



The Global Initiative  
*for* Economic, Social and Cultural Rights

**Parallel Report submitted by the Centro de Políticas Públicas y Derechos Humanos (EQUIDAD), Pueblos Indígenas Amazónicos Unidos en Defensa de sus Territorios (PUINAMUDT), the Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) and FIAN**  
**to the Committee on Economic, Social and Cultural Rights**  
**on the occasion of the consideration of the**  
**Sixth Periodic Report of the Netherlands**  
**during the Committee's 61<sup>st</sup> Session**

Submitted April 2017

## **1. Introduction**

1. The Centro de Políticas Públicas y Derechos Humanos (EQUIDAD) is a non-profit non-governmental organization established to promote and strengthen a social and institutional environment that allows the full and effective realization of all human rights, both in Peru and in the international environment in which it is located. EQUIDAD has as vision of a country with full validity of human rights; and its mission is to contribute to the establishment of sustainable public policies with a comprehensive approach to human rights at all levels of the State; and, at the same time, contribute to the generation of capacities in civil society to participate, exercise and defend their rights.

2. Pueblos Indígenas Amazónicos Unidos en Defensa de sus Territorios (PUINAMUDT) is an indigenous platform united to develop an agenda in defense of the territory and life in our Amazon, before the extractive activities of hydrocarbons that for more than 40 years have affected the rivers, the mountain and the communities. Currently PUINAMUDT is integrated by the Federation of Native Communities of Corrientes river - FECONACO; The Federation of the kichwa people of the Tigre river - OPIKAFPE; The Quechua Indigenous Federation of Pastaza - FEDIQUEP; And the Cocama Association of Development and Conservation San Pablo de Tipishca - ACODECOSPAT, from the Marañón river basin. PUINAMUDT integrates in Peru the national indigenous Amazon organization AIDSESEP, and is part of the regional organizations ORPIO and CORPI-SL, in the Loreto region, in the northern Amazon region of Peru.

3. The Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) is an international non-governmental human rights organization which seeks to advance the realization of economic, social and cultural rights throughout the world, tackling the endemic problem of global poverty through a human rights lens. The vision of the GI-ESCR is of a world where the human rights framework reflects the real world experiences of all of us, effectively furthering social and economic justice and human dignity, and catalyzing change from the local to the global, back to the local.

4. FIAN is an international human rights organization working for the full realization of human rights, in particular the human right to adequate food, for every woman, man and child. FIAN stands up against unjust and oppressive practices that prevent people from feeding themselves. The struggle against discrimination of marginalized groups including women, peasants and indigenous peoples is part of its mission. FIAN strives to secure access to the resources people need in order to feed themselves, today and in the future.

5. EQUIDAD, GI-ESCR and FIAN are members of the Extra-Territorial Obligation Consortium (ETO Consortium). FIAN and GI-ESCR serve on the Consortium's Steering Committee.

6. The Committee has increasingly monitored compliance with and provided recommendations related to extra-territorial obligations under the International Covenant on Economic, Social and Cultural Rights. Such scrutiny should be undertaken during the periodic review of the Netherlands, particularly since that State

Party's decisions and actions, whether individually or collectively, often impact Covenant rights abroad.

## **2. Extra-Territorial Obligation to Protect: Business Enterprises**

7. The Maastricht Principles on Extra-Territorial Obligations in the Area of Economic, Social and Cultural Rights provide guidance. The Maastricht Principles were adopted in 2011 by leading international human rights experts and provide a concise restatement of existing customary and conventional international law in the area of extra-territorial human rights obligations.<sup>1</sup> Principle 24 makes clear that the extra-territorial obligation to protect includes that "All States must take necessary measures to ensure that non-State actors which they are in a position to regulate, as set out in Principle 25, such as private individuals and organisations, and transnational corporations and other business enterprises, do not nullify or impair the enjoyment of economic, social and cultural rights."<sup>2</sup> Principle 25 states that:

States must adopt and enforce measures to protect economic, social and cultural rights through legal and other means, including diplomatic means, in each of the following circumstances: ...b) where the non-State actor has the nationality of the State concerned; and c) as regards business enterprises, where the corporation, or its parent or controlling company, has its centre of activity, is registered or domiciled, or has its main place of business or substantial business activities, in the State concerned;....<sup>3</sup>

8. In the event that a State Party fails to abide by Covenant rights extra-territorially, access to justice, including accountability mechanisms and effective remedies, must be provided. According the Maastricht Principle 37:

States must ensure the enjoyment of the right to a prompt, accessible and effective remedy before an independent authority, including, where necessary, recourse to a judicial authority, for violations of economic, social and cultural rights. Where the harm resulting from an alleged violation has occurred on the territory of a State other than a State in which the harmful conduct took place, any State concerned must provide remedies to the victim.

