of Peru has insufficient capacity to protect their rights to life and health, cultural integrity and to property.<sup>57</sup>

Based on the reported decline in local subsistence food supplies and reduced quality in local diets within and adjacent to Block 88 (if evidence is forthcoming of direct or indirect causal links between Camisea I and declining fish and game abundance), the extractives project could also be implicated in violations of the:

- right to food<sup>58</sup>
- right to livelihood<sup>59</sup>

*Ongoing serious problems with Camisea I*

Independent studies and reports from support NGOs working in the Camisea project zone reveal that while the IDB staff and project managers have conducted multiple and regular oversight missions,<sup>60</sup> and while some loan conditions have been met, other key conditions have only been belatedly or partially implemented. They stress that the IDB and borrowers have not properly fulfilled promised mitigation measures (Box 4).

Crucially, while the promised monitoring system has reportedly in some areas been able to speed up corrective measures and deliver redress for local communities<sup>61</sup>, in other places community monitors complain it has been slow and suffers from problems related to its lack of full independence.<sup>62</sup>

At the same time, well-documented evidence has been presented to show that IDB safeguards and industry standards for pipeline safety and environmental protection have not been complied with in the downstream component of Camisea directly financed by the IDB.<sup>63</sup>

Promised development benefits have likewise been slow to materialise at the local level. While much is heard from the Municipal and central governments regarding the Lower Urubamba Sustainable Development Plan financed under the Camisea Project, only minimal benefits have been received by affected Native Communities. Most of the funds appear to be channelled to the priorities of regional government (if and when those funds are spent), rather than to the development objectives of indigenous peoples on whose traditional lands the gas is being extracted.<sup>64</sup>

While the IDB accepts that some safeguard implementation and benefit-sharing problems do exist,<sup>65</sup> such as the long continuing delay in establishing access controls around the Kugapakori Nahua Reserve, it rejects many of the accusations of poor implementation and maintains that loan conditions have been fully complied with.

In December 2004, to the surprise of civil society organisations that pointed to multiple cases where loan conditions had not been properly implemented, the IDB proceeded to close its private sector loan through full disbursement – just one week after the first rupture of the Camisea pipeline.<sup>66</sup> It appears that the IDB did not follow its usual practice of withholding disbursement of some of loan in order ensure adequate compliance with all conditions.

*Long-awaited audits of Camisea I:*

Following multiple ruptures of the Camisea pipeline in 2004 and 2005, which have provoked strong community and indigenous protests and multiple claims for compensation (Section I above), the IDB finally agreed to conduct its own technical and social and environmental audits in 2006. Civil society organisations pressed the IDB to ensure that independent experts would be involved in the audit. They advised that the IDB should not proceed with processing the loan for Camisea II until the results and lessons of the audits were fully examined in public.<sup>67</sup> They had also sought to influence the terms of reference for the audit, requesting that auditors look specifically at compliance with IDB and other IFI standards. The IDB chose to ignore these recommendations and rejected calls for independent experts. The Bank instead largely placed the audit in the hands of its private sector department that has been implementing the controversial loans to Camisea I.<sup>68</sup>

*IDB starts due diligence for Camisea II without audit results:*

To the disillusion of civil society, the IDB also decided to proceed with due diligence for Camisea II in July 2006<sup>69</sup> even though the results of its audit were not available.<sup>70</sup> In October 2006, the IDB publicly pledged that it would not approve loans for Camisea II until it has studied the results of its own safeguard policy due diligence and also considered the results of its audits of Camisea I.<sup>71</sup>

**Box 4: IDB loan conditions for Camisea I: some illustrative examples of progress and problems with their implementation**

The IDB attached no less than 104 conditions to its loans to Camisea I. Some notable conditions included:

- Complete a full Strategic Environmental Assessment for the Lower Urubamba region (GoP)
- Raise the legal protection status of the Kugapakori Nahua Reserve - KNR (government of Peru- GoP)
- Prevent further hydrocarbon extraction inside the KNR – *other than by the Camisea Project* (GoP)
- Establish barriers to invasion to the KNR to protect its integrity (Pluspetrol, GoP - INRENA)
- Supply IDB with a contingency plan for pipeline ruptures (Pluspetrol)
- Deploy local and community monitors to report on impacts in KNR (GoP and Pluspetrol)
- Ensure compliance with ILO Convention 169, including FPIC (GoP and Pluspetrol)
- Formulate and implement social development plans with IPs in KNR (GoP and Pluspetrol)
- Address NGO concerns relating to the project (GoP and Pluspetrol)
- Complete all components in the IDB Public Loan for Institutional Strengthening (GoP)
- Develop and implement a final access control plan to prevent access to the pipeline ROW (TGP)
- Ensure and apply health, safety and environmental standards along the pipeline route (TGP)
- Confirm to IDB independent monitors that soil erosion is adequately mitigated (TGP)
- Develop and implement a sustainable development plan for the Lower Urubamba (GoP + companies)

Some of these conditions have been met. For example, the first condition noted above got under way in 2006. However, it is not clear to what extent this SEA has so far involved public participation or a consideration of economic alternatives. Initial scrutiny suggests the study will not critically examine existing land use and development policies or alternative development options.<sup>72</sup> Controversially, hydrocarbon development has continued in the lower Urubamba region despite civil society calls for all development to be suspended until the results of the SEA are available. In early 2004, Peruvian Government moved ahead with awarding new concessions 56, 57, 58, and 90 adjacent to the Camisea block 88 totalling 1.89 million hectares. The second condition was complied with when the legal status of KNR was elevated in 2003. However, the legal strengthening of the reserve contained certain provisions that demoted the legal status of isolated peoples within it - from “peoples” to wards of the State – a legal weakening that was later judged unconstitutional by the courts. It can be seen that the third condition listed above actually *legally reinforced gas extraction within the reserve*, though it did subsequently help exclude superimpositions of parts of Blocks 57 and 58 where they overlapped with the KNR – a welcome development that had been demanded (in the case of 57) by indigenous peoples for several years. Other conditions met under the public loan have been the IDB’s support for the Ashaninka and Machiguenga Communal Reserves and Otishi National Park.

*Poor implementation of IDB mitigation measures:*

Notwithstanding some degree of compliance, affected communities and NGOs tracking Camisea report that the process of meeting other conditions have either been late, partial or defective. E.g., in 2006<sup>73</sup> and early 2007<sup>74</sup>:

- Construction of control posts and protection measures for KNR had not been completed
- The *Grupo Técnico de Coordinación Interinstitucional-Camisea* (GTCI)<sup>75</sup>, established under the public loan, was not working well and its staff complain they lack resources to comply with their mandate
- Increased circulation of cash has increased alcohol consumption in the Lower Urubamba

- The project monitoring system was not functioning well in some places. Some community and indigenous monitors complain that their critical reports of problems had not been acted on by the company
- Local fish and game sources continued to decline and this has impoverished local diets – but the companies and the IDB deny the loss of local livelihood resources is due to the project
- The Camisea Ombudsman Office, *Defensoría de Camisea* had not addressed grievances in a timely way, lacked transparency and claimed it had insufficient resources to visit communities to investigate complaints. There are perceptions that the project ombudsman has not taken community concerns seriously
- TGP contingency plans had been proven to be weak and lacking in transparency. Little or no timely information was provided to communities during emergencies (experienced during multiple spills)
- TGP had been slow and obstructive in dealing with community claims for compensation following adverse impacts from pipeline ruptures
- Compensation for affected communities for the adverse impacts of the project had often been minimal and unsatisfactory (communities complain they received little or no support to help them understand the negotiation and compensation process)
- Local development plans under the project have so far delivered minimal benefits
- State agencies like OSINERG have only had an occasional and weak presence in the project zone

*Comprehensive audits or green wash?*

The audits were finally released on the IDB web site on the 17 May 2007 – two weeks later than promised by the IDB. NGOs and independent experts examined these audits, but complained there was limited time to do this properly before the public hearing in Washington in June 2007. Initial scrutiny already finds serious potential shortcomings in the audits. The social and environmental audit, for example, has only assessed practice against ISO14001 and ISO 14031. These very specific international standards relate to rule and performance-based indicators for environmental management and control<sup>76</sup>. They do not extend to other international environmental and social standards.

Curiously, the audit finds that in almost all areas Pluspetrol operations more or less meet or exceed required standards (“yellow” or “green” in the crude audit quality scoring scheme), even through the auditors acknowledge that Pluspetrol does not yet have an ISO 14001 certificate and is still working toward achieving this standard.<sup>77</sup> Also disappointing is the failure of the audit to assess the extractive operations in Block 88 and along the pipeline route against national legal requirements.

A further hole in the audit is the absence of any analysis of the compliance of Camisea I against the IDB’s safeguards standards (previous or existing) or other relevant minimum standards and best practices applied by IFIs in the extractive sector. This gap, the auditors claim, is due to their terms of reference and the assertion that any such assessment would be beyond the scope of the study. The social and environmental audit completed for the IDB on Camisea I is therefore partial. It does not constitute a comprehensive social and environmental audit, but rather very specific audit on the performance of the environmental management systems of Pluspetrol and TGP. This suggests that the Terms of Reference for the audit were incomplete and overly narrow in their remit and scope from the outset.

Preliminary examination by E-tech International of the other IDB audit on pipeline integrity (an audit completed by Exponent Inc)<sup>78</sup>, likewise shows that the analysis suffers from serious gaps.<sup>79</sup> This review also finds potential conflicts of interest risks in relation to the auditor employed for this work as their own report notes that they remain under contract to the IDB to provide advice on pipeline integrity.<sup>80</sup>



It is essential that concerns and criticisms raised by the public in connection with the “independent” IDB audits are then duly incorporated into the Bank’s ongoing due diligence on Camisea II (the Peru-LNG Project) and associated facilities. Critical issues highlighted in the public consultations must be dealt with in its project team’s forthcoming *Environmental and Social Impact Report* (ESIR) and its related *Environmental and Social Management Proposal* to be submitted to the Committee on Environmental and Social Impact (CESI)<sup>81</sup> – which during the writing of this report, had not yet been made available.

## **II. B International Finance Corporation (IFC)**

In 2006 the IFC began “informal” discussions with Hunt Oil and Peru-LNG regarding possible financing for Camisea II and made a site visit to project sites in October 2006. It has set up a team of seven staff to oversee due diligence, which commenced in mid-2007. The IFC is also planning a “formal working group” between “financing partners”. The IFC sees the IDB as the lead public agency on Camisea II.

In a meeting with NGOs in June 2007, the IFC team that is overseeing the project processing were ambiguous about whether or not its performance standards would apply to “associated” upstream facilities in Block 56.<sup>82</sup>

### *Poor track record in social and environmental performance*

It is important to note that while the IFC has some useful new Performance Standards, these policies only came into force in July 2006 and remain to be tested. IFC due diligence has been the subject of repeated public criticisms in recent years.<sup>83</sup> While the World Bank cites the IFC-financed Chad Cameroon pipeline in Africa as a model hydrocarbon project by the World Bank, NGOs and local organisations stress that many safeguard policies have not been fully implemented and loan conditions have been violated.<sup>84</sup>

With such a high risk and complex project, the IFC will be under intense civil society scrutiny should it decide to proceed with due diligence on Camisea II.

### III. International standards, due diligence and Camisea II

The IDB has affirmed in its preliminary 2006 Environmental and Social Strategy (ESS) for the “Peru LNG Project” that it will apply its updated safeguard policies in conducting due diligence for Camisea II. The IFC has likewise indicated that it will seek to ensure compliance with its new Performance Standards to its due diligence on the project proposal before deciding whether or not to finance the project.

This section examines some of the key safeguard commitments of the IDB and IFC that would apply to the project. The analysis here focuses on IFI standards that must be met *prior* to the approval of the loan.

Some examples of important applicable international human rights and environmental standards are discussed and critical observations regarding due diligence relating to these standards are presented within the context of the social and environmental problems and challenges that exist in the project area of influence, particularly in its upstream component in Block 56. The analysis seeks to pinpoint some key safeguard and accountability issues. It is not exhaustive and does not claim to cover all relevant issues. Concluding observations and recommendations are made in the final section (Section IV).

#### IIIA. IDB environmental and social safeguards

If the IDB proposes to finance a project that is already underway, as is the case with Camisea II, the staff and governing body must review the environmental and social safeguard measures previously taken by the potential private sector client and host government to ensure their full compliance with relevant safeguard requirements. According to IDB rules, where due diligence in project preparation finds non-compliance, then the potential borrower must submit an **action plan** to the Bank prior to Board approval of the loan (IDB Environment and Safeguard Compliance Policy, 2006).

##### *Which IDB policies apply?*

IDB operational policies and related standards that apply to the Camisea II (Perú-LNG) project proposal include its new Environmental and Safeguard Compliance Policy, the new Indigenous Peoples Policy, its Involuntary Resettlement Policy, and the Disclosure of Information Policy.

