

Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the right to food; and the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

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3 March 2022

Excellency,

We have the honour to address you in our capacities as Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; Special Rapporteur on the right to food and Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, pursuant to Human Rights Council resolutions 44/15, 46/7, 32/8 and 45/17.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received regarding the human rights impact of oil spills on the Callao maritime coastline at the facilities of **the La Pampilla S.A.A. Refinery or Relapasa, a subsidiary of Repsol Peru B.V., which forms part of the Spanish Repsol group.**

According to the information received:

Repsol has been operating since 1996 in Peru as part of its exploratory work, Repsol Perú B.V. has natural resource exploitation rights in Peru over four blocks: one exploration block, with a net area of 13,185 km², and three production/development blocks, with a net area of 202 km². Repsol Peru B.V, which is incorporated and existing under the laws of the Netherlands. carries out part of its refining activities through La Pampilla Refinery, a facility that has become the most modern and important oil refinery in the country, according to the company. Repsol Perú B.V. is a subsidiary of Repsol SA,

Facts from a human rights perspective.

On Saturday, January 15, the tanker "Mare Doricum" (a vessel owned by the Italian parent company "La Fratelli d'Amico Armatori S.p.A.") was unloading Brazilian crude oil from a Petrobras plant in the sea of Ventanilla, in the Constitutional Province of Callao from the La Pampilla Refinery, an asset of Repsol Peru B. V. During this operation, an incident occurred at the La Pampilla Refinery. This operation resulted in a spill of more than 11,900 barrels, severely affecting the human rights of the people living in the area and of the general population and the environment, including the maritime and coastal ecosystems. The government estimates that the spill will affect at least 180 hectares of beach and coastline and 713 hectares in the sea. The contamination of land, surface groundwater, and sediments leaves local farmers and communities without local

food. It is estimated that more than 1,000 local fishermen are directly affected. It is also assessed that heavy metals from crude oil will remain in the ecosystem for many years, making fish, molluscs and other marine species dangerous for human consumption, and affecting the entire marine food chain, which highlights a severe medium to long term impact. Impregnating the caves and coasts, this spill is expected to have a strong impact on tourism, and consequently on the work and resources of many local workers, some of whom work informally.

All this has repercussions on the right to a healthy, clean and sustainable environment, the right to food, the right to drinking water, the right to an adequate standard of living, the right to work, the right to health and therefore the right to life. Also noteworthy is the impact on biodiversity, particularly on the two protected areas in the region. The National Service of Natural Protected Areas (SERNANP) and the National Forestry and Wildlife Service (SERFOR) have reported that the environmental impacts extend over the National Reserve System of Islands, Islets, and Puntas Guaneras - Islotes de Pescadores, the Ancón Reserved Zone, negatively impacting the living conditions and ecosystems of various species, especially guano birds. As of February 8, traces of oil are still being identified in rocks, sand and sea at Caverro, Pachacútec, Isla Mata Cuatro, Pocitos, Miramar, Las Conchitas, Toma y Calla, Chacra y Mar and La Calichera beaches.

Response from REPSOL Peru B.V.

On January 16, after the dissemination of photos and videos of the negative impact of the oil in the sea and on the coast, the company Repsol Perú B.V. acknowledged the existence of "a limited spill that was quickly overcome", attributable to an unusual increase of tides during the unloading of fuel and pointed out the activation of security protocols and measures to control the incident. The Government accused Repsol Peru B.V. of failing to immediately and diligently warn of the incident and misrepresenting the magnitude of the incident. Repsol Peru B.V. first reported that the spill was 0.16 barrels before updating the figure to more than 10,000, after the government's own estimate indicated that the spill was about 11,900 barrels. According to the information received, the company had a contingency plan in place to adequately respond to an event of this nature, but it is alleged that the operators were not familiar with its practical application, as no drills and training had been conducted since mid-March 2020.