To give effect to this obligation, States should:

- a) seek cooperation and assistance from other concerned States where necessary to ensure a remedy;
- b) ensure remedies are available for groups as well as individuals;

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<sup>1</sup> The Maastricht Principles are a restatement of law based on existing conventional and customary international law. They were adopted by leading experts from around the world, including a former member of the Human Rights Committee and members and former members of other treaty bodies. Drawn from international law, the Maastricht Principles elaborate the content of extra-territorial State obligations in relation to realize economic, social and cultural rights, but many principles apply to the full spectrum of civil, cultural, economic, political and social rights.

<sup>2</sup> *Id.* at Principle 24.

<sup>3</sup> *Id.* at Principle 25.

- c) ensure the participation of victims in the determination of appropriate remedies;
- d) ensure access to remedies, both judicial and non-judicial, at the national and international levels; and
- e) accept the right of individual complaints and develop judicial remedies at the international level.<sup>4</sup>

9. The Committee has increasingly scrutinized ETOs, including the ETO to protect. This obligation requires regulating corporations in order to prevent harm to the enjoyment of human rights abroad and requires providing access to justice, accountability and remedies in event of such harm.<sup>5</sup> The State Party should be held to these important standards.

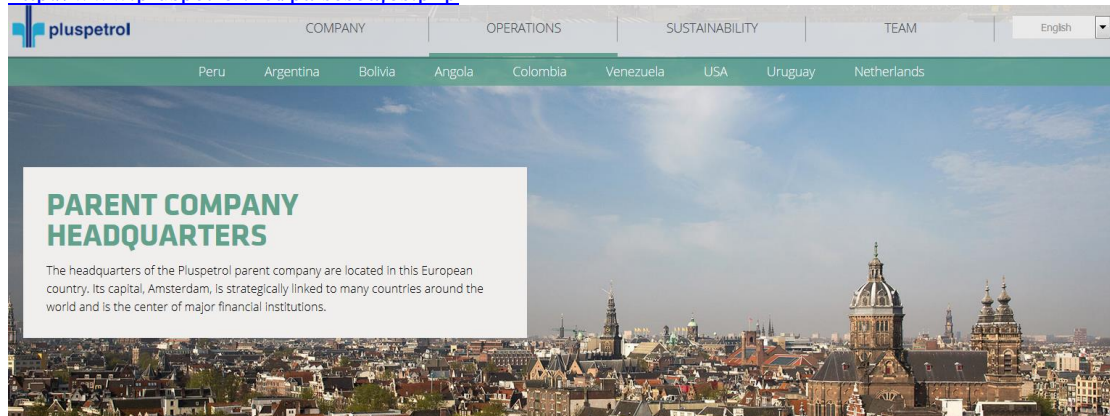
10. States failures to comply with their obligations under a human right – including their extra-territorial obligations – violate this human right and breach the respective Covenant. This holds for all types of human rights obligations, including in particular the obligations to protect economic, social and cultural rights against being impaired by business enterprises.

11. In the case described below, the business enterprise, Pluspetrol, operating in Perú, is registered in the Netherlands and – according to its website – headquartered in the Netherlands with offices around the world.<sup>6</sup> Registration or headquarters in the Netherlands have legal implications for the Netherlands, as mentioned above. The Netherlands carries the obligation to take all measures expeditiously by suitable regulation to protect human rights from being impaired by such companies - even if the victims of these impairments live abroad. The Netherlands also has the obligation to provide access to justice, accountability and remedies in the event of such impairment of human rights by its corporate entities.

<sup>4</sup> *Id.* at Principle 37.

<sup>5</sup> See Concluding Observations on the United Kingdom (2016), Canada (2016), Taiwan (2105), China (2015), Austria (2013), Belgium (2013), Norway (2013), Germany (2011).