The project proposal is classed by the IDB as a “Category A” high risk project requiring the highest standards of environmental and social assessment.<sup>85</sup> Some of the main mandatory standards for IDB project processing under the aforementioned safeguards are summarised in Annex I.1-3 attached to this paper. Examples of key requirements that must be met before the IDB staff and the IDB Board can consider Camisea II eligible for financing include measures and evidence to ensure the proposal, *inter alia*:

**Points marked with \* indicate those in which Camisea II shows a high probability of non-compliance with IDB policies in relation to some prior activities in Block 56 (and Block 88) and/or risk of non-compliance in existing operations**

- **Fully complies with applicable legal norms on the rights of indigenous peoples contained in national legislation and international law, including jurisprudence of the Inter-American Human Rights System** (see III. C below)\*
- Is in full compliance with environmental laws and regulations of the country..., including national obligations established under ratified Multilateral Environmental Agreements (MEAs)\*

- Will not involve operations that will “[...] significantly convert or degrade critical natural habitats or that damage critical cultural sites”
- has been screened by IDB staff to assess potential negative social and environmental impacts of the operation and its associated facilities (i.e. upstream component in Block 56)
- Has a design based on a detailed credible EIA involving *inter alia*: timely and adequate public consultation; consultations with affected parties and consideration of their views; thorough economic analysis of project alternatives and due consideration of direct, indirect, regional or cumulative impacts as well as a legal analysis of project compliance with national and international laws\*
- Contains documented evidence of the **informed participation** of indigenous peoples in the EIA evaluation to determine the “seriousness” of potential adverse impacts on their lands, territories, food security, **rights**, traditional economy, way of life, identity and cultural identity AND to determine their “...legitimate representatives and internal decision- making procedures”\*
- Includes an IDB **technical review** during the identification phase, including perspectives of indigenous peoples, to determine the presence of potentially affected indigenous peoples and the requirements for prior consultation and good faith negotiation
- Fully respects the rights of isolated (uncontacted) indigenous peoples to remain in their isolated condition and “live freely according to their culture”
- Documented evidence, “duly verified by the Bank” that the project proponent has undertaken **good faith negotiation processes**\* and reached **prior agreements** with affected indigenous peoples and that steps have been taken to respect indigenous peoples’ rights in accordance with “applicable legal norms”\*
- Includes detailed plans for indigenous peoples’ protection, compensation, and self-determined development (development with identity)
- Includes mechanisms for **socioculturally appropriate participation** of affected indigenous peoples in the monitoring and evaluation of the project
- Applies measures to *avoid* or mitigate physical displacement or adverse impacts (economic displacement) on the assets of indigenous peoples in full respect of their **customary rights**\*
- Has obtained the prior **informed consent** of affected indigenous peoples to any resettlement or compensation measures
- Includes compensation and rehabilitation packages that take adequate account of intangible assets, especially non-monetary social and cultural assets and, particularly in the case of rural populations, of customary rights to land and natural resources”\*
- Guarantees that compensation for adverse impacts will be taken in a timely manner to ensure that transitional hardships are not unnecessarily prolonged and do not result in irreparable harm\*
- Includes a **resettlement plan** to ensure that the affected people receive fair and adequate compensation and rehabilitation

*Due diligence issues:*

Under IDB due diligence, the Bank has committed to compiling a comprehensive Environmental and Social Strategy (ESS) in order to “...confirm the environmental and social impacts and risks are adequately mitigated and monitoring measures will be established and implemented.” It is noteworthy that the IDB in 2006 affirmed that:

“[...]The proposed ESS *is based upon the experience and lessons from the Camisea project* and an understanding of the potential environmental and social impacts that may occur as a result of the Peru LNG Project, and *is intended to go beyond the traditional environmental and social due-diligence followed by the Bank.*”<sup>86</sup>

The IDB acknowledges that there will be potential social and environmental impacts linked to “associated facilities” upstream, which it points out are not financed by the Bank:

“[...] the potential key environmental and social impacts identified by the Bank at this time related to the Peru LNG associated facilities include: (i) **social impacts on indigenous and other local communities due to the development of Block 56 and Block 88, including indigenous peoples living in voluntary isolation within the Nahua-Kugapakori Territorial Reserve, which overlaps Cashiri wells 1 and 3 in Block 88**; (ii) incremental impacts on biodiversity due to the development of Block 56; (iii) potential impacts due to ruptures in the Camisea natural gas liquids pipeline; (iv) incremental impacts due to increased boat and helicopter traffic used to transport and distribute construction materials needed for Block 56 and Las Malvinas facilities; (v) increased emissions and discharges due to expansion of Las Malvinas facility”<sup>87</sup>

The IDB notes risks in the proposed loan, including: “insufficient negotiations or inappropriate actions toward indigenous communities in the Lower and Upper Urubamba area or communities in the sierra.” It claims: “[t]hese potential risks will be fully evaluated during the IDB’s environmental and social due diligence, and appropriate risk mitigants will be established and implemented, as necessary”.<sup>88</sup> The IDB also promises that if it approves the loan, it will:

“Assist in helping to establish actions to address potential key issues that are not the responsibility of the Project, such as those related to Peru LNG’s **associated facilities** (i.e., in Block 56) and the long-term sustainable development of energy resources in Lower Urubamba, including such development that benefits the indigenous peoples’ development.”<sup>89</sup>

#### *Questions over IDB policy coverage in Camisea II*

While the IDB will rightly apply its new policy on Indigenous Peoples to the upstream component in Block 56, it seems that the Bank considers that the policy may not apply in the downstream component in the Andean highlands because, according to the Bank, the project will not “interact with indigenous peoples or indigenous areas” and will “not use indigenous manpower”.<sup>90</sup> As noted in Section II above, any assertion that indigenous labour will not be hired in the upland pipeline zone appears highly questionable - not least because it contradicts some sections of the social baseline study already conducted for the Peru-LNG Consortium Environmental and Social Management Plan (ESMP). This ESMP notes that ILO Convention 169 must be applied to uphold the labour rights of “local communities” - clearly inferring that indigenous peoples *are* present in the project area of influence in the uplands (even though they are not named as such!). IDB claims that the Peru-LNG Project will not interact with indigenous areas are thus doubtful.

#### *Continuing doubts over government capacity:*

Other question marks that hang over the IDB 2006 ESS document relate to its reliance on institutions established with IDB finance under Camisea I – namely the Camisea Ombudsman Office and GTCI – both of which have proven to be less than efficient, and show signs of continuing insufficient capacity to deal with social and environmental issues (Box 4). These capacity weaknesses have been at least partially confirmed in the IDB’s own “independent” audit. At a minimum, such weaknesses must be acknowledged and addressed in the IDB’s due diligence work and in its related full ESS, ESIR and ESMP documents.

*Existing evidence of non-compliance:*

Leaving aside problems in the IDB's 2006 ESS document, the preliminary safeguard analysis presented here shows that Camisea II, in particular in its upstream facilities in Block 56, falls short of IDB safeguard requirements on multiple counts (marked by an asterisk above), particularly in relation to public consultation and EIA requirements. Information presented in section II based on local reports and documented statements by affected communities and their representative organisations, confirms that culturally appropriate and informed participation in the EIA process and its public hearing did not take place.

There are, at the very minimum, doubts that all compensation packages and mitigation measures for easements, seismic surveys and construction works were all undertaken in full compliance with ILO Convention 169. There are likewise signs that prior consultation, prior consent and negotiation processes have not always been culturally appropriate and have failed to respect internal customary decision-making procedures.

Though some communities reportedly did manage to secure compensation with technical assistance from support NGOs (Section II), there are reports that other communities have not been fairly compensated for all direct and indirect damages caused by the project so far. Some indigenous leaders complain that the valuation methods used are neither adequate nor culturally appropriate.

As noted above (Box 3) there are also serious questions over the integrity of some parts of the EIA documents and mitigation plans, particularly regarding the failure of the EIA to conduct a thorough analysis of economic alternatives and options for other project designs; and its superficial and defective treatment of potential impacts on isolated indigenous groups inside *and* outside Block 56.

As observed in section II.A, there are likewise serious questions regarding possible non-compliance with national and international laws in the original demarcation and sale of concession rights over Block 56. Due diligence would require a careful historical and field study to ascertain to what extent ILO Convention 169 and other related treaties requiring the prior consent of indigenous peoples have been violated or adhered to (see III.C below).

As noted above, the recently published IDB audits fall short of identifying these past and present problems in Block 88 and the audit does not extend to ongoing operations in Block 56. At a minimum, IDB due diligence by the PRI Project team for Peru-LNG and by CESI should be expected to identify these problems with the upstream components of Camisea II in Block 88 and Block 56 (most of which are quite well documented, at least up until late 2005).

It is reiterated that effective IDB due diligence must document and address these failings in the forthcoming IDB **Environmental and Social Management Report (ESIR)** and in related due diligence documentation.

### III.B IFC Performance Standards and Sustainability Policy

In mid-2007 the IFC commenced due diligence, although has not yet placed information of related "social and environmental considerations" in the public domain.

*Which IFC standards would apply?*

Knowledge of the Peru-LNG proposal and its associated upstream "associated" facilities in Block 56 indicates that, as a minimum, the following IFC standards will likely apply: *IFC Policy on Social and*

*Environmental Sustainability*; Performance Standard (PS) 1 on *Social and Environmental Assessment and Management Systems*; PS2 on *Labour and Working Conditions*; PS3 on *Pollution Prevention and Abatement*, PS4 on *Community Health, Safety and Security*; PS5 on *Land Acquisition and Involuntary Resettlement*; PS6 on *Biodiversity Conservation and Sustainable Natural Resource Management*; and PS7 on *Indigenous Peoples* (Annex I). Additionally, like the IDB, there is good reason to believe this project will be classed as a “Category A” high risk project, with expected “significant adverse social and/or environmental impact that are diverse, irreversible, or unprecedented.”<sup>91</sup>

Some important IFC standards and requirements under these mandatory policies include the need for:

**Points marked \*\* indicate those in which Camisea II shows a high probability of non-compliance with IFC Sustainability Policy and Performance Standards in relation to some prior activities in Block 56 (and Block 88) and/or risk of non-compliance in existing operations**

- **Social and/or environmental audits** to determine any areas of concern when the project involves existing business activities (as is the case with Camisea II) (PS1: paragraph 8)
- IFC verification that the client’s community engagement has involved free, prior, and informed consultation\*\* and enabled the informed participation of the affected communities, leading to **broad community support** for the project within the affected communities, before presenting the project for approval by IFC’s Board of Directors
- Use of “*experienced qualified external experts*” to carry out the Social and Environmental Assessment where the project may affect the customary lands and resources under use by indigenous peoples (as it does in the upstream and downstream components)
- “Active” and informed participation of affected communities of indigenous peoples in the social and environmental assessment process\*\*
- Detailed analysis in the SEA of the potential social and environmental risks and impacts ... (in) ... the project’s area of influence (which includes Blocks 56 and 88)
- A study of the customary land and resource tenure system of affected communities of indigenous peoples “within the project area of influence” (including block 56) as part of the SEA
- An examination of technically and financially feasible alternatives to the source of such impacts, and documentation of the rationale for selecting the particular course of action proposed – as part of the SEA (PS1: 9)\*\*
- A regional, sectoral or strategic social and environmental assessment “in exceptional circumstances” (PS1: 9)
- **An Action Plan** prepared by the client to set out required mitigation measures and actions necessary for the project to comply with applicable laws and regulations and to meet the requirements of Performance Standards 1 through 8 (PS1: 16)
- **Specific plans** in order to comply with other IFC requirements, including: Resettlement Action Plans, Biodiversity Action Plans, Hazardous Materials Management Plans, Emergency Preparedness and Response Plans, Community Health and Safety Plans, and Indigenous Peoples Development Plans (PS1: 16)
- Community engagement [...] “free of external manipulation, interference, or coercion, and intimidation, and conducted on the basis of timely, relevant, understandable and accessible information.” (PS1:19)\*\*
- SEA consultation processes that are inclusive and **culturally appropriate and tailored to the language preferences of the affected communities, their decision-making process, and the needs of disadvantaged or vulnerable groups** (PS1:21)\*\*

- A **grievance mechanism** to address affected community concerns promptly, using an understandable and transparent process that is culturally appropriate and readily accessible to all segments of the affected communities (PS1: 23)\*\*
- Full conformity with ILO core labour standards (PS2)
- Strict compliance with host country pollution control standards or the IFC’s Environmental and Safety Guidelines (EHS)<sup>92</sup>, *whichever is the most stringent* (PS3)
- Evaluation of the risks and impacts to health and safety of affected communities, and place emphasis on identifying *preventive* measures to avoid such impacts (PS4)
- Consider feasible alternative project designs to avoid or at least minimize physical or economic displacement (PS5)\*\*
- Prohibition of physical or economic displacement of indigenous peoples without their prior agreement based on good faith negotiation\*\* (PS5 and PS7)
- Compensation for loss of assets **at full replacement cost** and assistance to help affected communities **improve or at least restore** their standards of living or livelihoods (PS5)\*\*
- Measure to prevent any *conversion or degradation of critical forest habitat*, including **areas having biodiversity of significant social, economic or cultural importance to local communities (PS6)\*\***
- **“Mutually acceptable procedures”** for the good faith negotiation\*\* and documentation by the client of the outcomes of such negotiations (PS7). If such outcomes are not forthcoming, the IFC will not proceed with project processing.
- Community engagement that is culturally appropriate, involves Indigenous Peoples’ representative bodies, is inclusive of both women and men and of various age groups, designed to provide sufficient time for Indigenous Peoples’ collective decision-making processes and facilitates the Indigenous Peoples’ expression of their views, concerns, and proposals in the language of their choice, without external manipulation, interference, or coercion, and without intimidation (PS7: 9)\*\*

*IFC Exclusion List:*

The IFC has committed publicly to prohibit finance for certain categories of harmful or illegal business.<sup>93</sup> Business operations excluded from IFC finance include: “Purchase of logging equipment for use in primary tropical moist forest; Trade in wildlife or wildlife products regulated under CITES; (and) Production or trade in pesticides/herbicides subject to international phase outs or bans...”, among others.