To remediate the impacts of the spill, the company reported having taken consistent measures to address impacts on land, sea and animals.¹ To this end, the company indicated that it has hired the best companies with expertise in spill control and has hired a contingent of local workers to assist in actions to clean up the spilled oil². However, according to the Directorate of Disaster Risk Management of the Ministry of Health, there have been reports of health problems among the workers, including two hospitalizations for acute

¹ <https://www.repsol.com/en/press-room/ventanilla-accident-information/index.cshtml>.

² https://www.repsol.com/content/dam/repsol-corporate/en_gb/sala-de-prensa/documentos-sala-de-prensa/pr01022022-minister-environment-visits-repsol-emergency-control-center.pdf.

intoxication, because the work was carried out without personal protective equipment. In addition, the company has announced that it will provide assistance to more than 1,600 fishermen and local vendors³.

It is alleged that the measures taken by the company have not been adequate and proportionate to the impact caused. In addition, the company has allegedly failed to comply with government orders. For example, the Environmental Evaluation and Oversight Agency (OEFA) ordered the company to identify the contaminated areas. Due to the lack of compliance, on February 3 the Government fined Repsol Peru B.V. 122 thousand dollars after the company failed to identify the affected areas.

It is also worth mentioning that on January 20, the National Society of Mining, Petroleum and Energy (SNMPE), as a business association of which Repsol Peru B.V. is a member, stated that in application of the Code of Conduct they had initiated an internal process against Repsol Peru B.V. and had publicly requested that it address the consequences of the spill, and to avoid similar events, prioritizing social and environmental responsibility.

Response from Fratelli d'Amico Armatorio S.p.A:

For its part, Fratelli d'Amico Armatori SpA, owner of the Italian-flagged tanker Mare Doricum, reported that "following the sudden rupture of the terminal's underwater pipeline, an oil slick was observed near the ship. At around 17:25 local time, the watch on board quickly informed the first officer, who immediately stopped the offloading operations and ensured that the manifold valves were closed. The SOPEP (Shipboard Oil Pollution Emergency Plan) was immediately activated, and the appropriate authorities were informed." The vessel moved to the port of Callao, with no reports of damage. Faced with accusations against the vessel, the captain of the Italian ship emphasized that the responsibility of the transport company extends from the connection of the oil valves to its final destination, dismissing that the surge caused the rupture, and pointing out that Repsol Peru B.V. omitted to report the amount of crude oil discharged, which would have allowed a calculation of the precise volume of the spill, and that underwater diving activities were delayed. Specific responsibilities for the spill are still under investigation, but it is alleged that the spill could have been related to the force of the vessel's displacement on the pumping hoses.

Response from the State:

Upon becoming aware of the facts, the Port Captaincy of Callao, the Peruvian General Directorate of Captains and Coast Guard drew up a record of the facts and initiated a summary investigation process. The Environmental Evaluation and Inspection Agency (OEFA) carried out environmental inspections to determine the causes, the responsibility for the facts and the impact generated.

³ https://www.repsol.com/content/dam/repsol-corporate/en_gb/sala-de-prensa/documentos-sala-de-prensa/pr29012022-collaboration-agreement-with-fishermen-press-release.pdf.

As part of its activities, the OEFA has requested the adoption of first response actions by Repsol Peru B.V. and a schedule of activities.

Likewise, the Supervisory Body of Investment in Energy and Mining (OSINERGMIN), ordered La Pampilla Refinery to suspend operations at the N°2 terminal, where the incident occurred, and that tankers do not unload fuel at this jetty located 4.5 kilometres from the coast, in the sea of Ventanilla. In addition, the National Maritime Authority has prohibited the departure of the "Mare Doricum", unless it presents a bond letter of 150 million soles.

For its part, the Ministry of Justice and Human Rights, in the framework of its stewardship of public policy on human rights and the functions assigned by the National Action Plan on Business and Human Rights (NAP) 2021-2025, requested Repsol Peru B.V. to report on the actions and due diligence mechanisms implemented, in application of the UN Guiding Principles on Business and Human Rights, to prevent actual or potential negative consequences on human rights of the spill and to mitigate and remedy such impacts, in accordance with international standards. The Office of the High Commissioner on Human Rights and the United Nations System provide support to the government to address this emergency.