<sup>6</sup> According to Pluspetrol’s website, “The headquarters of the Pluspetrol parent company are located in this European country [The Netherlands]. Its capital, Amsterdam, is strategically linked to many countries around the world and is the center of major financial institutions.” See, <http://www.pluspetrol.net/paisesbajos.php>



## 12. Recommendations to the Netherlands:

- Investigate the criminal record of Pluspetrol in Perú, both in terms of human rights law, environmental law and tax law, in cooperation with Peruvian authorities.
- Involve Argentinean authorities, where Pluspetrol has a key office, to address these issues jointly with the Netherlands and Perú in view of Art. 2 of the Covenant dealing with international cooperation.
- The Netherlands should regulate corporations headquartered, incorporated or domiciled within its territory to ensure that they do not harm human rights throughout their activities including abroad and prosecute them in Dutch courts in the event of such harm.
- The Netherlands should ensure access to justice, accountability and remedies for those persons harmed by such corporations.

### **3. Abuses of Covenant rights by a Dutch corporation acting in Peru, as per the study of EQUIDAD and PUINAMUDT reproduced below.**

#### **CONTEXT:**

13. The indigenous peoples of the Quechua, Achuar, Urarina, Kichwa and Kukama ethnic groups inhabit the basins of the Pastaza, Corrientes, Tigre and Marañon Rivers (4 basins), located in the Peruvian Amazon region of Loreto. Their communities have been affected by 45 years of oil exploitation carried out in their territories, overlapped with two oil blocks, 192 (previously 1AB) and block 8. A primary driver of the oil exploration and exploitation is Pluspetrol, an energy company headquartered in the Netherlands.

14. The situation of environmental pollution in this area has been denounced and reported to Peru since the 1980s<sup>7</sup>. Following multiple and constant indigenous protests, a Multisectoral Commission was established in 2012 that led to the elaboration of several diagnoses by state technical agencies that concluded with the Declarations of Emergency and Sanitary Emergency in the four basins between 2013 and 2014<sup>8</sup>.

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<sup>7</sup> The Institute of Investigations of the Peruvian Amazon carried out studies between 1983 and 1984 on the ichthyological resources in the petroleum zone (IIAP 1987). The National Office of Evaluation of Natural Resources - ONERN (1984) said it was "one of the most damaged critical environmental areas of the country"

<sup>8</sup> In the Pastaza river basin (25/03/2013, N° 139-2013-MINAM); in the Corrientes river basin (6/09/2013, N° 263-2013-MINAM); in the Tigre river basin (29/11/2013, N° 370-2013-MINAM) and in the Marañon river basin (15/05/2014, N° 136-2014-MINAM). Each declaration is valid for 90 business days. The declaration for the Pastaza was modified on May 10, 2013, with a new term of 90 working days, and that of Corrientes was extended on January 20, 2014, also for 90 business days.



Quechua indigenous peoples protest in Pastaza river. (PUINAMUDT)

#### **AFFECTED COMMUNITIES:**

15. In the 1990s, indigenous communities in the area created federations in each of the four basins and mobilized to report to the State environmental contamination suffered by their territories and the health effects on their families. Despite belonging to different villages and rivers, several communities and their federations, affected by the same impacts and by the same actors (Pluspetrol and Peru), decided to join in a Fight Platform and coordinate strategies and mobilizations. Since then, 2011, with the creation of PUINAMUDT, the dialogue with Peru and the decisions, have been taken jointly and unanimously by these federations of the four rivers: FEDIQUEP (Quechuas of the Pastaza), FECONACO (Achuas of the Corrientes), OPIKAFPE (Kichwas of the Tigre) and ACODECOSPAT (Kukamas of the Marañon).



Kichwa children eatin yucca. Tigre river. (PUINAMUDT)

16. The affected communities' basic sources of water and food are contaminated. Prior to 2016, only two health studies had been carried out by the State, in 2005 and 2006, but limited exclusively in five communities on the Corrientes River. The 2005 study showed that 66.21 per cent of children under 18 exceeded the established limit for lead in children and for the presence of cadmium, it was 98.65 per cent that the percentage of the population under 18 years of age exceeds Values of cadmium in blood. These studies did not involve State action aimed at mitigating and monitoring the implications of these results.



Sachavacas eating oil (they mistake it with collpas or natural salt resources). (Universidad Autónoma de Barcelona, Martí Orta Martínez)

## THE OIL ACTIVITY:

17. **Block 192** (formerly called 1AB) was created in 1971 and operated by the Occidental Petroleum Company (OXY) until 2000, when it sold its assets and liabilities (including environmental damage) to the Dutch oil company Pluspetrol Resources. The tendering contract ended in August 2015 when Pluspetrol left the block without guaranteeing the environmental remediation for which it was found responsible by the Government of Peru.