*IFC Environmental, Health and Safety Guidelines*

Relevant EHS guidelines *must* be applied to relevant IFC loans under Performance Standard 3 as noted above.<sup>94</sup> EHS standards would almost certainly apply to several aspects of Camisea II.

*Coverage of IFC policies:*

It is crucial to note that according to the IFC, its standards apply to the “project area of influence”, which:

...encompasses, *as appropriate*, associated facilities that are not funded as part of the project (funding may be provided separately by the client or by third parties including the government), and whose viability and existence depend exclusively on the project and whose goods or services are essential for the successful operation of the project (this would certainly include Block 56 and possibly also Block 88); The project area of influence also includes “areas potentially impacted by **cumulative impacts** from further planned development of the project” and “...areas potentially affected by impacts from unplanned



but predictable developments caused by the project that may occur later or at a different location.” (PS1 at paragraph 5)

A careful reading of the IFC Performances Standards indicates in the case of Camisea II the IFC’s policy requirements should apply to operations and potential impacts within “the project area of influence” given that downstream component (pipeline and liquefaction plant) are dependent upon gas from the Camisea and Pagoreni fields. In other words, the project area of influence would include upstream activities in Block 56 and 88 given that the social and environmental assessment process triggers requirements under PS7.

The unequivocal interconnection and inter-dependence between the upstream and downstream components of Camisea II are clearly spelled out in Peru-LNG public documents and web site and in the IDB’s 2006 Environmental and Social Strategy Document which states:

- “[The Peru LNG Project]...will liquefy natural gas purchased from Blocks 56 and 88 (ESS, page 1)
- “Gas for the Peru-LNG Project will be provided by production from Block 56 and Block 88” (ESS, page 24)

Though a proportion of natural gas from Blocks 56 and 88 (as a by-product from the extraction of gas liquids) will supply domestic consumers in Peru, the excess gas is to be used to supply the Peru-LNG liquefaction plant for export to Mexico and the U.S. as already noted in section I. above. At the same time, the planned construction of the Cashiriari I and III platforms in Block 88 will most likely supply natural gas via a new flow line to the Malvinas Plant which in turn will enter the Camisea natural gas pipelines that will feed the future LNG liquefaction plant on the coast. As the operations of the upstream consortium are already underway in Block 88 and Block 56, the above standards would thus require an **IFC social and environmental audit** of the upstream operations to assess compliance with IFC Performances Standards.

As well as functional interdependence between the upstream and downstream components of Camisea II, analysis of the private sector entities and potential IFC clients involved shows a strong commercial interconnection. Several companies, most notably Hunt Oil, have investment and/or operational interests in both the upstream and downstream activities (Box 5). Due diligence under the IFC’s Environmental and Social Review Procedures (ESRP) and its Sustainability Policy would require a careful review of social and environmental aspects of Hunt, Repsol and SK investments in associated facilities (i.e., within Block 56 and Block 88), even though these Blocks are operated by Pluspetrol which might not be a direct IFC client.

The need for an IFC audit of upstream operations would also be especially necessary given that the IDB audits published in May 2007 have not addressed compliance with national and international laws, nor with the IFC’s PPS requirements.

Any IFC position that would seek to exclude the associated facilities from due diligence and safeguard requirements would be highly questionable and at odds with their stated policies and standards. It would also contradict the other main public IFI considering lending to the project, the IDB, which has already acknowledged it has a responsibility to deal with social and environmental issues in the upstream component of the project.

In the same way, it is reasonable to conclude that the IFC should apply its safeguard for social licence for the project (Broad Community Support) and the more stringent precondition of successful good

faith negotiation with affected communities of indigenous peoples to both the upstream (Amazon rainforest) and downstream (Andean uplands) components.

This review finds that PS1 of the IFC and its audits (see below) must cover both Block 56 and 88.

**Box 5: Private sector companies investing in and/or operating Camisea I and II**

**BLOCK 88**

Pluspetrol: 27.2% (operator)

Hunt Oil: 25.2%

SK: 17.6%

Tecpetrol: 10%

Sonatrach 10%

Repsol: 10%

**BLOCK 56**

Pluspetrol: 27.2% (operator)

Hunt: 25.2%

SK: 17.6%

Tecpetrol: 10%

Sonatrach: 10%

Repsol

**TRANSPORTATION:**

Transportadora de Gas del Peru (TGP)

Techint / Tecgas NV - majority shareholder and operator : 23.6%

Hunt: 22.2%

Sonatrach 20.65%

Pluspetrol: 12.38%

Grana y Montero: 2%

SK: 11.1%

Suez-Tractabel: 8.07%

**DISTRIBUTION**

Calida

**PERU-LNG**

Hunt Oil: majority / operator 50%

SK: 30%

Repsol YPF: 20%

Repsol-YPF is responsible for marketing 100 % of the LNG produced by the project.

*Non-compliance and due diligence issues:*

Probable cases of non-compliance in existing operations in Block 56 and Block 88 are noted above against some key IFC standards. A systematic reading of all the IFC Performance Standards against recent and current practices in the project area of influence of Camisea II would result in further examples of non-compliance. For example, the IFC audit required for Camisea II would find cases of non-compliance in relation to Block 56 (as already described in section II) given that prior consultation and prior consent did not always respect collective decision-making norms and was in some cases allegedly conducted in an atmosphere of (indirect) intimidation.

*Need for social license*

Under the IFC's Sustainability policy, its project managers must review the client's documentation of the process of consultation and they must determine if their potential client's engagement with affected communities has involved free, prior and informed consultation, that affected indigenous peoples have enjoyed "informed participation" and that this process has led to the "**Broad Community Support**" for the project among affected communities. In a retroactive audit of the Peru-LNG Project, serious questions would need to be raised regarding this precondition for IFC finance. As a minimum, the IFC should require additional fieldwork and possibly new negotiation processes to determine the level of support and dissent for the project in the upland and lowland areas within the project area of influence. Any IFC reliance on existing community agreements with the respective consortiums would be inadequate given the allegations of irregularities with prior agreements (e.g., in Block 56).

*Need for a sectoral social and environmental assessment?*

The massive scale of the whole Camisea Project and its expansion under Camisea II merits a serious study of direct and cumulative impacts on the environment in Peru in view of controversial State plans for the intensification of industrial extraction of hydrocarbons in the Peruvian Amazon in the near future (for example in Block 56, 57, 58, 90, and beyond). Such expansion raises major, environmental, human rights and climate issues, particularly in relation to the total impact of the sector on indigenous peoples, the environment and Peruvian society and economy. The sectoral assessment should assess the full range of social and environmental impacts and poverty risks associated with the expansion in the hydrocarbon sector and private sector operations. It should also undertake a comprehensive options assessment of alternative "development" interventions and ensure full public participation in the evaluation.

IIIC. International human rights and environmental law

As part of its recent upgrading of its safeguard policies the IDB has adopted progressive standards that require that its loan operations affecting indigenous peoples are fully compliant with international standards safeguarding their rights. It is especially significant that the Inter-American Development Bank (IDB) has publicly committed the institution to adherence to safeguard standards that will ensure that its loan operations uphold "applicable legal norms", including "...international jurisprudence of the Inter-American Court of Human Rights or similar bodies".<sup>95</sup> The IFC has affirmed in its social and environmental assessment policy that the SEA and the client's action plan must take account of: "applicable laws and regulations of the jurisdictions in which the project operates that pertain to social and environmental matters, **including those laws implementing host country obligations under international law**", which would include environmental and human rights law (PS1: paragraph 4).

Companies today increasingly accept that they have duties to protect and promote human rights in their investments.<sup>96</sup> As noted by the IFC in its guidance to its recently adopted Performance Standards:

While...(human rights) instruments establish responsibilities of States, it is increasingly expected that private sector companies conduct their affairs in a way that would uphold these rights and not interfere with states' obligations under these instruments..."<sup>97</sup>

Peru has ratified several international human and indigenous peoples' rights instruments as well as environmental treaties, including, *inter alia*:

- ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries (enshrined in national law under *Resolución Legislativa 26253* on December 1993)
- International Covenant on Economic Social and Cultural Rights – ICESCR (ratified 1978)
- International Covenant on Civil and Political Rights – ICCPR (1978)
- International Convention on the Elimination of all Forms of Racial Discrimination – CERD (1971)
- Convention on the Elimination of All Forms of Racial Discrimination Against Women – CEDAW (1982)
- Convention on the Rights of the Child – CRC (1990)
- American Convention on Human Rights (1978)
- Additional Protocol to the American convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador") (1995)
- Convention on Biological Diversity
- Convention on International Trade in Endangered Species of Wild Fauna and Flora CITES
- Ramsar Convention (1992)

*ILO Convention 169:*

This convention deals specifically with indigenous peoples' rights and places a series of binding obligations on the host government in relation to development projects, extractive industries and other activities affecting indigenous peoples (Annex I).<sup>98</sup> ILO Convention 169 specifies, for example, that where development projects may affect indigenous lands and territories or their interests in general the government must:

“...ensure that, whenever appropriate, studies are carried out, **in co-operation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact** on them of planned development activities” [Art.7.3]; and

“...consult the peoples concerned, through appropriate procedures and in particular **through their representative institutions** whenever consideration is being given to any plans or measure that may affect them [Art.6.1a; see also Articles 7.4, 15.2 and 23.2]

The government must also ensure that consultations are:

[...] undertaken, in **good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent** to the proposed measures” [Article 6.2]

*American Convention on Human Rights*

Authoritative interpretations of effective compliance with the American Convention by the Inter-American Commission of Human Rights and rulings of the Inter-American Court of Human Rights have also established that under the right to property indigenous peoples have the right to free, prior and informed consent (FPIC) in relation to decisions and activities that may affect them.<sup>99</sup> In 2006, the IACHR concluded unequivocally that:

“...in light of the way international human rights legislation has evolved with respect to the rights of indigenous peoples (their) consent to natural resource exploitation activities on their traditional territories is always required by law.”<sup>100</sup>

*UN Treaty Body Jurisprudence*

UN Human Rights monitoring bodies have likewise affirmed indigenous peoples' right of FPIC and the need for rights-based environmental and social impact assessments prior to initiating any extractive industry projects.<sup>101</sup> In 2006, for example, the Human Rights Council "stress[ed] the obligation of the State party to seek the informed consent of indigenous peoples before adopting decisions affecting them...."<sup>102</sup>

In 1997, the UN Committee for the Elimination of all Forms of Racial Discrimination (CERD) called upon States-parties to "ensure that members of indigenous peoples have equal rights in respect of effective participation in public life, and that no decisions directly relating to their rights and interests are taken without their informed consent."<sup>103</sup>

*UN Declaration on the Rights of Indigenous Peoples*

The UN Declaration was adopted by the UN Human Rights Council in June 2006 and is currently pending adoption by the General Assembly. The Declaration consolidates existing international law and jurisprudence on the rights of indigenous peoples. The instrument, which has been consistently supported by the Government of Peru within the United Nations, provides, *inter alia*, that:

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development...(Article 23)

Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, of a just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent (Article 28(1))

States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent (Article 29(2))

Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources. (Article 32(1))

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their **free and informed consent** prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of their mineral, water or other resources (Article 32(2))

Environmental treaties ratified by Peru have likewise issued authoritative guidance to States-parties and multi-lateral development banks in relation to their development policies, including extractive industry policies that may affect protected areas and the rights of indigenous and local communities. At the Eighth Conference of the Parties (COP8) to the Convention on Biological Diversity in 2006, for example, the COP decision on protected areas invited:

"[...] international and regional development banks to ensure coherence among their respective institutional policies and improve guidelines related to biodiversity conservation and/or sustainable use in investment projects that affect sustainability of protected areas.

Such policies should allow for the full and effective participation and **prior informed consent** of indigenous and local communities.” [emphasis added] (paragraph 21)

#### *International law and IFI due diligence*

It is increasingly accepted that public international financial institutions and international development agencies are required under international law to ensure that their decisions, actions and operations do not undermine the ability of other subjects of international law, including their member states, to fulfil their obligations under applicable international human rights instruments, environmental treaties and under international customary law.<sup>104</sup> The IDB and member governments sitting on its Board have legal obligations to uphold human rights, including those human rights guaranteed under the Organisation of American States (OAS).<sup>105</sup> These legal obligations and duties mean that in considering any proposed IDB loan for Camisea II, the Executive Directors of public IFIs must be assured that the loan would not adversely affect human rights or undermine the capacity of the Government of Peru (as host government) to fulfil its obligations under international human rights instruments it has ratified.