The Special Prosecutor's Office for Environmental Matters of Northern Lima initiated a preliminary investigation against the legal representatives of La Pampilla Refinery and those responsible for the alleged crime of environmental contamination. On January 21, the Ministry of Environment declared, for a period of ninety days, an environmental emergency in the coastal marine area and approved an Immediate and Short-Term Action Plan.

According to the information received, in order to carry out the clean-up actions, local governments have arranged for municipal clean-up workers (mostly women) to remove contaminated material from the soil.

Despite the clean-up measures carried out at the local level, it is alleged that the supervisory bodies, in charge of the Ministry of the Environment, the Ministry of Energy and Mines, the Ministry of Defence, among others, have favoured supervisory and punitive actions against the company but have delayed their response in adopting measures to contain the advance of the oil into the sea and along the coasts, in coordination with the competent authorities and the company, including remediation, clean-up actions, and identification of the social, economic, cultural and humanitarian impacts. Although the government has begun to register fisherpersons and local communities affected by the oil spill in order to provide economic assistance, this effort must be redoubled, considering the impacts on all human rights and all affected communities, incorporating a differential approach into the analysis and the support provided, including in relation to women and children.

On the other hand, according to the information received, the potential and cumulative impacts of the oil spill on cultural spaces and aquifers near the beaches that were contaminated, on which local communities depend for consumption, and on spaces for agricultural work nearby or spaces that depend

on seabird fertilizers, have not yet been identified. The Ministry of Health has had to deploy health campaigns and deliver jerry cans and water tanks for food preparation in common pots in some affected communities.

At the Government's request, the United Nations Resident Coordinator for Peru deployed a group of experts to conduct a rapid environmental impact assessment and advise the authorities on the management and coordination of the response and to reduce the risk of future disasters in the country. The UN technical mission recommended to the Peruvian government the need to establish an action protocol that includes a Joint Command Center between the State and the company to apply international best practices. Likewise, the mission proposed a strategic action plan that includes communication with the population, but at the same time, that includes their needs and allows them to participate in the solutions. The mission also identified the need to design an environmental monitoring plan to track the evolution of the impact, including on ecosystems and biodiversity, in the short, medium and long term. Finally, the mission also recommended the development of a national oil pollution response system, including contingency and coordination plans at various levels on a clear regulatory and operational basis to obtain and process information. In a briefing note, the UN Environmental Emergency Mission further noted that "the impact on wildlife and natural resources has hit the local communities especially hard, and not only the families living from fishing and tourism related activities. However, to date there is no evidence of damage assessments or comprehensive needs analysis of the population, which would allow a better understanding of the damages suffered, current needs, the impact of lost profits, and to have an idea of the gender, age and location of the population in need. Therefore, it is recommended that a needs analysis of the affected population be carried out as soon as possible to ensure the implementation of mechanisms for communication and community participation in assistance and socioeconomic recovery plans".⁴

While we do not wish to prejudge the accuracy of these allegations, we wish to express our grave concern about the human rights impact of this spill, which has resulted in severe, extensive and long-lasting damage to the environment, which requires human rights-based mitigation measures with a differential approach, mechanisms for accountability and comprehensive reparation by the State and the company, including guarantees of non-repetition.

We are particularly concerned that this spill will severely affect the right to a healthy, clean and sustainable environment, the right to food, the right to drinking water, the right to an adequate standard of living, the right to work and safe working conditions, the right to health and therefore the right to life.

In relation to the above allegations, please find attached the **Annex of references to international human rights law** which summarizes the relevant international instruments and principles.

