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Report - REPORT: A disaster that could have been avoided

EXECUTIVE SUMMARY

Introduction

On 15 January 2022, an oil spill occurred at the La Pampilla S.A.A. Refinery, a company belonging to the REPSOL Economic Group, a Spanish multinational that has been operating in Peru since 1995.¹ About 11,900 barrels of crude oil² were spilled on the beaches of the district of Ventanilla, in the constitutional province of Callao, affecting a maritime and land area of 18,000 square metres.³ The oil spill resulted in the worst environmental disaster in Peru in recent times,⁴ violating the human rights of a great number of people living and working on the coast north of the Pampilla Refinery. Among the rights most affected were the right to a healthy environment, the right to work, the right to health, the right to food, as well as the right to a cultural identity.

An Investigation Commission⁵ appointed by the Congress of the Republic of Peru concluded that the primary responsibility for the oil spill lies with the La Pampilla S.A.A. Refinery,⁶ and by extension to the REPSOL Economic Group, to which it belongs through REPSOL PERÚ B.V. in its capacity as majority shareholder.⁷ The Investigation Commission found that the oil unloading operation had not itself followed all risk prevention procedures.⁸ The Commission found, among others, that the pressure at which the unloading had been conducted at the request of the Refinery Terminal had surpassed the maximum safe level for which the

¹ See Report, section 3.3.

² Unidad Conjunta de Emergencias Ambientales. *Reporte de Misión Perú*. Lima: Naciones Unidas Perú; 2022. P. 3.

³ Ministerio del Ambiente. Expediente N° 0081-2022-OEFA/DFSAI/PAS. Resolución Subdirectoral N° 0306-2022-OEFA/DFSAI-SFEM. P. 2

⁴ See Report, section 3.1.

⁵ Comisión Investigadora facultada para investigar por un plazo de 90 días hábiles de las acciones de los funcionarios públicos y privados que ocasionaron el derrame de petróleo de la empresa multinacional Repsol YPF S.A. en el Distrito de Ventanilla y sus consecuencias en el medio ambiente y la ecología.

⁶ The La Pampilla Refinery S.A.A. is a subsidiary of REPSOL Peru B.V., a company incorporated in the Netherlands and a subsidiary of REPSOL S.A., incorporated in Spain. As of 31 March 2022, REPSOL S.A. owned 99.20% of the issued share capital of La Pampilla Refinery (see Report, section 3.3.). For the purposes of this report, 'REPSOL' refers to the economic Group as a whole.

⁷ Congreso de la República. Comisión Investigadora facultada para investigar por un plazo de 90 días hábiles de las acciones de los funcionarios públicos y privados que ocasionaron el derrame de petróleo de la empresa multinacional Repsol YPF S.A. en el Distrito de Ventanilla y sus consecuencias en el medio ambiente y la ecología. *Informe final*, entregado mediante Oficio 293-2002-CPAAAAE-CI/CR. [Internet] Lima; 16 June 2022. P. 328. Available at:

https://leyes.congreso.gob.pe/Documentos/2021_2026/Informes/Comision_Ordinaria_con_Facultades_de_Co_mision_Investigadora/OFICIO-293-2022-CPAAAAE-CI-CR.pdf.

⁸ *Ibid*, P. 103, 130, 133 - 4, 183, 328 - 334; (Report, section 3.2.).

Terminal had been certified.⁹ It further observed that the Refinery's notification to the authorities had understated the extent of the spill and failed to inform about deficiencies in the implementation of its contingency plan, which contributed to the lack of an appropriate response to the disaster.¹⁰ REPSOL's contingency plan was also found to be inadequate, given that it had not considered the environmental and human rights risks arising from the incident and took too long in responding to the spill in its initial stage.¹¹ Importantly, based on the findings of the Peruvian Ombudsman, REPSOL's contingency plan failed to duly address the impacts of the oil spill on the affected communities once it had occurred.¹²

There is also a level of shared responsibility between the Peruvian State and the Spanish State. In the case of Peru, the State bears responsibility for not having guaranteed the appropriate respect for human rights by REPSOL's operations within its territory. It failed to carry out adequate supervision of REPSOL's risk prevention measures and ensure an adequate corporate response once the spill had occurred.¹³ Furthermore, it bears responsibility for not having taken adequate measures to fulfil the human rights of the persons affected by the oil spill.¹⁴

In the case of Spain, the State is responsible for failing to ensure that a company domiciled within its jurisdiction respect human rights in its operations abroad.¹⁵ Furthermore, it failed to comply with its obligation to ensure human rights compliance in the operations of its own business investments abroad, considering that REPSOL had benefited from significant financial support from the Spanish State for the renovation of the La Pampilla S.A.A. Refinery.¹⁶

In this context, this report aims to provide systematised information on the main impacts on the human rights of the affected population, drawing on their own voices and experiences. It also addresses the responsibility of REPSOL and the Peruvian and Spanish States in relation to these human rights violations.