As noted above, the IDB has already indirectly accepted its responsibilities under international law in relation to the rights of indigenous peoples under its new operational policy OP-765 (Annex I). Nonetheless, there is a need for the IDB to adopt **special measures** and mechanisms to screen its proposed loans for potential human rights impacts. The scale of Camisea II would certainly warrant a careful Human Rights and Poverty Risk Impact Assessment, which would help underpin due diligence and compliance with the IDB’s Operational Policy on Indigenous Peoples *before* presenting the loan proposal to CESI and the Bank’s Board. For its part, the IFC has yet to formally acknowledge its human rights responsibilities. However, the IFC is developing a voluntary human rights impact assessment guide. It also now recognises that its private sector clients should ensure their operations are consistent with relevant international standards, especially those established under treaties or instruments ratified by the host government, including *ILO Convention 169 Concerning Indigenous and Tribal Peoples in Independent Countries*.<sup>106</sup>

#### **III.D International Best Practice**

It is likewise noteworthy that the IFC advises its clients that they ought to apply international best practice in implementing the IFC’s social and environmental Performance Standards. In relation to PS1 on Social and Environmental Assessment, for example, the IFC notes the importance of the Convention on Biological Diversity’s *Akwé: Kon Guidelines - Voluntary guidelines for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities*.<sup>107</sup> These best practice guidelines on EIA and social and cultural impact assessment would certainly apply to both the upstream and downstream components of Camisea II. Notable guidelines in these voluntary standards include, *inter alia*, recommendations that:

[...] The following steps may also be considered in carrying out an impact assessment for a development proposed to take place on, or which is likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities: ... (c) Establishment of effective mechanisms for indigenous and local community participation...; (d) Establishment of an agreed process for recording the views and concerns of the members of the indigenous or local community whose interests are likely to be impacted by a proposed development; (e) Establishment of a process whereby local and indigenous communities may have the option to accept or

oppose a proposed development that may impact on their community; (f) Identification and provision of sufficient human, financial, technical and legal resources for effective indigenous and local community participation in all phases of impact assessment procedures; (g) Establishment of an environmental management or monitoring plan (EMP), including contingency plans regarding possible adverse cultural, environmental and social impacts resulting from a proposed development; (h) Identification of actors responsible for liability, redress, insurance and compensation; (i) Conclusion, as appropriate, of agreements, or action plans, on mutually agreed terms, between the proponent of the proposed development and the affected indigenous and local communities; (j) Establishment of a review and appeals process.

“Affected indigenous and local communities...should be involved in the establishment of the terms of reference...” (paragraph 14)

“Early identification by the State and affected indigenous and local communities and, as circumstances warrant, provision of necessary human, financial, technical and legal resources, particularly to those indigenous and local communities, to support indigenous and local expertise, will facilitate effective indigenous and local community participation in the impact assessment process....” (paragraph 18)

“In order to protect the interests of affected indigenous and local communities, an agreement, could be negotiated between the community and the proponent of the development. The terms of such an agreement, subject to national legislation and regulations, could cover the procedural aspects of impact assessments, including the option of a no-action alternative, setting out the rights, duties and responsibilities of all parties, and also address measures to prevent or mitigate any negative impacts of the proposed development.” (paragraph 21)

Were the IFC’s Environment, Health and Safety standards, for one reason or another, deemed not to be mandatory for Camisea II under Performance Standard 3, they would be still expected to be referred to by the client as Good International Industry Practice (GIIP).<sup>108</sup>



#### IV. Concluding observations and recommendations

This critical review of Camisea II has identified a series of social and environmental problems, most notably in the EIA and development for Block 56, which repeat errors and rights violations made in Camisea I.<sup>109</sup> The analysis finds that the upstream component of Camisea II has violated indigenous peoples' rights and fallen short of international standards and national regulations because:

- Questions remain over the legality of the original demarcation of Block 56 and the sale of concession rights that did not ensure meaningful prior consultation and consent of affected communities
- Some consultations with affected Native Communities over hydrocarbon development plans for Block 56 were rushed and conducted in an atmosphere of confusion and intimidation
- Prior consultation processes failed to respect customary and internal processes for collective decision-making
- The EIA for Block 56 was flawed on numerous counts
- The EIA fails to address potential direct, indirect and cumulative impacts on isolated indigenous peoples known to be in close proximity to Block 56
- The public hearing for the EIA in May 2005 did not answer substantive concerns raised by the public and international experts, and was pushed through while community grievances regarding damages caused by Camisea I had not been resolved
- Subsequent written concerns about the EIA were unreasonably dismissed by the company and the government prior to its final approval in July 2005
- Compensation negotiations with individual communities regarding easements and works on their titled lands were in some cases hastily conducted and communities lacked adequate technical support to understand the negotiations
- The indirect, cumulative and qualitative costs of the expansion of Camisea II into Block 56 have not been properly compensated, partly because transparent methodologies for fair and equitable procedures and methodologies do not exist to indemnify: declining abundance of fish and game, loss of tranquillity and privacy, increased disturbance by outsiders, cultural and social structure change, introduced disease epidemics, damage to flora and fauna, degradation of the local landscape, increased pressure on forest resources, increased illegal timber extraction and influx of colonists
- The consortium *Transportadora de Gas de Perú* (TGP), has been slow to compensate some Native Communities for the harmful effects and damages caused by Camisea I pipeline ruptures and has reportedly failed to deal with community grievances and claims in good faith
- Subcontractors working inside Block 56 have not always adhered to the Pluspetrol Code of Conduct and have entered Native Community lands without prior consent
- Social and environmental mitigation measures for seismic survey work have not always been followed and damage to community lands has taken place
- The EIA completed for the downstream (upland) component of Camisea II gives only superficial treatment to the potential for adverse cultural change and fails to identify potential impacts on the rights of indigenous peoples
- Potentially affected indigenous communities in the Andean region are only identified as "local residents" – suggesting serious methodological and legal flaws in the social baseline study for the EIA

This study therefore concludes that the aforementioned rights violations and shortcomings in previous business activities that have already taken place under the Camisea II project do not fully conform to the safeguard standards of the IDB or the performance standards of the IFC.

*Incomplete IDB audits and rushed public consultation on their findings*

Preliminary scrutiny of the long awaited IDB social and environmental audit and pipeline integrity audits for Camisea I shows that they have a series of problems. Specifically:

- The social and environmental audit contains a narrow analysis that only measures the effectiveness of existing mitigation measures against ISO14000
- The analysis contains only a superficial historical analysis of social and environmental issues (mostly confined to pipeline ruptures and contingency measures in 2004 and 2005)
- The audit does not identify and carefully analyse cases of non-compliance with IDB standards and violations of national and international norms.
- Treatment of the previous and current impacts of Camisea I on indigenous peoples living in voluntary isolation and indigenous communities in the initial stages of contact is perfunctory. The audit disregards numerous official and independent reports and studies conducted on this subject
- The pipeline integrity audit has dismissed well-founded independent technical criticisms of the flawed Camisea I pipeline construction process, and has disregarded evidence of breach of safety standards during the construction phase (e.g., welder certification and route variation authorisations etc)<sup>110</sup>
- The audits were released two weeks after the date promised by the IDB leaving only a limited time for public examination of the documents prior to the public hearing in Washington in June 2007

*Need for thorough IDB due diligence on Camisea II*

The shortcomings and restricted remit of the social and environmental audit published in May 2007 make it even more essential that a thorough assessment of compliance of previous and existing business activities with IDB's new safeguard policies is conducted as part of IDB due diligence for Camisea II.

This report and annex confirm that under the IDB's new Environmental and Indigenous Peoples Policies, such analysis should evaluate compliance against applicable legal norms at the national and international levels. A credible legal analysis must contain a historical assessment of compliance in the operations, including the initial sale of the concession rights over Block 56 in 2004.

*Learning or unlearning lessons?*

The ongoing problems and cumulative negative impacts of Camisea I demonstrate that the legitimacy of public IFIs like the IDB in getting involved in large-scale extractive projects after they have already started is questionable. One of the key lessons from Camisea I is that trying to do retroactive due diligence and post-facto mitigation measures are fraught with difficulties - as predicted by critics of the Camisea project from the outset. Yet the IDB and the IFC is proposing to take the same problematic *post-facto* approach to Camisea II – despite much evidence to show that some of the irregularities and violations of indigenous peoples' rights that occurred in Block 88 prior to IDB engagement have again taken place in Block 56 (e.g., with regard to prior consent and prior consultation).

Unless major action is taken to address past mistakes, existing problems and ongoing weak capacities among company and host government agencies, there is a real risk that the IDB will make the same mistakes in Camisea II as it did in Camisea I.<sup>111</sup>

*Holding the IDB and IFC to account:*

To convince locally affected peoples and the public in Peru and internationally that it is learning hard lessons from Camisea I, and that it is genuinely committed to sustainable development and upholding international standards and complying with its updated safeguard policies, the IDB must:

- Ensure audit documents and summaries are placed in the public domain at least 60 days prior to formal public meetings to discuss their findings
- Subject the audit findings to public scrutiny in open meetings in Peru in the lower Urubamba, Andean Region and in the coastal area of Lima in order to enable a serious discussion of the problems of Camisea I and lessons learned and the pros and cons of Camisea II
- Take seriously any critical inputs made by local communities and civil society and investigate their allegations where problems have been overlooked or not adequately dealt with in IDB audits
- Enable written submissions by civil society to provide comments and observations on the audits over an ample time period after the public hearings (at least 60 days)
- Correct any shortcomings in its audits should weaknesses be identified after their scrutiny by the public
- Take corrective measures and remedial actions to address findings of non-compliance with IDB policies, loan conditions and applicable national and international laws identified in its audits and related public consultations
- Make a public commitment to delay processing of Camisea II until non-compliance, local grievances and problems associated with Camisea I have been resolved to the satisfaction of affected communities
- Ensure fully IDB due diligence on Camisea II undertakes a systematic compliance analysis of previous and existing business activities against IDB and other relevant standards and applicable legal norms. This analysis should draw on relevant official information like the Peruvian Ombudsman Office reports No.103 and N° 009-2007-DP/ASPMA.CN, as well as indigenous peoples' and NGOs' reports.
- Provide an extended period of public comment on the IDB's due diligence documentation, including its Environmental and Social Impact Report (ESIR) to ensure transparency and help improve the analysis
- Fully uphold IDB commitments that it will not finance Camisea II unless it can ascertain that the project would fully comply with IDB policies, including guarantees that indigenous peoples' rights will be safeguarded in accordance with all applicable legal norms that include those established under ILO Convention 169 and the Inter-American human rights system.

For its part, the IFC's due diligence on Camisea II must:

- Ensure its due diligence and Performance Standards apply to upstream "associated facilities" in Blocks 56 and 88
- Conduct its own technical, social and environmental audit of Camisea II (upstream and downstream components of Peru-LNG) to assess compliance of existing operations with IFC's Sustainability Policy and Performance Standards, EHS Guidelines and IFC Project Exclusion Criteria
- Ensure that due diligence and social and environmental assessment safeguard work, including Broad Community Support standard will be applied to *both* the upstream and downstream components of Peru-LNG
- Include special safeguard due diligence work to assess measures necessary to ensure full compliance with ILO Convention 169 in the upland as well as the eastern lowland components of the project

- Provide for *independent* verification of the existence of broad community support or dissent among potentially affected communities to assist IFC staff in following their Environmental and Social Review Procedures. The IFC should not rely only on documents provided by the Peru-LNG consortium
- Publicly commit the IFC to upholding its standards, including Performance Standard 7 on Indigenous Peoples, and applying best practice, including application of the Akwe:kon Guidelines for social and cultural impact assessments
- Adopt a best practice rights-based approach to its due diligence by conducting a human rights and poverty risk impact assessment as part of its due diligence for Camisea II
- Ensure full public consultation in Peru and internationally on the findings of its due diligence before proceeding with project processing and document public opinion expressed, including any dissent that may arise in the consultation.