⁴ <https://peru.un.org/es/171833-mision-de-expertos-onu-ante-la-emergencia-ambiental-presenta-resultados-en-reunion-de>

It is our responsibility, in accordance with the mandates given to us by the Human Rights Council, to attempt to clarify the allegations brought to our attention. In this regard, we would be very grateful to have your cooperation and comments on the following issues:

1. Please provide any additional information or comments in relation to the allegations mentioned above.
2. Please provide information on the measures that your Excellency's Government has taken, or is considering taking, to protect individuals from human rights abuses by companies domiciled in the Netherlands and operating in other countries, including Repsol Peru B.V., including through the implementation of its National Action Plan on business and human rights and other measures.
3. Please provide information on concrete progress in requiring or encouraging companies domiciled in your territory and/or jurisdiction to implement human rights due diligence processes.
4. Please provide information on the measures that your Excellency's Government is taking or considering taking to ensure that persons affected by activities occurring outside your territory by business enterprises domiciled in your jurisdiction have access to remedy in your country, through State judicial or extra-judicial mechanisms.

This communication and any response received from your Excellency's Government will be made public through the communications [website](#) within 60 days. They will also be made available subsequently in the report to be submitted to the Human Rights Council.

Pending your response, we would like to urge your Excellency's Government to take all necessary measures to protect the rights and freedoms of the above-mentioned person(s) and to investigate, prosecute and impose appropriate sanctions on any person or company responsible for the alleged violations. We would also urge you to take effective measures to prevent the recurrence of such events, if they have occurred.

We will consider publicly expressing our concerns in the near future, as we believe that the information received is sufficiently reliable to indicate that there is a matter that warrants immediate attention. In addition, we believe that the public needs to be informed of the potential implications related to the above allegations. The press release will indicate that we have been in contact with Your Excellency's Government to clarify the relevant issues.

Please be informed that letters in this matters have also been sent to the Governments of Spain and Peru, and to Repsol S.A, Repsol Peru B.V and the Refinery La Pampilla S.A.A.

Please accept, Excellency, the assurances of our highest consideration.

Elżbieta Karska
Chair-Rapporteur of the Working Group on the issue of human rights and
transnational corporations and other business enterprises

David R. Boyd
Special Rapporteur on the issue of human rights obligations relating to the enjoyment
of a safe, clean, healthy and sustainable environment

Michael Fakhri
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management and disposal of hazardous substances and wastes

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to draw the attention of Your Excellency's Government to the applicable international human rights norms and standards, as well as authoritative guidance on their interpretation. These include the following:

- Universal Declaration of Human Rights;
- International Covenant on Economic, Social and Cultural Rights;
- International Covenant on Civil and Political Rights;
- Convention on the Rights of the Child;
- United Nations Declaration on the Rights of Indigenous Peoples;
- Maastricht Principles on Extraterritorial Obligations;
- United Nations Framework Principles on Human Rights and the Environment; and,
- United Nations Guiding Principles on Business and Human Rights

We would like to bring the attention of your Excellency Government the UN Guiding Principles on Business and Human Rights, which received unanimous support by the Human Rights Council in June 2011. These Guiding Principles are based on the recognition of:

- “a. States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- b. The role of corporations as specialized organs of society that perform specialized functions and must comply with all applicable laws and respect human rights;
- c. The need for rights and obligations to be accompanied by adequate and effective remedies in the event of non-compliance.”

According to the Guiding Principles, States must protect against human rights violations committed within their territory and/or jurisdiction by third parties, including businesses.

The Guiding Principles clarify that, in accordance with international human rights obligations, "States must protect against human rights violations committed within their territory and/or jurisdiction by third parties, including business enterprises"

(Guiding Principle 1). This requires States to 'clearly enunciate that all companies domiciled in their territory and/or jurisdiction are expected to respect human rights in all their activities' (Guiding Principle 2). In fulfilling their obligation to protect, States should: (a) Enforce laws that have the purpose or effect of enforcing respect for human rights by business, periodically assess the adequacy of such laws and remedy any shortcomings; (b) Ensure that other laws and regulations governing the establishment and activities of business, such as commercial law, are not restrictive of, but conducive to, respect for human rights by business; c) Effectively advise companies on how to respect human rights in their activities; (d) Encourage and, if necessary, require companies to explain how they take into account the impact of their activities on human rights (Guiding Principle 3). States should also take appropriate measures to ensure, through appropriate judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction, those affected have access to effective remedy" (Principle 25).