Methodology

This human rights impact assessment report relies on the *Getting It Right*¹⁷ tool as a methodological reference. It places the affected communities at the centre of the assessment process - from measuring the impacts on rights anchored in international human rights law, to making recommendations for reparations. The report draws upon desk-based research as well as interviews carried out between June and November 2022 with members

⁹ Ibid, P. 328.

¹⁰ Ibid, P. 328-9; (Report, section 3.2.).

¹¹ Ibid, P. 331; (Report, section 3.2.).

¹² Defensoría del Pueblo. *Informe del derrame de petróleo en la Refinería La Pampilla. Recomendaciones sobre un desastre que pudo evitarse*. Lima; 2022. P. 47-48. Available at:

<https://www.defensoria.gob.pe/wp-content/uploads/2022/04/Informe-Derrame-Ventanilla.pdf> ; Report, sections 3.4.2, 3.4.3.1., 4.1.2.2., 4.2.2.1., 4.2.2.2., 4.3.3., 4.4.2., 4.4.3., 4.5.2., 4.5.3.

¹³ Report, section 4.2.3.

¹⁴ Report, section 4.2.3.

¹⁵ Report, section 5.1.1.

¹⁶ Report, section 5.1.1.

¹⁷ OXFAM and FIDH. *Todo derecho* [Internet]. Boston: Oxfam America. Available at: <https://hria.oxfam.org/home/hria/landing>.

– men and women between 20 and 72 years old – of six different community organisations of artisanal fisherpeople affected by the oil spill.

Findings

Right to a clean, healthy, and sustainable environment

The oil spill had a large-scale impact on the right to a clean, healthy, and sustainable environment, as recognised by the UN General Assembly in its Resolution A/76/L.75, and as embedded in Article 11 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (known as Protocol of San Salvador), which Peru has ratified. The oil spill severely affected an area of more than 18,000 square metres of sea and land known for its exceptional biodiversity.¹⁸ It damaged a number of valuable coastal marine ecosystems in the Ventanilla district.¹⁹ The area includes 48 beaches and two natural protected areas - National Reserve System Islands, Islets and Capes and the Zona Reservada de Ancón.²⁰

More than 1,850 wild animals died as a result,²¹ including some belonging to endangered species.²² Affected communities reported that they were not able to carry on with their usual livelihoods, including fishing, on which they depended for their subsistence. They recalled finding animals covered in crude oil - including dead ones -, a strong toxic tar smell emanating from the sea, and visible greasy black spots and clots in the water.²³

Inadequate response to the impacts on the right to a healthy environment

The first response of REPSOL was late and inadequate.²⁴ For the initial cleaning efforts, the company deployed personnel with no relevant experience, including local fishermen who had lost their income due to the oil spill. In many cases, these people worked without suitable protective gear.²⁵ As a result, the persons participating in the cleaning frequently suffered from headaches, migraines, and vomiting. Some of the clean-up actions consisted of removing the oil from the sea surface and burying it below the sandy shore. When the tide came in, the crude oil returned to the sea, contaminating everything again.²⁶ Moreover, the company had not carried out due cleaning of the seabed.²⁷

In August 2022, more than six months after the spill, Peru's environmental authorities found that almost a third of the affected areas remained contaminated.²⁸ REPSOL was imposed

¹⁸ Ministerio del Ambiente. Expediente N° 0081-2022-OEFA/DFSAI/PAS. Resolución Subdirectoral N° 0306-2022-OEFA/DFSAI-SFEM. P. 2.

¹⁹ Informe, p. 35.

²⁰ Defensoría del Pueblo. *Informe del derrame de petróleo en la Refinería La Pampilla. Recomendaciones sobre un desastre que pudo evitarse*. Lima; 2022. P. 5.