Figure 1. Map of Camisea blocks and Indigenous Communities (Instituto del Bien Comun)

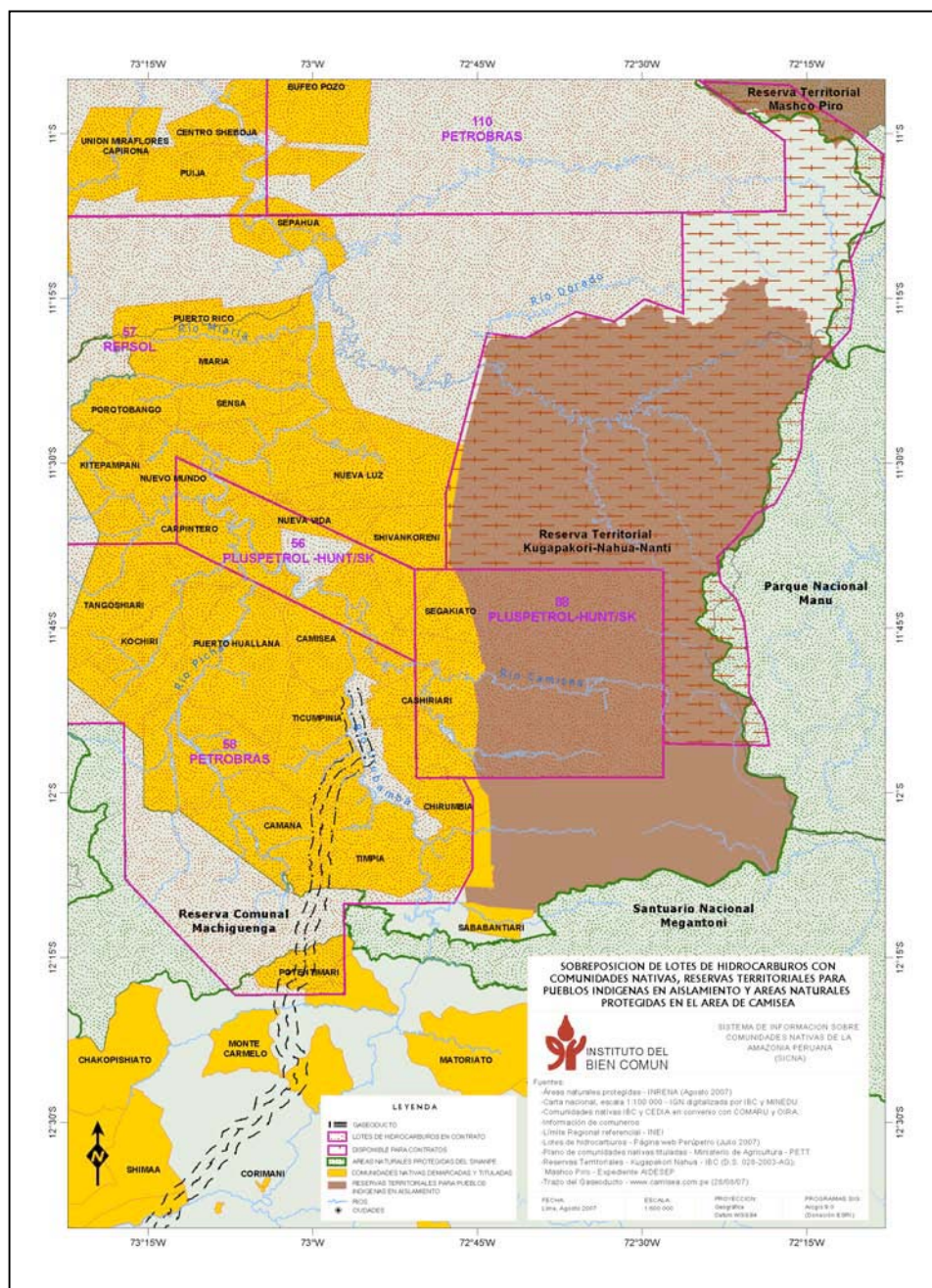
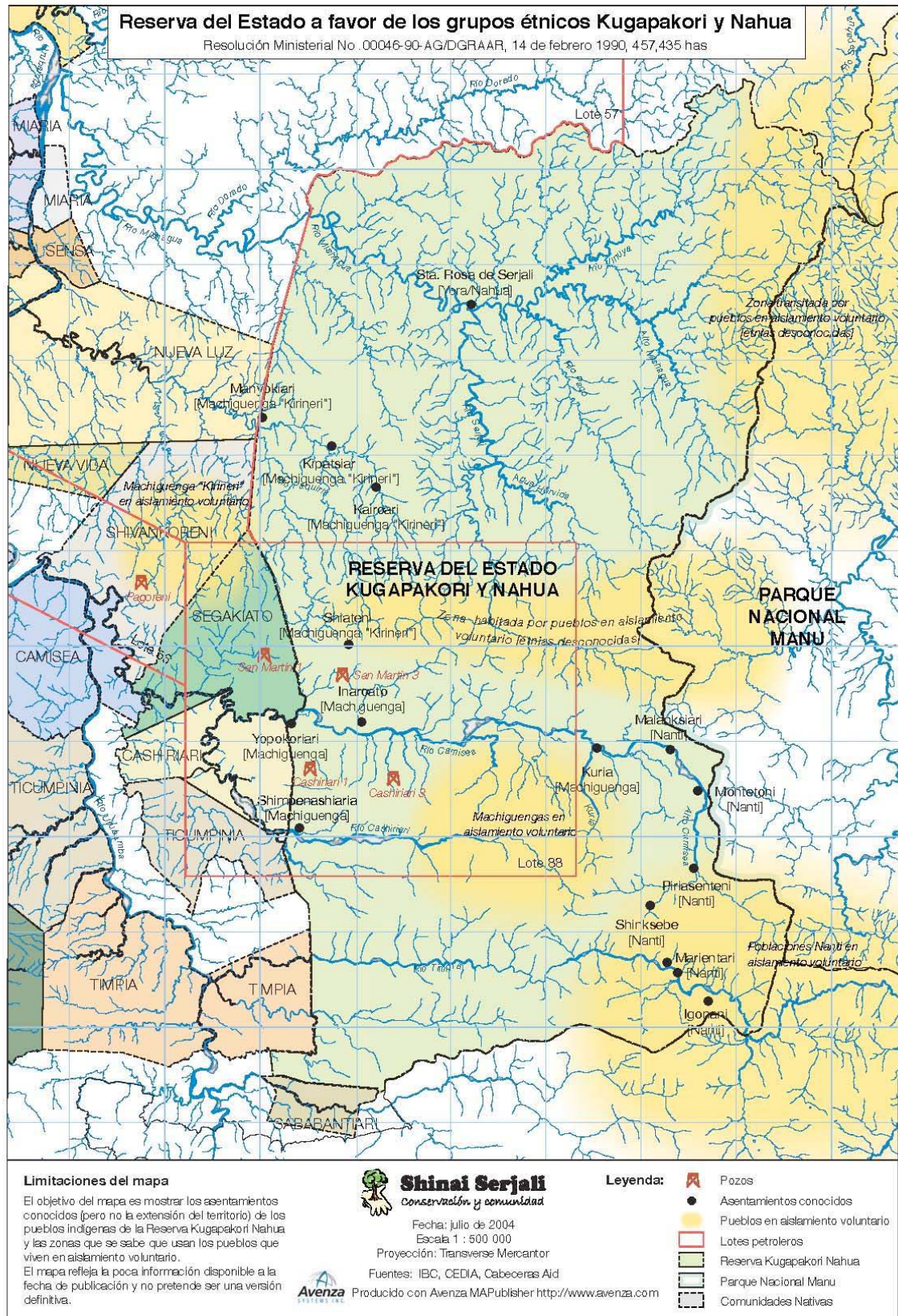




Figure 2. Map of Camisea block 88 and 56 and Isolated Indigenous Populations (Shinai)



**Annex I: Some minimum standards and procedures that must be adhered to by the IDB and the IFC before approving finance for Camisea II** (NOTE: this list does not detail all international standards relevant to Camisea II. It only details some of the main applicable social and environmental norms)

**I. Mandatory and binding standard(s) in IFI policy/regulations**

**1. IDB Operational Policy on Indigenous Peoples (OP-765)<sup>112</sup> and Guidelines (2006)<sup>113</sup>.**

- A. IDB due diligence must include a **technical review** during the planning and identification phase, including perspectives of indigenous people to determine the presence of potentially affected indigenous peoples and requirements for prior consultation and good faith negotiation.
- B. The Bank's technical review will – *whenever possible* – rely on “inputs from the indigenous peoples who might be affected by the project.”
- C. “Depending on the nature, scope, and intensity of the impacts and benefits identified, the Bank will determine the level of analysis needed to address indigenous issues, including **sociocultural analyses and consultation and good faith negotiation processes.**”
- D. The Bank will conduct its operations in a way that prevents or mitigates direct or indirect adverse impacts on indigenous peoples or their individual or **collective rights or assets**...
- E. “...When valid collective and individual rights co-exist, deference will be given to collective rights particularly with regard to rights over land, territory, and natural resources.”
- F. To be eligible for Bank financing, operations need to comply with applicable legal norms... contained in national legislation and international law, **including the jurisprudence of the Inter-American human rights system**. The project must also be fully consistent with the Bank's safeguard policies.
- G. The project must **fully respect the rights of uncontacted indigenous peoples** “to remain in said isolated condition and to live freely according to their culture.”
- H. The project must NOT exclude indigenous peoples on the basis of their ethnicity
- I. The borrower must undertake “an evaluation” with the informed participation of indigenous peoples to determine “the seriousness of potential adverse impacts on physical and food security, lands, territories, resources, society, rights, the traditional economy, way of life and identity or cultural integrity of indigenous peoples, and to identify the indigenous peoples affected and their legitimate representatives and internal decision-making procedures”.
- J. In high-risk projects (like Camisea II), the project proponent must demonstrate that it has, through a **good faith negotiation** process, obtained **agreements** (with affected indigenous peoples) regarding the operation
- K. Specifically “...the Bank will require that the project proponent provide, no later than by the date of consideration of the operation by the Board of Executive Directors, evidence **duly verified by the Bank** and to the Bank's satisfaction of the agreements reached with the affected peoples.”
- L. In projects with potential adverse impacts, consultation and **good faith negotiation** processes must be consistent with the legitimate decision-making mechanisms of affected indigenous peoples or groups
- M. In such projects with “potential adverse impacts”, the project proponent is also required to incorporate the design and implementation of the measures necessary to minimize or prevent adverse impacts and include measures for monitoring and fair compensation
- N. In high-risk projects with “...significant potential adverse impacts that (threaten) the physical, territorial or cultural integrity of the affected indigenous peoples or groups” the project proponent must include mitigation measures “...to address the adverse impacts as necessary to support, in the Bank's judgment, the sociocultural viability of the operation.”
- O. Where there is “**widespread express refusal**” by indigenous peoples to the project or its consultation processes, the project may only proceed with due diligence if the Bank's Board issues a waiver of IP policy requirements.
- P. Where the project may include “operations that directly or indirectly affect the legal status, possession, or management of territories, lands, or natural resources traditionally occupied or used by indigenous peoples”, steps must be taken to **respect indigenous rights recognized in accordance with “the applicable legal norms”**.
- Q. “Where legal or administrative protection is insufficient to ensure that the project will not directly or indirectly cause the deterioration of the physical integrity or legal status of the affected lands, territories or resources, the project will include the **pertinent restrictions or corrective or compensatory measures.**”
- R. In projects involving the “commercial development of indigenous culture and knowledge resources”, the **prior agreement** of the affected indigenous peoples is required
- S. In potentially harmful projects (like Camisea II) social and environmental avoidance and mitigation measures must be submitted to CESI for a second review.
- T. Where the Bank decides to proceed with project processing in cases likely to have **potential adverse impacts** on indigenous peoples, it will “as early as possible in the project cycle verify compliance by the project proponent with the following three **requirements** (i) Preparation of **sociocultural evaluations** as inputs for the loan document, analysis mission, and the project environmental and social review process (ii) Implementation of socioculturally appropriate and **duly documented consultation and good faith negotiation processes** ...and (iii) Incorporation into the project of enforceable measures for mitigation, restoration, and compensation reflected in the content of the loan document and of project contractual documents and **detailed plans for indigenous protection, compensation, and development** or in other instruments in a timely manner
- U. “The Bank will adopt supervision and evaluation measures designed to verify that the project proponent fulfils, to the Bank's satisfaction, the agreed to measures to meet the requirements of this policy with respect to each project, including **socioculturally appropriate mechanisms for the participation of affected indigenous peoples** in the monitoring and evaluation of those measures.”



**2. IDB OP on Involuntary Resettlement (OP-710)<sup>114</sup>**

- A. “The Bank will...only support operations that involve the displacement of indigenous communities...if the Bank can ascertain that: (i) the resettlement component will result in direct benefits to the affected community relative to their prior situation; (ii) **customary rights will be fully recognized** and fairly compensated; (iii) compensation options will include land-based resettlement; and (iv) **the people affected have given their informed consent to the resettlement and compensation measures**”
- B. Affected people are to be **identified as early as possible** in the project cycle
- C. Affected people are to be **fully informed and closely consulted**, during **planning, implementation and monitoring** of resettlement activities.
- D. The **absence of a formal land title is not a bar to policy entitlements and compensation.**
- E. The **social and cultural institutions** of the affected people should be protected and supported
- F. Cultural considerations should be accounted for in identifying **culturally appropriate** resources, living conditions, and income-earning opportunities
- G. Compensation and rehabilitation measures should be **determined in consultation with the affected people**
- H. “the compensation and rehabilitation package must take adequate account of intangible assets, especially non-monetary social and cultural assets and, particularly in the case of rural populations, of customary rights to land and natural resources”
- I. “particular attention must be given to socio-cultural considerations, such as cultural or religious significance of land, vulnerability of the affected population, or the availability of in-kind replacement for assets, especially when they have important intangible implications”
- J. “The resettlement plan will include the results of consultations carried out in a timely and socio-culturally appropriate manner with a representative cross-section of the displaced and host communities... Care will be taken to identify the most vulnerable subgroups and to ensure that their interests are adequately represented in this process”
- K. “...Consultations will take place during the design phase and will continue through the execution and monitoring of the plan, directly or through representative institutions and community organizations...”
- L. At all stages, resettlement identification, planning, and management will ensure that **gender concerns are incorporated**, including gender-specific **consultation** and information **disclosure**. This includes special attention to **guarantee women’s assets**, property and land-use rights; and to ensure the restoration of their income and **living standards**.
- M. Compensation and rehabilitation options must provide a fair replacement value for assets lost, and the necessary means to restore subsistence and income, to reconstruct the social networks that support production, services and mutual assistance, and to compensate for transitional hardships (such as crop losses, moving costs, interruption or loss of employment, lost income, among others).
- N. These measures must be taken in a timely manner to ensure that transitional hardships are not unnecessarily prolonged and do not result in irreparable harm.