Business enterprises, in turn, are expected to conduct human rights due diligence to identify, prevent, mitigate and account for their human rights impacts. To fulfil their responsibility to respect human rights, companies should have in place policies and procedures appropriate to their size and circumstances, including:

(a) A political commitment to assume their responsibility to respect human rights;

b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their human rights impacts;

(c) Processes to remedy any adverse human rights impacts they have caused or contributed to. "(Guiding Principle 15).

In addition, the Committee on Economic, Social and Cultural Rights in its General Recommendation 24 (2017) states that "the extraterritorial obligation to protect requires States parties to take steps to prevent and redress violations of Covenant rights occurring outside their territories due to the activities of business entities over which they may exercise control, especially in cases where the remedies available to victims before the domestic courts of the State where the harm occurs are unavailable or ineffective."

Furthermore, it should be noted that, based on international law, the Maastricht Principles aim to clarify the content of States' extraterritorial obligations to realize economic, social and cultural rights in order to promote and give full effect to the purposes of the Charter of the United Nations and international human rights. [...] All States have obligations to respect, protect and fulfill human rights, including civil, cultural, economic, political and social rights, both within their territories and extraterritorially. Each State has the obligation to realize the economic, social and cultural rights of all persons within its territory to the maximum extent of its capabilities. All states also have extraterritorial obligations to respect, protect and fulfill economic, social and cultural rights.

We would like to remind your Excellency's Government of the explicit recognition of the human rights to safe drinking water and sanitation by the United

Nations General Assembly (resolution 64/292) and the Human Rights Council (resolution 15/9), which derives from the right to an adequate standard of living, protected, inter alia, by Article 25 of the Universal Declaration of Human Rights, and Article 11 of the ICESCR. In its General Comment No. 15, the Committee on Economic, Social and Cultural Rights (CESCR) clarified that the human right to water means that everyone has the right to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.

The Committee also stated that the human right to water implies "sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses," not only to prevent death from dehydration, but also to reduce the risk of water-related diseases and to meet personal and domestic consumption, cooking, and hygiene needs. The Committee also noted the obligation of States to ensure the protection of natural water resources.

We would also like to draw your attention to the Human Rights Committee's General Comment No. 36 on the right to life. According to the HRC, the duty to protect life also implies that States parties should take appropriate measures to address general conditions in society that may give rise to direct threats to life or prevent people from enjoying their right to life with dignity, including environmental degradation (para. 26). The implementation of the obligation to respect and ensure the right to life, and in particular to life with dignity, depends, inter alia, on the measures taken by States parties to preserve the environment and protect it from damage, pollution and climate change caused by public and private actors (para. 62).

We would also like to draw your attention to article 12 of the International Covenant on Economic, Social and Cultural Rights, which enshrines the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The right to health is also guaranteed as part of the Universal Declaration of Human Rights, Article 25, which is read in terms of the individual's potential, the social and environmental conditions affecting the individual's health, and in terms of health services. General Comment No. 14 of the Committee on Economic, Social and Cultural Rights describes the normative content of Article 12 of the International Covenant on Economic, Social and Cultural Rights and the legal obligations undertaken by States Parties to respect, protect and fulfil the right to physical and mental health. In paragraph 11 of General Comment No. 14, the Committee on Economic, Social and Cultural Rights interprets the right to health as "an inclusive right that encompasses not only timely and appropriate health care, but also the underlying determinants of health, such as access to safe drinking water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information."