²¹ Ministerio de Desarrollo Agrario y Riego. Expediente N° 0008880-2022.RIN° D000098-2022-MIDAGRI-SERFOR-ATFFS-LIMA-AI, fundamento 39.

²² Idem.

²³ Report, section 4.1.2.3.

²⁴ Report, section 3.4.2.

²⁵ Report, section 4.1.2.2.

²⁶ Report, section 4.1.2.2.

²⁷ Report, section 4.1.2.2.

²⁸ Report, section 3.4.2.

administrative fines for not having complied with its obligation to identify and clean the affected areas and to contain and remove the spilt oil.²⁹ Despite these sanctions, the contamination persists, ecosystems are damaged, none or insufficient works are being done and further animals, including endangered ones, are being contaminated as a result.³⁰

For months, the affected communities did not have adequate and precise information – either from the authorities or from REPSOL – about the level of contamination and the progress of cleaning efforts.³¹ The communities reported persisting contamination even in some of the areas that had been declared by the State as no longer contaminated.³² REPSOL reported on its key interventions concerning the oil spill on a dedicated website.³³ However, the UN has pointed out issues concerning transparency on the side of the company, noting that it did not make available evaluations of the harm caused or analyses of the needs of affected people, necessary for a suitable response.³⁴

Under its obligation to protect the right to a healthy environment, the Peruvian State should have ensured that REPSOL remedy the environmental impacts brought about by the oil spill. Under its obligation to fulfil the right, it should have provided the affected communities with information on the environmental impacts and should have adopted effective measures to stop and restore the adverse effects of the spill on the environment and the population.³⁵

Right to work

The oil spill and the insufficient and delayed response to contain and address it resulted in large-scale damage to the ecosystem. Beaches and marine resources have been contaminated with crude oil. Thousands of people became unable to carry out their professional activities – especially those related to the fishing industry and tourism.³⁶ Consequently, they suffered violations of their right to work as guaranteed by Article 6 of both the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Protocol of San Salvador.³⁷

Fishing is an important economic activity in the affected area, generating an extensive chain of invaluable job opportunities for thousands of people. This entire labour chain has been severely affected and brought a great deal of uncertainty to the workers' lives, leading to emotional exhaustion, permanent stress, and the violation of their fundamental rights.³⁸ Within 72 hours of the disaster, thousands of fisherpeople and their families were left without an occupation.³⁹

²⁹ Report, section 3.4.

³⁰ Report, section 3.4.

³¹ Report, section 4.1.2.1.

³² Report, section 4.1.2.1.

³³ Report, section 3.4.1; REPSOL. REPSOL: plan de contingencia activado. [Internet] 20 January 2022. Available at: <https://compromisoREPSOL.pe/REPSOL-plan-de-contingencia-activado>.

³⁴ Report, section 3.4.1; Derecho Ambiente y Recursos Naturales. Informe Deficiencias en transparencia y acceso a la información identificadas en el desastre ambiental de La Pampilla. [Internet] Peru; 2022. P. 3-4. Available at: https://dar.org.pe/wp-content/uploads/2022/03/informe_transparencia_derrame_160322_vf.pdf.

³⁵ Report, section 4.2.3.

³⁶ Report, section 4.1.2.3.; 4.2.2.

³⁷ Report, section 4.2.

³⁸ Report, section 4.2.2.

³⁹ Report, section 4.2.2.

The affected area was also a greatly popular place for tourists, providing a seasonal source of income for local communities. The disaster occurred at the height of the summer season, right after two difficult years for the sector due to the COVID-19 pandemic. As a result of the contamination of the sea and the beaches, tourism drastically decreased.⁴⁰ In consequence, many households were deprived of a means of subsistence and forced to take out debt.⁴¹

Inadequate response to the impacts on the right to work

Among the affected communities, there were hopes for a discussion among the victims, the State, and REPSOL concerning the crisis response. However, no such joint dialogue took place.⁴² Instead, the State and REPSOL concluded an extrajudicial agreement, based on which some of the affected persons received a compensation of 6,000 Soles (around 1,480 EUR or 1639 USD) between January and April 2022 for being unable to conduct their professional activities due to the spill. However, this agreement has been criticised for a lack of legal competency of the State to sign an agreement on behalf of the victims without their participation and due to its possible impact on the affected people's right to seek remedy via judicial means.⁴³ It was further subjected to criticism because the amount granted did not reflect the real earnings or the economic needs of the families depending on them.⁴⁴ Importantly, it did not concern all affected persons, with less than half of them receiving compensation from REPSOL.⁴⁵

The State implemented a programme offering those affected to carry out work by cleaning and maintaining tourist areas - but only two months after the spill and merely on a temporary basis.⁴⁶ Moreover, the State programme only generated 500 positions vis-à-vis 10,300 affected persons.⁴⁷ REPSOL also provided temporary employment to the affected, consisting of cleaning the contaminated beaches. However, these jobs were offered without essential training and protective equipment.⁴⁸ Some fishermen had to migrate and seek work in another area, not affected by the oil leak.