18. OXY was denounced in the United States by five Achuares indigenous communities residing near the Corrientes river on account of the detrimental affect on their health and life. This resulted in establishing a preliminary agreement of compensation for damages between the parties.

19. **Block 8** was created in the 1970s and was operated by Petroperú until 1996, after which it was transferred to Pluspetrol and a consortium of oil companies. Pluspetrol held 60 per cent of the project and remains in charge of operating it until today. This contract expires in 2024<sup>9</sup>.

20. In the four River Basins it operates under the name Pluspetrol Norte S.A., Peruvian subsidiary of the headquarter Pluspetrol Resources, located in the Netherlands as a mailbox company.

21. In summary, it could be said that the sources of environmental pollution are and have been mainly:

**1. Dumping the formation waters (highly contaminating):** Until 2009, the company poured the formation waters directly into the main water sources of the communities and area rivers.



Formation waters from the Jibarito battery dumped at the Pucacungayacu river, stream of the Corrientes River. (Martí Orta Martínez/FECONACO)

<sup>9</sup> <http://www.perupetro.com.pe/relaciondecontratos/relacion.jsp?token=100>



## 2. Spills, leaks and accidents



Spill in the Marañon River. (PUINAMUDT)



Spill in the Corrientes river basin. (PUINAMUDT)

**3. The poor state of infrastructure and oil pipelines that have not been replaced in the last 45 years.**



Clamps on the pipelines after leaks have happened. Tigre river. (PUINAMUDT/EQUIDAD)

**4. The lack of environmental remediation.** The few remedial actions the company has taken have been mainly bad practices, such as: burning the spills or burying the oil in the ground.



Burning oil spilled as a remediation technique. Jibarito Battery. Corrientes River. (Martí Orta Martínez/FECONACO)

The company Pluspetrol has not fulfilled its environmental obligations in the country or in the zone, resulting in fines imposed in 2014 by the organs of environmental control. Pluspetrol, however, has been evasive of accepting any accountability by legally challenging any sanctions imposed by Peru.

Two examples, of the several that exist in the area and that demonstrate the lack of adequacy and good practices of Pluspetrol include:

**a. Block 1AB / 192: Sansococcha lake/lagoon:** In 2012, before the arrival of a Congressional Commission of the Republic to the area, indigenous organizations and their environmental monitors denounced the existence of a lagoon completely covered with oil. Given this situation, the company, without prior notice to Peru as was its obligation, decided to “remedy” the lake by making it disappear. Pluspetrol cleared the area and drained the lagoon illegally<sup>10</sup>. The practice of “hiding” pollution by Pluspetrol has been denounced by indigenous environmental monitors successive times.



Shanshoccha Lake flooded with oil. Pastaza river. 2012. (PUINAMUDT)

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<sup>10</sup> OEFA (2014) parra. 62, nota al pie 9. The visit was between the 19 and the 24 september, 2012



What was left of the Shanshococho lake after the company “remediated” it. Pastaza river. (Stefan Kisler/PUINAMUDT)

**b. Block 8: Legal obstruction of its obligation to repair Yanayaku battery<sup>11</sup>.** The Yanayaku battery has an environmental management instrument presented by Pluspetrol and approved by the Peruvian government that provides different mechanisms of environmental remediation in case of contingency or accident, namely a Decontamination Plan. Pluspetrol requested modification to the Decontamination Plan, which were rejected by Peru. In 2009, with evidence that the area of the battery was highly contaminated, the Peru forced the company to implement this environmental instrument. Pluspetrol, however, challenged the agreed upon Decontamination Plan in the courts. The company claimed that it had now been proven that “natural remediation or regeneration” - that is, doing nothing - was the best technique that should be applied to the area. At present, the Yanayaku area still does not have any type of environmental remediation.

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<sup>11</sup> On August 1, 2013, OEFA imposed a sanction of approximately 29 million soles (US \$ 8,597,508) on Pluspetrol for the lack of remediation of areas 1, 3, 4 and 5 in the battery 3 of Yanayacu in Block 8 within the Pacaya Samiria National Reserve.



President of FEDIQUEP, Aurelio Chino Dahua, in a quechua assembly. Pastaza River. (PUINMADUT)

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