Furthermore, the Committee on Economic, Social and Cultural Rights affirmed that "business activities may adversely affect the enjoyment of Covenant rights", including through adverse effects on the right to health, standard of living and the natural environment, and reiterated "the obligation of States parties to ensure that all economic, social and cultural rights set forth in the Covenant are fully respected and that the holders of these rights are adequately protected in the context of business activities" (E/C.12/2011/1, para. 1).

We would also like to draw the attention of your Excellency's Government to the United Nations Declaration on the Rights of Indigenous Peoples, which reflects existing legal obligations arising from international human rights treaties. In particular, article 24, paragraph 2, of the Declaration states that indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. Likewise, Article 24 of the Convention on the Rights of the Child recognizes the right of the child to the enjoyment of the highest attainable standard of physical and mental health and the concomitant duty of the State to provide adequate nutritious food and safe drinking water, taking into account the dangers and risks of environmental pollution.

In addition, we would like to recall the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas. In accordance with Article 1, paragraph 2, the Declaration applies to any person engaged in small-scale or artisanal agriculture, crop planting, animal husbandry, pastoralism, fishing, forestry, hunting or gathering, and handicrafts related to agriculture or a related occupation in a rural area. It also applies to dependent family members of farmers. In addition, Article 18.1 of the Declaration states that "peasants and other people working in rural areas have the right to the conservation and protection of the environment and of the productive capacity of their land, as well as of the resources they use and manage". Furthermore, Article 18.2 provides that "States shall take appropriate measures to ensure that peasants and other people working in rural areas enjoy, without discrimination, a safe, clean and healthy environment".

We would like to recall the duty of all States to prevent exposure to hazardous substances and wastes, as detailed in the 2019 report of the Special Rapporteur on the human rights implications of the environmentally sound management and disposal of hazardous substances and wastes to the United Nations General Assembly (A/74/480). This obligation derives implicitly, but clearly, from a range of rights and duties enshrined in the global human rights framework, under which States are obliged to respect and fulfil recognized human rights, and to protect those rights, including from the consequences of exposure to toxic substances. These rights include the human rights to life, health, food and drinking water, adequate housing and safe and healthy working conditions. The duty to prevent exposure is reinforced by national and regional recognition of the right to a safe, clean, healthy and sustainable environment, including clean air. The existence of the State's duty to prevent exposure is reinforced by the right to full respect for the bodily integrity of the individual, which contributes to a context in which everyone should have the right to control what happens to his or her body (see A/HRC/39/48). Read together, international human rights clearly establish the duty of Your Excellency's government to prevent exposure to hazardous substances and wastes.

We would like to draw the attention of your Excellency's Government to Article 25 of the Universal Declaration of Human Rights recognizes the right of everyone "to a standard of living adequate for the health and well-being of himself and of his family, including food." Article 11 (1) of ICESCR further recognizes "the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, and housing, and to the continuous improvement of living conditions."

ICESCR requires States to "take appropriate steps to ensure the realization of the right to food" (article 11(1)). According to general Comment 12, the obligations to

respect existing access to adequate food requires State parties to refrain from taking any pressures that result in preventing such access. The obligation to protect requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food. The obligation to fulfil (facilitate) means the State must pro-actively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including their access to land in order to ensure their food security. (para. 15.) Whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfil (provide) that right directly.

On October 8, 2021, the Human Rights Council adopted resolution 48/13 recognizing the right to a healthy environment. In this regard, we would like to draw Your Excellency's Government's attention to the Framework Principles on Human Rights and the Environment detailed in the 2018 report of the Special Rapporteur on Human Rights and the Environment (A/HRC/37/59). The Principles provide that States should ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights (Principle 1); States should respect, protect and fulfil human rights in order to ensure a safe, clean, healthy and sustainable environment (Principle 2); and States should ensure effective enforcement of their environmental standards against public and private actors (Principle 12).

The full texts of the above-mentioned human rights instruments and standards are available at www.ohchr.org or can be made available upon request.