Certain groups were affected more severely due to their intersecting vulnerabilities. For example, among those deprived of their means of subsistence were many single mothers working in the fishing industry. Migration was not a feasible option for them due to their care responsibilities for children.⁴⁹ Moreover, many of them engaged in jobs related to fishing, such as filleting, rather than fishing as such. These were, however, not recognised by REPSOL as entitled to the same assistance offered to fishermen.⁵⁰ This differential treatment was further exacerbated by the fact that women were insufficiently represented in the discussions with REPSOL and thus unable to claim their rights to the same extent as men. Family burdens limited their capacity for representation and advocacy. Also, the boards of

⁴⁰ Report, section 4.1.2.3.

⁴¹ Report, section 4.1.2.3.

⁴² Report, section 4.1.2.3.

⁴³ Report, section 3.4.3.1.

⁴⁴ Report, section 3.4.3.1.

⁴⁵ Report, sections 3.4.3.1. and 4.2.2.2.

⁴⁶ Report, section 4.2.2.

⁴⁷ Report, section 4.2.2.2.; Informe de emergencia N°1788-19/11/22/COEN-INDECI.

⁴⁸ Report, section 3.4.3.1., Report, section 4.2.2.

⁴⁹ Report, section 4.2.2.1.

⁵⁰ Report, section 4.2.2.1.

directors of fishermen's organisations were made up only of men. In addition, many of the alternative work opportunities were only open to men, further aggravating the situation for women even more.⁵¹

As can be seen, there has been no long-term and adequate solution offered either by the Peruvian State or by REPSOL to the disaster's impacts on the right to work.⁵² Furthermore, as long as the environmental impacts as the root cause of the crisis are not duly addressed, the crisis will persist.⁵³

As part of its obligation to protect the right to work, the State should have ensured that REPSOL prevented the spill. Once occurred, the State should have guaranteed that REPSOL remedy its impacts on the victims' right to work. Within the realm of its obligation to fulfil the right, the Peruvian State should have adopted measures that would have enabled the affected people to have access to decent employment that would have allowed them to satisfy their basic needs.⁵⁴

Right to food

The oil spill has had serious impacts on the right to food – anchored among others in Article 11 of the ICESCR and Article 12 of the Protocol of San Salvador, both ratified by Peru. It affected the right to food not only of fishermen and fisherwomen, but also of the traders whose business revolved around fishing and recreational activities on the beach. The disaster had large-scale direct and indirect impacts on the right to food of fishermen and fisherwomen as well as that of their families: direct because fishing provided food for them and their families; indirect because they lost their source of income, necessary to acquire other products for a varied diet.⁵⁵

Without being able to fish and source food directly, families have been forced to buy all the products they consume. This has significantly affected many households' financial standing. Families have had to radically change their daily diet, ration their meals, lower the quality of food - sometimes still facing hunger. Many of the affected persons were single mothers who had to set up a common cooking pot to continue to feed their families.⁵⁶ In short, the oil spill created a situation of serious food insecurity for fishermen, fisherwomen, traders and their families.⁵⁷

Inadequate response to the impacts on the right to food

Neither the Peruvian State nor REPSOL responded adequately to the food crisis. The testimonies reveal a systematic violation of the right to food.⁵⁸ Following various complaints made by both affected people and civil society organisations on this matter, REPSOL delivered vouchers of 500 soles (around 125 EUR or 136 USD) to the affected people so that

⁵¹ Report, section 4.6.2.

⁵² Report, section 4.2.2.1.

⁵³ Report, section 4.2.2.2.

⁵⁴ Report, section 4.2.3.

⁵⁵ Report, section 4.3.2.

⁵⁶ Report, section 4.3.2.

⁵⁷ Report, section 4.3.2.