**3. IDB Environment and Safeguard Compliance Policy – OP-703, 2006<sup>115</sup>**

- A. “The Bank will only finance operations and activities that comply with the directives of its environment and safeguard compliance policy”
- B. Where environmental risks are “deemed to be too great...**the Bank would support the proposed investment only once the plan for mitigation of the risks is agreed**”
- C. The Bank also requires that the borrower ensures that the project is in **compliance with environmental laws and regulations of the country...**, including national obligations established under **ratified Multilateral Environmental Agreements** (MEAs)
- D. All Bank-financed operations will be screened and classified according to their potential environmental impacts. Screening will be carried out early in the preparation process. **The screening process will consider potential negative environmental impacts whether direct, indirect, regional or cumulative in nature, including environmentally related social and cultural impacts, of the operation and of its associated facilities** if relevant.
- E. Any operation that is likely to cause significant negative environmental and associated social impacts, or have profound implications affecting natural resources, will be classified as Category “A”.
- F. For some high safeguard risk operations that, in the Bank’s opinion raise complex and sensitive environmental, social, or health and safety concerns, the borrower should normally establish an **advisory panel of experts** to provide guidance for the design and/or execution of the operation on issues relevant to the EA process, including health and safety.
- G. In addition to risks posed by environmental impacts, the Bank “...will identify and manage other risk factors...**such as the governance capacity of executing agencies/borrower and of third parties**, sector-related risks, risks associated with highly sensitive environmental and social concerns.... The Bank will engage with the executing agency / borrower and relevant third parties to develop appropriate measures for managing such risks.”
- H. The borrower is responsible for the preparation of the EA and “associated management plans”. “The operation’s approval by the Bank will consider the quality of the EA process and documentation, among other factors”
- I. “As part of the environmental assessment process, Category “A” and “B” operations will require consultations with affected parties and consideration of their views.”

Continued

J. The EIA process includes, as a minimum:

- screening and scoping for impacts;
- timely and adequate consultation and information dissemination process;
- **examination of alternatives including a no project scenario.**
- economic analysis of project alternatives
- economic cost-benefit assessments of the project's environmental impacts and/or the associated protection measures.
- **due consideration of compliance with relevant legal requirements; direct, indirect, regional or cumulative impacts,**
- use of adequate baseline data as necessary;
- impact mitigation and management plans presented in an **Environmental and Social Management Plan (ESMP)**;
- incorporation of EA findings into project design; and
- measures for adequate follow-up of the ESMP's implementation.

K. The ESMP must include:

- a presentation of the key direct and indirect impacts and risks of the proposed operation; the design of the proposed social/environmental measures to avoid, minimize, compensate and/or mitigate the key direct and indirect impacts and risks;
- the institutional responsibilities to implement these measures, including, where necessary, institutional development, capacity building and training;
- the schedule and budget allocated for the implementation and management of such measures;
- the consultation or participation program agreed for the operation; and
- the framework for the monitoring of social and environmental impacts and risks throughout the execution of the operation, including clearly defined indicators, monitoring schedules, responsibilities and costs.

L. The ESMP should be ready for, and reviewed during, the analysis / due diligence mission.

M. An EIA report must be prepared with its ESMP and **disclosed to the public prior to the analysis mission**, consistent with the Disclosure of Information Policy (OP-102).

N. Strategic Environmental Assessment (SEA) has the following objectives:

- (i) Assure that the main environmental risks and opportunities of policies, plans or programs have been properly identified;
- (ii) Engage early-on governments and potentially affected parties in the identification and analysis of strategic issues, actions, and development alternatives;
- (iii) Define and agree on a sequence of actions to address systematically and strategically environmental issues and priority actions, summarized in an SEA action plan for adequate monitoring and follow up; and
- (iv) Assure that adequate environmental information is available and collected for the decision making process.

The SEA should be triggered early in the decision-making process and prior to implementation of policies, plans or programs.

O. **The Bank will not support operations that, in its opinion, significantly convert or degrade critical natural habitats or that damage critical cultural sites**

P. Bank-financed operations "should" avoid adverse impacts to the environment and human health and safety from the production, procurement, use and disposal of hazardous materials

Q. Bank-financed operations will include...measures to prevent, reduce or eliminate pollution...

R. The Bank will finance operations already under construction, **only if the borrower can demonstrate that the operation complies with all relevant provisions of this Policy.**

S. If, as part of the Bank's analysis/due-diligence of a proposed operation that is already under construction, non-compliances with relevant safeguard Directives of this Policy are identified, then an **action plan must be submitted to the Bank prior to Board approval of the operation.** The action plan shall define the actions and associated schedule for the timely resolution of such non-compliances and include sufficient funding for its implementation.

T. The Bank will monitor the executing agency / borrower's compliance with all safeguard requirements stipulated in the loan agreement and project operating or credit regulations. Safeguard requirements, such as those in an ESMP must be incorporated into the project contract documents, its operating or credit regulations, or the project bidding documents, as appropriate, setting out as necessary milestones, timeframes and corresponding budgetary allocations to implement and monitor the plan during the course of the project. **Safeguard indicators**, as appropriate, should be clearly defined in the logical/results framework, followed-up in project monitoring reports and reviewed in mid-term reviews and project completion reports. Compliance with safeguard commitments and identification of unexpected safeguard issues will be analyzed, reviewed and reported as part of Bank's administration and portfolio review missions.

U. Category "A" projects will be reviewed at least annually to assess safeguard compliance. Whenever ex-post evaluations are conducted, these will evaluate the sustainability outcomes of an operation.



**4. IFC Policy on Social and Environmental Sustainability (2006),<sup>116</sup> IFC Performance Standards (2006)<sup>117</sup>, IFC Guidance Notes (2006)<sup>118</sup> and IFC Environmental and Social Review Procedures (ESRP)<sup>119</sup>**

**IFC Policy on Social and Environmental Sustainability:**

- A. Through its own investigation, the IFC assures itself that the client's community engagement is one that involves free, prior, and informed consultation and enables the informed participation of the affected communities, **leading to broad community support for the project** within the affected communities, before presenting the project for approval by IFC's Board of Directors.
- B. **Broad community support is a collection of expressions by the affected communities, through individuals or their recognized representatives, in support of the project**" (paragraph 20).

**Performance Standard 1: Social and Environmental Assessment and Management Systems:**

- A. Under PS1, the Client is required to identify communities of indigenous peoples who may be affected by the project as part of **Social and Environmental Assessment (SEA)** process: "As part of the Assessment, the client will identify individuals and groups that may be differentially or disproportionately affected by the project because of their disadvantaged or vulnerable status" (PS1:12)
- B. Where the initial screening phase detects that a project may affect indigenous peoples' customary lands and resources under use, the client must "*engage experienced qualified external experts*" to carry out the SEA "*with the active participation of affected communities of indigenous peoples*"
- C. The SEA should include a **study of the customary land and resource tenure system** of affected communities of indigenous peoples "within the project area of influence"
- D. PS1 requires that the private sector client establish a Social and Environmental Management System (SEMS), which must incorporate a (i) Social and Environmental Assessment; (ii) management program ; (iii) organizational capacity; (iv) training; (v) community engagement; (vi) monitoring; and (vii) reporting.
- E. PS1 also stipulates that the SEA must consider the potential social and environmental risks and impacts ... (in)... the **project's area of influence**. This area of influence encompasses, as appropriate: (i) the primary project site(s) and related facilities that the client (including its contractors) develops or controls , such as power transmission corridors, pipelines, canals, tunnels, relocation and access roads, borrow and disposal areas, construction camps; (ii) **associated facilities** that are not funded as part of the project (funding may be provided separately by the client or by third parties including the government), and whose viability and existence depend exclusively on the project and whose goods or services are essential for the successful operation of the project; (iii) areas potentially impacted by **cumulative impacts** from further planned development of the project, any existing project or condition, and other project-related developments that are realistically defined at the time the Social and Environmental Assessment is undertaken; and (iv) areas potentially affected by impacts from unplanned but predictable developments caused by the project that may occur later or at a different location. (PS1)
- F. PS1 requires that the SEA also "take into account" the "Applicable laws and regulations of the jurisdictions in which the project operates that pertain to social and environmental matters, **including those laws implementing host country obligations under international law**" (this would include environmental and human rights law)
- G. The SEA must be an adequate, accurate, and objective evaluation and presentation of the issues, prepared by qualified and experienced persons. In projects with significant adverse impacts or **where technically complex issues are involved, clients may be required to retain external experts** to assist in the Assessment process" (PS1:7)
- H. "When the project involves existing business activities, **social and/or environmental audits** may need to be performed to determine any areas of concern." (PS1)
- I. Projects with potential significant adverse impacts that are diverse, irreversible or unprecedented (Category A) **will have comprehensive social and environmental impact assessments**. This assessment will include an examination of technically and financially feasible alternatives to the source of such impacts, and documentation of the rationale for selecting the particular course of action proposed. In exceptional circumstances, a regional, sectoral or strategic assessment may be required (PS1:9)
- J. Where the client identifies specific mitigation measures and actions necessary for the project to comply with applicable laws and regulations and to meet the requirements of Performance Standards 1 through 8, the client will prepare an **Action Plan**... (PS1:16)
- K. The Action Plan will: (i) describe the actions necessary to implement the various sets of mitigation measures or corrective actions to be undertaken; (ii) prioritize these actions; (iii) include the time-line for their implementation; (iv) be disclosed to the affected communities; and (v) describe the schedule and mechanism for external reporting on the client's implementation of the Action Plan" (PS1:16)
- L. The Action Plan may need to include other specific plans in order to comply with other IFC requirements under its other Performance Standards, including: Resettlement Action Plans, Biodiversity Action Plans, Hazardous Materials Management Plans, Emergency Preparedness and Response Plans, Community Health and Safety Plans, and Indigenous Peoples Development Plans (PS1)
- M. During the social and environmental assessment process "...**Community engagement will be free of external manipulation, interference, or coercion, and intimidation, and conducted on the basis of timely, relevant, understandable and accessible information.**" (PS1:19)
- N. "Effective consultation: (i) should be based on the prior disclosure of relevant and adequate information, including draft documents and plans; (ii) should begin early in the Social and Environmental Assessment process; (iii) will focus on the social and environmental risks and adverse impacts, and the proposed measures and actions to address these; and (iv) will be carried out on an ongoing basis as risks and impacts arise. The consultation process will be undertaken in a manner that is inclusive and **culturally appropriate**. **The client will tailor its consultation process to the language preferences of the affected communities, their decision-making process, and the needs of disadvantaged or vulnerable groups** (PS1:21)
- O. The client must develop a Social and Environmental Management System acceptable to the IFC

**Performance Standard 2: Labour and Working Conditions**

- A. All IFC project shall conform to ILO Core labour standards

**Performance Standard 3: Pollution Prevention and Abatement**

- A. Establishes that the client must meet host country pollution control standards or the IFC’s Environmental and Safety Guidelines (EHS)<sup>120</sup>, *whichever is the most stringent*.

**Performance Standard 4: Community Health, Safety and Security**

- A. The IFC client is required to evaluate the risks and impacts to health and safety of affected communities, and place an emphasis on *preventive* measures to avoid such impacts
- B. Measures must be taken to prevent or minimize community exposure to hazardous materials and communicable diseases (including diseases associated with the influx of temporary workers)
- C. Requires the client to develop an emergency response plan and disclose all relevant information in the Action Plan or other relevant documents to the affected communities and relevant government agencies

**Performance Standard 5: Land Acquisition and Involuntary Resettlement**

- A. Involuntary resettlement refers both to physical displacement (relocation or loss of shelter) and to **economic displacement** (loss of assets or access to assets that leads to loss of income sources or means of livelihood) as a result of project-related land acquisition
- B. The client must consider feasible alternative project designs to avoid or at least minimize physical or economic displacement
- C. When displacement cannot be avoided, the client will offer displaced persons and communities compensation for loss of assets **at full replacement cost** and other assistance to help them **improve or at least restore** their standards of living or livelihoods
- D. The client must consult with and facilitate the informed participation of affected persons and communities, including host communities, in decision-making processes related to resettlement.
- E. “Where communities of Indigenous Peoples are economically displaced (but not relocated) as a result of project-related land acquisition, the client will meet the applicable requirements of this Performance Standard, as well as those of Performance Standard 7 (in particular paragraphs 12 and 13)” – i.e., **economic displacement cannot take place without prior agreement** (successful “good faith negotiation” – see below)
- F. The client will establish a **grievance mechanism** consistent with Performance Standard 1 to receive and address specific concerns about compensation and relocation that are raised by displaced persons or members of host communities, including a recourse mechanism designed to resolve disputes in an impartial manner.