⁵⁸ Report, section 4.3.3.

they could buy basic necessities in supermarkets.⁵⁹ This measure was, however, criticised as problematic because the areas where the affected communities are mostly located are 2 to 3 hours away from any supermarkets.⁶⁰ Moreover, only some of the people who had been promised vouchers actually received them.⁶¹ Moreover, as a result of women's underrepresentation in the discussions with REPSOL, it was mainly men who received the vouchers.⁶²

The affected communities reported feeling abandoned by the State.⁶³ Within the realm of the State obligation to protect, the Peruvian State should have prevented human rights abuses caused by REPSOL as a non-State actor. However, it has tolerated the company's escaping responsibility to take effective action and address the food crisis sparked by the oil spill.⁶⁴ Under the obligation to fulfil the right to food, Peruvian authorities should have ensured that all affected persons have physical access to adequate food or the financial means to obtain it. By not doing so, the Peruvian State failed to comply with its obligation to protect and fulfil the right to food.⁶⁵

Right to health

There is a clear interrelation between the right to health and the abovementioned rights to food, work and a healthy environment. The impacts of the oil spill on these rights thus also impacted the affected communities' right to health, enshrined among others in Article 10 of the Protocol of San Salvador and Article 12 of the ICESCR.⁶⁶

As a consequence of the oil spill in the sea, the affected communities, including children, reported suffering from nausea, vomiting, intense itching of the eyes and nose, headaches, the appearance of spots on their skin, and fever. Poisoning after eating fish has also been reported.⁶⁷

In its report on the spill, the Peruvian Ombudsman's Office warned about the serious risks to health due to exposure to a dangerous substance such as crude oil, both for the population in the area and for those carrying out clean-up work. Upon its inspection of the site, the Office called on REPSOL to provide clean-up workers with suitable safety equipment – as that had not been the case.⁶⁸

Furthermore, people in the affected area are used to a lifelong and well-ingrained nutrition plan. The abrupt disruption of their nutrition also has had an effect on their bodies and general health. The lack of consumption not only of fish, but also of sufficient and adequate

⁵⁹ Report, section 3.4.3.2.

⁶⁰ Report, section 4.3.3.

⁶¹ Report, section 4.3.3.

⁶² Report, section 4.6.1.

⁶³ Report, section 4.3.3.

⁶⁴ Report, section 4.3.3.

⁶⁵ Report, section 4.3.3.

⁶⁶ Report, section 4.2.2.

⁶⁷ Report, section 4.4.2.

⁶⁸ Defensoría del Pueblo. *Informe del derrame de petróleo en la Refinería La Pampilla. Recomendaciones sobre un desastre que pudo evitarse*. Lima; 2022. P. 70. Available at: <https://www.defensoria.gob.pe/wp-content/uploads/2022/04/Informe-Derrame-Ventanilla.pdf>.

food due to the lack of resources, has severely weakened people's health. The communities have reported occurrences of anaemia and weight loss.⁶⁹

Proving the seriousness of the consequences of the oil spill for the right to health, one person died due to the aggravation of a pre-existing condition. This could not be treated due to a lack of economic resources in a period of unemployment following the spill.⁷⁰

The communities have also reported impacts on persons' mental health, including permanent stress, feelings of anguish, despair, helplessness and hopelessness, and even depression. In large part, these were triggered by the spill-related loss of means of subsistence and the resulting lack of financial resources to seek medical help.⁷¹

Inadequate response to the impacts on the right to health

In violation of its obligation to fulfil the right to health, the Peruvian State did not provide necessary medical and psychological care to the impacted communities, nor did it allocate resources for the communities to seek out such care themselves.⁷² Furthermore, the report of the Peruvian Ombudsman's Office drew attention to the lack of clarity and reporting on the care services in relation to the oil spill.⁷³

REPSOL did not take responsibility for the impacts on the affected people's health either⁷⁴ and the Peruvian State has failed to ensure that REPSOL take effective action to address the health needs that the oil spill generated. In this context, the State has thus failed to comply with its obligation to protect the affected communities' right to health.⁷⁵

Right to a cultural identity

The REPSOL oil spill has had a serious impact on the fishermen and fisherwomen who live along the coastline of the region affected by the spill, including on their cultural identity. This right is embedded, among others, in Article 2 Paragraph 2 of the Peruvian Constitution.⁷⁶ The artisanal fisherpeople highlight their special connection with the sea, not only as a place of work but also as the space in which they live and develop a large part of their lives. Through this link, they highlight their identity as well as a sense of personal fulfilment: indeed, the knowledge and skills related to artisanal fishing are passed down from generation to generation. The fishermen know the direction and strength of the sea, and the areas where there are abundant fish.⁷⁷ To them, fishing is an integral part of their life, their economic livelihood and their future plans and projects.⁷⁸

⁶⁹ Report, sections 4.3.2., 4.4.2.

⁷⁰ Report, section 4.4.2.

⁷¹ Report, section 4.4.2.

⁷² Report, section 4.4.3.

⁷³ Defensoría del Pueblo. *Informe del derrame de petróleo en la Refinería La Pampilla. Recomendaciones sobre un desastre que pudo evitarse*. Lima; 2022. P. 68. Available at:

<https://www.defensoria.gob.pe/wp-content/uploads/2022/04/Informe-Derrame-Ventanilla.pdf>.

⁷⁴ Report, section 4.4.2.

⁷⁵ Report, section 4.4.3.

⁷⁶ Report, section 4.5.1.

⁷⁷ Report, section 4.5.2.

⁷⁸ Report, section 4.5.2.

Inadequate response to the impacts on the right to a cultural identity

With the sea polluted, the fishermen cannot fish or access the beaches. Their life projects and those of their families have been dramatically altered. Neither the State nor the company has ensured a safe return to the beaches and the waters. The long-lasting environmental and socio-cultural impacts, the lack of guarantee of an adequate clean-up of the sea, and the lack of clarity regarding the repair of the coastal marine ecosystem make it impossible for them to plan their lives with certainty.⁷⁹

Under its human rights obligations, the Peruvian State should have protected and fulfilled the exercise of artisanal fishing, in order to protect and fulfil the fishermen and fisherwomen's right to their cultural identity.⁸⁰ The State should have exercised its powers of inspection and control over REPSOL to prevent the spill. Furthermore, it should have ensured that REPSOL carried out due clean-up of the oil contamination to restore the affected environment.⁸¹

Conclusion

The environmental and social disaster caused by the oil spill at the La Pampilla Refinery in January 2022 is undoubtedly an unprecedented event that, to date, continues to have a serious negative impact on the environment and on the lives of the people affected and their families.⁸²

As extensively demonstrated in the report, REPSOL bears a direct responsibility for the occurrence of the spill, for the lack of prompt and diligent action in the face of such an event, as well as for the lack of an adequate response to the impacts that this has generated. As can be seen in the various sections of the report, these corporate abuses have generated impacts that have seriously affected different human rights, such as the right to a healthy environment, to work, to food, to health and to the identity of the people living in the affected districts.⁸³ It has thus acted contrary to its responsibility to respect human rights, as foreseen by the United Nations Guiding Principles on Human Rights (UNGPs).⁸⁴

The testimonies collected for this report also highlight Peru's violation of its duty to protect and fulfil the human rights of the affected communities, stipulated in International Law. The Peruvian State, in breach of its obligations, did not activate or organise its institutions in a suitable way to protect the rights of the people affected by the oil spill. In breach of its obligation to protect human rights, it failed to ensure that REPSOL prevented the spill and redressed it once it occurred.⁸⁵

Given the insufficient response of REPSOL S.A. to restore the environment and the rights of the victims affected by the spill, it would be appropriate for the Spanish State to intervene to ensure that the human rights violated by the Spanish-based company REPSOL S.A. are

⁷⁹ Report, section 4.5.2.

⁸⁰ Report, section 4.5.3.

⁸¹ Report, section 4.5.3.

⁸² Report, Conclusion and Recommendations section.

⁸³ Report, Conclusion and Recommendations section.

⁸⁴ Report, Conclusion and Recommendations section.

⁸⁵ Report, sections 4.2.3. and Conclusion and Recommendations.

adequately redressed. As the country of REPSOL's incorporation, it is its responsibility to do so under the obligation to protect human rights, as embedded in International Law and further clarified in General comment No. 24 of the Committee on Economic, Social and Cultural Rights and the UNGPs.⁸⁶ Spain has been also called upon to do so by five UN Special Procedures mandate holders.⁸⁷

This assessment of the human rights impacts generated by the oil spill is an opportunity for REPSOL as well as for the Peruvian and Spanish States to fully and effectively comply with their human rights obligations and responsibilities. The recommendations formulated below are intended to accelerate the implementation of measures for that goal.