**Performance Standard 6: Biodiversity Conservation and Sustainable Natural Resource Management**

- A. In order to avoid or minimize adverse impacts to biodiversity in the project’s area of influence...the client will assess the significance of project impacts on all levels of biodiversity as an integral part of the Social and Environmental Assessment process
- B. The applicability of this Performance Standard is established during the Social and Environmental Assessment process, while implementation of the actions necessary to meet the requirements of this Performance Standard is managed through the client’s **Social and Environmental Management System**.
- C. In areas of modified habitat, the client will exercise care to minimize any conversion or degradation of such habitat, and will, depending on the nature and scale of the project, identify opportunities to enhance habitat and protect and conserve biodiversity as part of their operations.
- D. In areas of natural habitat, the client will not significantly convert or degrade such habitat (unless certain preconditions are met, including mitigation and offset measures etc)
- E. In areas of critical habitat, the client will not implement any project activities where there are measurable adverse impacts and threats to populations or endangered or threatened species
- F. In forest areas, *the client must not convert or degrade critical forest habitat*
- G. “Critical habitat is a subset of both natural and modified habitat that deserves particular attention. Critical habitat includes:
  - areas with high biodiversity value, including habitat required for the survival of critically endangered or endangered species;
  - areas having special significance for endemic or restricted-range species;
  - sites that are critical for the survival of migratory species;
  - areas supporting globally significant concentrations or numbers of individuals of migratory species;
  - areas with unique assemblages of species or which are associated with key evolutionary processes or provide key ecosystem services; and
  - **areas having biodiversity of significant social, economic or cultural importance to local communities.**” (Guidance Notes)
- H. Clients must not intentionally introduce invasive alien species and must undertake due diligence to prevent unintended introductions to the project area of influence

**Performance Standard 7: Indigenous Peoples**

- A. The applicability of this Performance Standard is established during the Social and Environmental Assessment process, while implementation of the actions necessary to meet the requirements of this Performance Standard is managed through the client's **Social and Environmental Management System**.
- B. Where the screening phase detects that a project may affect customary lands and resources under use, the client must *“engage experienced qualified external experts”* to carry out the Assessment *“with the active participation of affected communities of indigenous peoples”* (PS7:11; PS7: GN7:G23)
- C. The process of Social and Environmental Assessment must identify all communities of Indigenous Peoples who may be affected by the project within the project's area of influence, as well as the nature and degree of the expected social, cultural (including cultural heritage), and environmental impacts on them, and avoid adverse impacts whenever feasible.
- D. In high risk IFC projects “located on traditional or customary lands under use”, PS7 applies a standard of **good faith negotiation** under which the client must “...enter into good faith negotiation with the affected communities of indigenous peoples, and document their informed participation and the **successful outcome of the negotiation**”
- E. The required process of good faith negotiation with affected indigenous peoples must ensure **“mutually acceptable procedures** for the negotiation”. This requirement is triggered in projects that may be on “...traditional or customary lands under use and adverse impacts can be expected on the livelihoods, or cultural, ceremonial, or spiritual use that define the identity and community of the Indigenous Peoples...” (PS7:13)
- F. The client must establish an ongoing relationship with affected communities from “as early as possible” in project planning and “throughout the life of the project”.
- G. In high risk projects, the client must use experts to document indigenous peoples' land use “in collaboration with affected communities” and “without prejudicing any indigenous land claim” (PS7:13)
- H. The client will NOT proceed with relocation of indigenous peoples from traditional and customary lands UNLESS it enters into **good faith negotiation** with the affected communities, and documents their informed participation and the successful outcome of the negotiation.
- I. A client's documentation of a “successful outcome” of GFN may include “a memorandum of understanding, a letter of intent, a joint statement of principles, and written agreements” (PS7 – GN7: G25)
- J. The client's proposed action to mitigate adverse impacts ... “will be developed with the **informed participation** of affected indigenous peoples...” (PS7:8)
- K. Mitigation and compensation measures will be “contained in a time-bound plan, such as an IPDP, or a broader community development plan with separate components for IPs” (PS7:8)
- L. In projects with adverse impacts on affected communities of Indigenous Peoples, the consultation process will ensure their free, prior, and informed consultation and facilitate their informed participation on matters that affect them directly, such as proposed mitigation measures, the sharing of development benefits and opportunities, and implementation issues.
- M. Community engagement must:
- be culturally appropriate
  - Involve Indigenous Peoples' representative bodies (for example, councils of elders or village councils, among others)
  - Be inclusive of both women and men and of various age groups in a culturally appropriate manner
  - Provide sufficient time for Indigenous Peoples' collective decision-making processes
  - Facilitate the Indigenous Peoples' expression of their views, concerns, and proposals in the language of their choice, without external manipulation, interference, or coercion, and without intimidation
  - Ensure that the grievance mechanism established for the project (as described in Performance Standard 1) is culturally appropriate and accessible for Indigenous Peoples
- N. The client will seek to identify, through the process of free, prior, and informed consultation with and the informed participation of the affected communities of Indigenous Peoples, opportunities for culturally appropriate development benefits. Such opportunities should be commensurate with the degree of project impacts, with the aim of improving their standard of living and livelihoods in a culturally appropriate manner, and to fostering the long-term sustainability of the natural resource on which they depend.
- O. **IFC managers responsible for the project processing must determine “the level of support and dissent related to the project among the affected communities for the project”** before presenting the project for approval to the IFC Board.
- P. **IFC project managers must review the client's documentation of the process of consultation and the IFC determines if clients' engagement with affected communities has involved free, prior and informed consultation**, that affected indigenous peoples have enjoyed “informed participation” and that this process has **led to the “Broad Community Support” for the project among affected communities (IFC Sustainability Policy)**

**Performance Standard 8: Cultural Heritage**

- A. Requires that the client comply with relevant national law on the protection of cultural heritage, including national law implementing the host country's obligations under the *Convention Concerning the Protection of the World Cultural and Natural Heritage* and other relevant international law
- B. “Where a project may affect cultural heritage, the client will **consult with affected communities** within the host country who use, or have used within living memory, the cultural heritage for long-standing cultural purposes to identify cultural heritage of importance, and to incorporate into the client's decision-making process the views of the affected communities on such cultural heritage.”
- C. The client will not significantly alter, damage, or remove any critical cultural heritage.

Continued

**Performance Standard 8: Cultural Heritage** [Continued]

- D. Where a project potentially damages “critical cultural heritage” and where such damage or “...loss may endanger the cultural or economic survival of communities within the host country who use the cultural heritage for long-standing cultural purposes”, the client is required to carry out “good faith negotiation” with affected communities
- E. In these cases, the client must document the informed participation of the affected communities and the successful outcome of the negotiation. In addition, any other impacts on critical cultural heritage must be appropriately mitigated with the **informed participation of the affected communities**.
- F. Where a project proposes to use the cultural resources, knowledge, innovations, or practices of local communities embodying traditional lifestyles for commercial purposes... The client will not proceed with such commercialization unless it: (i) enters into a good faith negotiation with the affected local communities embodying traditional lifestyles; (ii) documents their informed participation and the successful outcome of the negotiation; and (iii) provides for fair and equitable sharing of benefits from commercialization of such knowledge, innovation, or practice, consistent with their customs and traditions.

In addition, see **IFC Exclusion List** at: <http://www.ifc.org/ifcext/enviro.nsf/Content/IFCExclusionList>

See also **IFC Environment, Health and Safety Guidelines** that must normally be applied under PS3 [http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/gui\\_EHSGuidelines2007\\_GeneralEHS/\\$FILE/Final+-+General+EHS+Guidelines.pdf](http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/gui_EHSGuidelines2007_GeneralEHS/$FILE/Final+-+General+EHS+Guidelines.pdf)

**II. International law and standards on human rights and sustainable development****1. ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries<sup>121</sup> - Resolución Legislativa 26253 [2 Dec 1993]**

- A. Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the (indigenous) peoples concerned. *Such special measures shall not be contrary to the freely-expressed wishes of the peoples concerned...* [Article 4]
- B. “Governments shall ensure that, whenever appropriate, studies are carried out, **in co-operation with the peoples concerned**, to **assess the social, spiritual, cultural and environmental impact** on them of planned development activities” [Art.7.3]
- C. Governments shall “...consult the peoples concerned, through appropriate procedures and in particular **through their representative institutions** whenever consideration is being given to any plans or measure that may affect them [Art.6.1a; see also Articles 7.4, 15.2 and 23.2]
- D. Consultations...shall be undertaken, in **good faith** and **in a form appropriate to the circumstances, with the objective of achieving agreement or consent** to the proposed measures” [Article 6.2]
- E. “...Governments shall establish means by which these peoples can **freely participate...at all levels of decision-making** in elective institutions and administrative and other bodies responsible for policies and programmes which concern them” [Art. 6.1b]
- F. “Governments shall take measures, **in co-operation with the peoples concerned**, to **protect and preserve the environment of the territories they inhabit**” [Article 7.4]
- G. Governments shall respect the special attachment indigenous peoples have to their lands and territories ... “and in particular the **collective aspects** of this relationship” [Article 13.1]
- H. Governments shall recognise and respect “...the rights of **ownership and possession** of the peoples concerned over the lands which they traditionally occupy shall be recognised... Particular attention shall be paid to the situation of **nomadic peoples and shifting cultivators** in this respect.” [Art. 14.1 etc]
- I. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession [Art. 14.2]
- J. Adequate procedures shall be established within the national legal system to **resolve land claims** by the peoples concerned [Art. 14.3]
- K. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded...[Article 15.1]
- L. In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities [Article 15.2]
- M. Projects with components for indigenous peoples shall include “**Special measures**...for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned.” [Article 4.1] ...Such measures shall not be contrary to their “freely expressed wishes” [Article 4.2]
- N. Subject to other Articles of the Convention “...the peoples concerned shall **not be removed** from the lands which they occupy” [Art.16.1]. “Where the relocation of these peoples is considered necessary as an **exceptional measure**, such relocation shall take place only with their **free and informed consent**...” [Article 16.2]
- O. Procedures established by the peoples concerned for the transmission of land rights among members of these peoples shall be respected [Article 17.1]
- P. The peoples concerned shall be consulted whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their rights outside their own community [Article 17.2]

- Q. Persons not belonging to these peoples shall be prevented from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them [Article 17.3]
- R. Adequate penalties shall be established by law for unauthorised intrusion upon, or use of, the lands of the peoples concerned, and governments shall take measures to prevent such offences [Article 18]

## 2. Human rights instruments

Peru has ratified the following human rights instruments:

- International Covenant on Economic Social and Cultural Rights – ICESCR (ratified 1978)
- International Covenant on Civil and Political Rights – ICCPR (1978)
- International Convention on the Elimination of all Forms of Racial Discrimination – CERD (1971)
- Convention on the Elimination of All Forms of Racial Discrimination Against Women – CEDAW (1982)
- Convention on the Rights of the Child – CRC (1990)
- American Convention on Human Rights (1978)
- Additional Protocol to the American convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador") (1995)
- ILO Convention 169 Concerning Indigenous and Tribal Peoples in Independent Countries (see #4 above)

HR bodies have issued a series of authoritative statements in relation to indigenous peoples under HR instruments ratified by Peru. In 2006, the UN Human Rights Council “stress[ed] the obligation of the State party to seek the informed consent of indigenous peoples before adopting decisions affecting them...”<sup>122</sup>

In 1997, the CERD Committee called upon States-parties to “ensure that members of indigenous peoples have equal rights in respect of effective participation in public life, and that no decisions directly relating to their rights and interests are taken without their informed consent.”<sup>123</sup>

In 2006, the IACHR concluded that “...in light of the way international human rights legislation has evolved with respect to the rights of indigenous peoples (their) consent to natural resource exploitation activities on their traditional territories is always required by law.”

In the IACHR *Mayagna (Sumo) Indigenous Community of Awás Tingni v. the Republic of Nicaragua Case*, the Court confirmed that indigenous peoples’ territorial rights arise from traditional occupation and use and indigenous forms of tenure, not from grants, recognition or registration by the state.

## 3. Some relevant standards established in the UN Declaration on the Rights of Indigenous Peoples

- Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development...(Article 23)
- Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and ...other resources... (Article 25)
- Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired (Article 26(1))
- Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired (Article 26(2))
- States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned (Article 26(3))
- Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, of a just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent (Article 28(1))
- Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress (Article 28(2))
- Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination (Article 29(1))
- States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent (Article 29(2))
- States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented (Article 29(3))
- Indigenous peoples have the right to determine and develop priorities and strategies for the development or



use of their lands or territories and other resources. (Article 32(1))

- States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their **free and informed consent** prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of their **mineral, water or other resources** (Article 32(2))
- States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact (Article 32(3))
- States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration (Article 38)
- Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration (Article 39)
- Indigenous peoples have the right to have access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights....(Article 40)
- The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established (Article 41)
- The UN, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States, shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration (Article 42)
- The rights recognized (in the Declaration) constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world (Article 43)

<sup>1</sup> USAID (2006) *Multilateral Development Bank Assistance Proposals – likely to have adverse impacts on the environment, natural resources, public health and indigenous peoples (October 2004-September 2006)* USAID, Washington DC at page 12

<sup>2</sup> Defensoría del Pueblo (2006) *El Proyecto Camisea y sus efectos en los derechos de las personas* Informe Defensorial No. 103, Defensoría del Pueblo, Lima, February 2006

<sup>3</sup> Walsh Perú S.A. (2005) *Environmental and Social Impact Assessment: Natural Gas Pipeline Transportation Project from Ayacucho to the Liquefaction Plant – Volume IV. Social Environmental and Social Management Plan* Walsh Peru S.A., Project No. 1239, November 2005 at page IV.10.1

<sup>4</sup> The EIA does note, however, that ILO Convention 169 standards will be applied in the hiring of “local people”, which indirectly acknowledges that many affected communities are indeed indigenous peoples. See Walsh Perú S.A. (2005) *Environmental and Social Impact Assessment: Natural Gas Pipeline Transportation Project from Ayacucho to the Liquefaction Plant – Volume IV. Social Environmental and Social Management Plan* Walsh Peru S.A., Project No. 1239, November 2005 at page IV-11-7