Recommendations

Recommendations to REPSOL

- Engage in genuine social dialogue processes with the victims and the organisations that represent them, with the aim of defining, in an adequate and fair manner and without submission to any conditionalities that limit their rights, appropriate redress for the violations of their rights, including their full restitution as well as compensation for the damages incurred.
- Establish, with the participation of the victims and the organisations that represent them, effective emergency prevention and containment mechanisms as well as reparation procedures.
- Establish communication channels that allow all parties to know the actions taken to ensure compliance with human rights commitments and obligations.

Recommendation to REPSOL and the State of Peru

- Ensure swift and adequate remediation to victims of the damage caused by the oil spill, taking into account the reality of the damage and thus increasing the level of reparation.

Recommendations to the Peruvian State

- Convene regular meetings with the participation of all relevant stakeholders, in particular: REPSOL; relevant State institutions; the affected communities, including women; and civil society and trade union organisations linked to the promotion of

⁸⁶ Report, section 5.2.

⁸⁷ OXFAM. REPSOL: Grupo sobre Empresas y DDHH de la ONU insta a los gobiernos de Perú, España y los Países Bajos a tomar medidas para proteger los derechos de las personas afectadas por el derrame [Internet]. 3 May 2022. Available at: <https://peru.oxfam.org/press-release/REPSOL-relatores-especiales-onu-istan-a-gobiernos-a-tomar-medidas-a-nte-derrame>.

human rights, in order to ensure swift and adequate remediation of the damage caused by the oil spill.

- Convene regular meetings with the participation of all relevant stakeholders, including businesses and civil society organisations, to ensure the fulfilment of the commitments and standards contained in the Peruvian National Action Plan on Business and Human Rights, as well as international human rights law.
- Strengthen environmental protection and coastal conservation policies in coordination with the local and regional governments. The REPSOL spill has revealed the limitations of the current ones.
- Prepare a plan for economic alternatives that can be immediately activated in the event of emergencies to ensure that affected communities are not left unprotected.
- Establish communication channels between the local and regional governments and the local communities, in order to disseminate information in the event of emergencies.
- Continuously update the lists of artisanal fishing community organisations and actors directly or indirectly related to artisanal fishing activities in order to obtain precise data. This information is necessary to provide immediate support to affected communities.
- Speed up the formalisation of small-scale artisanal fishing carried out by the regional governments. Through this process, fisherpeople would be better protected in case of disasters such as the oil spill in question.
- Adopt a due diligence law that will allow victims of corporate human rights violations to access justice.

Recommendations to the Spanish State

- It is essential that the Spanish State takes responsibility for its extraterritorial human rights obligations and cooperates with the Office of the High Commissioner for Human Rights and the United Nations Working Group on the issue of human rights and transnational corporations and other business enterprises. This is necessary in order to incorporate human rights obligations and principles into its strategies, policies, plans and investment projects abroad, and in Peru in particular.
- Commit to ensuring that development cooperation, official credit agencies, export credit agencies and official insurance or investment guarantee agencies condition, modify or revise their support for investment by Spanish companies according to the exercise of the responsibility to respect human rights by the beneficiary companies, both inside and outside Spanish territory.
- Carry out an awareness raising aimed at Spanish companies operating in Peru, as well as in other countries and regions, on how to prevent violations of international

human rights law. Incorporate information on the benefits of respect for human rights as well as examples of good practices.

- Implement mechanisms for periodic monitoring of compliance with human rights commitments, as foreseen in the National Action Plan on Business and Human Rights. Such mechanisms should, among others, rely on information from trade unions and communities potentially affected by the operations of Spanish companies.
- Adopt a due diligence law that will allow victims of human rights violations stemming from the activities of Spanish companies abroad to access justice before Spanish courts.

Recommendations for affected organisations

- Organisations of affected artisanal fisherpeople should begin a process of organisational strengthening as soon as possible, in order to avoid future difficulties that weaken their negotiation position with respect to corporate actors.
- Organisations of affected people should formalise their activity in order to be better placed to make reparation claims.
- Fisherpeople's organisations should progressively incorporate female representatives on their boards of directors to ensure equal treatment of women. The fishing environment relies on the work of both men and women, and this reality should be reflected in the constitution of the organisations' governing bodies.