<sup>5</sup> [http://www.perulng.com/proj\\_pipeline.asp](http://www.perulng.com/proj_pipeline.asp)

<sup>6</sup> Rivera, L, pers. comm., May 2007

<sup>7</sup> Friends of the Earth International (2007) Halliburton and Peru’s Camisea Project

<http://www.foei.org/en/campaigns/forests/news/camisea.html>

<sup>8</sup> La Torre, L (1998) *¡Solo queremos vivir en paz! Experiencias petroleras en territorios indígenas de la Amazonía peruana* IWGIA Document 25, IWGIA and Racimos de Ungurahui, Copenhagen and Lima at page 141-142

<sup>9</sup> Goldzimer, A (2005) *Peru: Camisea Gas and Gas Liquids Project* Environmental Defense, January 2005

<sup>10</sup> ERM(2001) *Estudio de impacto ambiental: Proyecto Camisea Lote 88*

<http://www.minem.gob.pe/archivos/camisea/estudios/proyectocamisea/proyectocami.htm>

<sup>11</sup> Caffrey, P B (2002) *An Independent Environmental and Social Assessment of the Camisea Gas Project* Report Commissioned by The Machiguenga Council of the Urubamba River (COMARU) and the Interethnic Association of the Peruvian Amazon (AIDSESP), April 2002 at pages 18-20

<sup>12</sup> Defensoría del Pueblo (2006) *El Proyecto Camisea y sus efectos en los derechos de las personas* Informe Defensorial No. 103, Defensoría del Pueblo, Lima, February 2006

<sup>13</sup> Feather, C (2002) “Peru: Camisea gas project undermines the rights of indigenous peoples” *WRM Bulletin No. 62, September 2002* <http://www.wrm.org.uy/bulletin/62/Peru.html>

<sup>14</sup> Defensoría del Pueblo (2006) *El Proyecto Camisea y sus efectos en los derechos de las personas* Informe Defensorial No. 103, Defensoría del Pueblo, Lima, February 2006 at page 35

<sup>15</sup> Salazar Tirado, C and Powers, B (2006) *Evaluation of Camisea Project Piping Failures and Long-term Solutions* A report prepared for E-Tech International, February 27, 2006; Hearn, K (2007) “The Camisea cover-up” *NACLA* press article, January 25, 2007

<sup>16</sup> Caffrey, P B (2002) *An Independent Environmental and Social Assessment of the Camisea Gas Project* Report Commissioned by The Machiguenga Council of the Urubamba River (COMARU) and the Interethnic Association of the Peruvian Amazon (AIDSESP), April 2002; Shinai (2004) *Aquí Vivimos Bien – Kamyeti notimaigzi aka: Territorio y uso de recursos de los pueblos indígenas de la Reserva Kugapakori Nahua* Shinai, Lima at pages 86-90; Merino Lucero, B (2006) *El Proyecto Camisea y sus efectos en los derechos de las personas* Informe Defensorial No. 103, Defensoría del Pueblo, Lima, February 2006 at pages 24-25. See also USAID (2004) *Multilateral Development Bank Assistance Proposals – likely to have adverse impacts on the environment, natural resources, public health and indigenous peoples (September 2002-October 2004)* USAID, Washington DC at pages 8-10 and IDB (2006) *Camisea Project: Incident Report* IDB, Washington DC, April 2006

- <sup>17</sup> Amazon Watch (2006) *Substandard Peruvian Gas Pipeline Blamed for Spills* Press release, March 2006 <http://www.ens-news.com/ens/mar2006/2006-03-02-02.asp>; Osinbergmin (2007) *Informe sobre falla ocurrida en el ducto de Líquidos de Gas Natural del Sistema de Transportes de Camisea* [http://www.osinerg.gob.pe/osinerg/camisea/informes/informeCamiseaDucto\\_sexta.pdf](http://www.osinerg.gob.pe/osinerg/camisea/informes/informeCamiseaDucto_sexta.pdf)
- <sup>18</sup> “Resultados de la UNSAAC” *Matsigenkaegi Año 1(1), febrero de 2005*
- <sup>19</sup> “Cómo fue el derrame de gas?” *Matsigenkaegi Año 1(1), febrero de 2005*
- <sup>20</sup> “Peru: Camisea gas project undermines the rights of indigenous peoples” *WRM Bulletin No. 62, September 2002*; Kostishak, P(2004) *The impacts of the Camisea Gas Project on the isolated indigenous peoples of the Nahua-Kugapakori Reserve Amazon Alliance Update*, May 8, 2004
- <sup>21</sup> Napolitano, D.A., Stephens, C. (2003) *La salud de los pueblos indígenas y el Proyecto Camisea*, Informe para AIDSESP, LSHTM/Shinai; 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
- <sup>22</sup> Need a source for the 2006 Nanti epidemic outbreak
- <sup>23</sup> ERM (2004) *Estudio de Impacto Ambiental y Social Lote 56 – Línea de Base Ambiental* November 2004. Ref.
- <sup>24</sup> ERM (2004) *Estudio de Impacto Ambiental y Social Lote 56 – Línea de Base Social* November 2004. Ref. PLU\_03\_536, ERM Perú S.A., Lima
- <sup>25</sup> See especially – *Mapa 1: Territorios indígenas en la Reserva Kugapakori, Nahua, Nanti y otros in Shinai* (2004) *Aquí Vivimos Bien – Kamyeti notimaigzi aka: Territorio y uso de recursos de los pueblos indígenas de la Reserva Kugapakori Nahua* Shinai, Lima
- <sup>26</sup> Swierk, K (2006) *El Territorio de los Matsigenka Paquirianos: informe sobre el uso de recursos y el territorio de un grupo regional/territorial de la etnia Matsigenka – cuencas del Paquiria y de unos ríos adyacentes, Sur de la Amazonia peruana* at page 8 [http://www.onr.com/cabeceras/swierk\\_inform\\_paquiria\\_2004.pdf](http://www.onr.com/cabeceras/swierk_inform_paquiria_2004.pdf)
- <sup>27</sup> On land use and territorial occupation patterns among isolated indigenous peoples in other parts of the Peruvian Amazon, see Huertas Castillo, B (2002) *Los Pueblos Indígenas en Aislamiento: su lucha por la sobrevivencia y la libertad* IWGIA, Copenhagen
- <sup>28</sup> Rivera, L, pers. comm., May 2007; *Pluspetrol invertirá 60 millones en perforación de 3 nuevos pozos de gas natural* Agencia Peruana de Noticias <http://www.andina.com.pe/NoticiaDetalle.aspx?id=124568>
- <sup>29</sup> The 2004 EIA volume on impact analysis for Block 56 deals with impacts on soils, landscape, flora and fauna, hydrology, air quality, noise levels and social and cultural impacts. It does not have a category for impact on “critical habitats”. Though impacts and “alteration” of habitats is discussed and tabulated, there is no systematic *identification* of critical habitats, even though classification of habitats and component species and their conservation status is documented in detail in the biological baseline study.
- <sup>30</sup> ERM (2004) *Estudio de Impacto Ambiental y Social Lote 56 – Línea de Base Social* November 2004. Ref. PLU\_03\_536, ERM Perú S.A., Lima at page 4-35 (footnote 10). The same study on page 4-117 seems to have a typographical error later in the report where it is stated: “[...] indigenous communities make extensive use of their territories, one the possible explanations for having [?] evidence of the presence of ‘uncontacted’ groups or groups in ‘voluntary isolation’ within the perimeter of Block 56”. Presumably the negative is lost here in the original text.
- <sup>31</sup> See Huertas Castillo, B (2002) *op. cit.*
- <sup>32</sup> See, for example, ERM (2004) *Capítulo 5: Estudio de Impacto Ambiental y Social Lote 56 – Evaluación de impactos* November 2004. Ref. PLU\_03\_536, ERM Perú S.A., Lima at pages 5-56-5-65, 5-100-101, 5-204 and impact matrices in annexes.
- <sup>33</sup> COMARU (2004) Statement on Lote 56, signed by 28 indigenous and community leaders in Quillabamba on 30<sup>th</sup> November 2004
- <sup>34</sup> See, for example, COMARU (2004) *Memorial al Señor Ministro de Energía y Minas Carpintero*, 6 November 2004
- <sup>35</sup> “El ‘cilindrazo’ de los machiguengas” *Matsigenkaegi Año 1(1), febrero de 2005*
- <sup>36</sup> “Los ochos puntos que exige COMARU” *Matsigenkaegi Año 1(1), febrero de 2005*
- <sup>37</sup> Comunidad Nativa Shivankoreni (2005) *A la opinión pública nacional e internacional: CN Shivankoreni rechaza la audiencia pública para el Lote 56* CN Shivankoreni, Río Camisea, 5 de mayo de 2005
- <sup>38</sup> Dora Napolitano, pers. comm, April 2007; Rivera, L, pers. comm. May 2007
- <sup>39</sup> “A firma consultor E-Tech Internacional: Pluspetrol necesita un año para superar deficiencias” *Matsigenkaegi Año 1(2), marzo de 2005*
- <sup>40</sup> See, for example, Shinai (2005) *Preguntas presentadas por Shinai en la audiencia pública (9 y 10 de mayo, 2005) que no se leyeron o no se respondieron adecuadamente*, Shinai, Lima (document sent to DGAAE which never received any response)
- <sup>41</sup> Ministerio de Energía y Minas (2005) *Resolución Directoral No.230* Lima, 12 de julio de 2005.
- <sup>42</sup> Rivera, L , pers comm, May 2007
- <sup>43</sup> COMARU (2005) *Pronunciamento al Defensor del Pueblo, al Presidente del INDEPA a la opinión pública nacional e internacional* Quillabamba, 04 de julio del 2005, signed by representatives of 22 Native Communities
- <sup>44</sup> Servindi (2005) “Perú: Crece protesta contra Camisea, el gasoducto coladera” Email boletín, October 2005
- <sup>45</sup> COMARU, pers comm, May 2007
- <sup>46</sup> Rivera, L, pers comm, May 2007
- <sup>47</sup> E-Tech International (2004) *Review of “Estudio de Impacto Ambiental y Social del Lote 56” (proyecto Camisea)*, by ERM, Perú S.A. for PlusPetrol Perú Corporación S.A. ETI, Santa Fe Asociación Interétnica de Desarrollo de la Selva Peruana (2005) *Análisis, conclusiones y recomendaciones sobre el Estudio de Impacto Ambiental del Lote 56 (realizado por*

*PlusPetrol Perú Corporación S.A. AIDSESEP, Lima;*; Tampianori (2005) “EIA del Lote 56 tiene deficiencias” *Matsigenkaegi* Año 1(2), marzo de 2005

<sup>48</sup> IDB (2006) *Peru LNG Project (Peru LNG): Project Abstract – PE-L1016* IDB, Washington, July 17, 2006

<sup>49</sup> See, for example, Goodland, R (2003) *Peru: Camisea Natural Gas Project: an independent assessment of the environmental and social priorities* Report prepared for WWF. CI, The Nature Conservancy and the Smithsonian Institution at pages 3 and 28-29.

<sup>50</sup> Goodland, R (2003) *Peru: Camisea Natural Gas Project: an independent assessment of the environmental and social priorities* Report prepared for WWF. CI, The Nature Conservancy and the Smithsonian Institution

<sup>51</sup> Goldzimer, A (2005) *Peru: Camisea Gas and Gas Liquids Project* Environmental Defense, January 2005

<sup>52</sup> FPP (2003) Letter to UK Executive Director

<sup>53</sup> [http://www.forestpeoples.org/documents/ifi\\_igo/idb\\_camisea\\_peru\\_fpp\\_let\\_dec03.shtml](http://www.forestpeoples.org/documents/ifi_igo/idb_camisea_peru_fpp_let_dec03.shtml)

<sup>53</sup> <http://www.iadb.org/projects/Project.cfm?project=PE0233&Language=English>

<sup>54</sup> Defensoría del Pueblo (2006) *El Proyecto Camisea y sus efectos en los derechos de las personas*” Informe Defensorial No. 103, Defensoría del Pueblo, Lima, February 2006 at page 35

<sup>55</sup> Article 2 of the Peruvian Constitution and under the 1988 Protocol to the American Convention on Human Rights, ratified by Peru. See also, among others, Article 11 of 1966 UN Covenant on Economic, Social, and Cultural Rights – see

<http://www.unu.edu/unupress/unupbooks/uu25ee/uu25ee0q.htm>

<sup>56</sup> <http://www.ohchr.org/english/issues/health/right/index.htm>

<sup>57</sup> Defensoría del Pueblo (2006) *El Proyecto Camisea y sus efectos en los derechos de las personas*” Informe Defensorial No. 103, Defensoría del Pueblo, Lima, February 2006 at page 4

<sup>58</sup> <http://www.righttofood.org/>

<sup>59</sup> <http://www.pdhre.org/rights/land.html>

<sup>60</sup> In the first three years of the project, IDB staff had carried out over 30 missions to Peru related to the Camisea project – See IDB (2006) *Camisea Project: a fact sheet* <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=755898>

<sup>61</sup> COMARU, pers. comm, May 2007

<sup>62</sup> CEDIA pers comm, May, 2007

<sup>63</sup> Goldzimer, A (2005) *Peru: Camisea Gas and Gas Liquids Project* Environmental Defense, January 2005

<sup>64</sup> COMARU, pers. comm, May 2007

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