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EXECUTIVE SUMMARY

ANALYSIS OF THE REGULATIONS RELATED TO HYDROCARBONS IN PERU AND THEIR APPLICATION IN THE CONTEXT OF OIL SPILLS IN THE AMAZON AND, IN PARTICULAR, IN THE AMAZON REGION.

PRESENTATION

In the Amazonas region, and in agreement with the Awajún Autonomous Territorial Government (GTAA), Action Against Hunger (ACH) implements the Indigenous Rapid Response (RRI) project, whose main objective is to strengthen the necessary capacities in disaster risk management in the Awajún Indigenous Institutionalinity. The work is oriented towards the implementation of preparedness and rapid response mechanisms for oil spill emergencies, among other disasters in Awajún indigenous communities.

This document analyses the gaps between the regulations promoted by the State for the prevention, attention, control and sanctions for oil spills. The analysis also includes the operational implementation of these regulations in the Awajún indigenous communities located in the districts of Imaza and Santa María de Nieva, provinces of Bagua and Condorcanqui, in the Amazon region.

I. CONTEXT

Since 1997, more than 1400 oil spills have been recorded in Peru. Among these, 39 occurred in Amazonas and 32 of them were in districts within the territory of the GTAA (Imaza, Santa María de Nieva, Aramango and La Peca).

In this sense, the present document has three main objectives:

- 1 To review and analyze the regulations linked to the prevention, attention and sanctioning of spills in order to identify deficiencies.
- 2 To analyze the actions of the State and Petroperú in the Imaza (2016) and Santa María de Nieva (2023) spills in order to identify non-compliance with the regulations.
- 3 Make recommendations for regulatory changes, political and legal advocacy, and important aspects for the GTAA's Rapid Response Plan for spills.



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Transportation at the Wachapea's community

II. REGULATORY DEFICIENCIES

General deficiencies

- a. There is a lack of inter-institutional coordination spaces for the attention of spills. This means that each State entity carries out its work in isolation and there is no point of confluence in which to assess and address the comprehensiveness of the impacts and the response required.
- b. Lack of "locks" to ensure remediation in the event of a spill. In the face of non-compliance by companies, the State only issues administrative measures and fines, but this does not guarantee remediation. The State should be able to intervene to protect life if the company fails to do so.
- c. The regulation of Environmental Emergency Declarations does not contemplate the injection of additional State resources to deal with the emergency. Nor does it consider the exoneration of bureaucratic processes of contracting, making the attention slower.

Specific deficiencies in the Amazonian context and with indigenous people

- d. Lack of mandatory participation of the people and their organizations in the elaboration of plans for prevention, awareness-raising and attention to spills.
- e. Failure to provide information on issues that directly affect their territory to the people and their organizations.
- f. Various environmental and hydrocarbon sector regulations conflict with the territorial autonomy of indigenous people and their right to use their territory according to their self-determination. For example: restrictions on access to certain parts.
- g. There is a normative deficiency in terms of compensation for damages in the event of a spill: no specific deadlines or participatory and intercultural procedures are established. Compensation is intended to be given on an individual basis and not to the community.
- h. Lack of understanding or incorporation of intercultural criteria for defining "Areas of High Consequence". The norm demands that in these areas greater measures be taken to prevent spills, but the reality of the Amazonian communities is not taken into account within this type of area.
- i. There is a normative violation by not being able to title communities in areas occupied by oil infrastructure, despite the fact that the indigenous people are there before the pipelines are there.
- j. The Directive for the Declaration of Health Emergencies lacks intercultural and gender criteria, with a perspective that prioritizes urban environments. It does not consider that there are communities where there are no water systems for human consumption, nor that many of these Amazonian communities are more vulnerable to water contamination.
- k. The Environmental Quality Standards used to determine whether the environment is contaminated or not have been copied from other countries and do not guarantee the protection of the Amazonian ecosystem.

Deficiencies of the North Peruvian Oil Pipeline Contract (ONP)

- i. The contract gives a concession for an indefinite term. This does not create opportunities to improve or update the clauses, nor does it provide an opportunity for Prior Consultation. The most recent contracts in other oil zones already include better clauses for the protection of the environment and recognition of the rights of the people. Since the North Peruvian Oil Pipeline contract does not expire, there is no room to demand that these clauses be improved.

III. DEFICIENCIES IN THE IMPLEMENTATION OF RULES (STATE AND COMPANY FAILURES)

- a. The Supervisory Body for Investment in Energy and Mining (Osinergrmin) does not adequately fulfil its functions of supervising and monitoring Petroperú. Although the company fails to comply with prevention and safety standards, the regulator does not always sanction it. With so many repeated non-compliances, OSINERGMIN has the power to recommend to the Ministry of Energy and Mines - MINEM to terminate the contract.
- b. The MINEM has relaxed the deadlines for companies to comply with minimum safety and prevention standards, resulting in more spills.
- c. Osinergrmin and The Environmental Evaluation and Supervision Agency (OEFA) do not apply the strongest sanctions they can apply: stopping the activities of the companies.
- d. The Regional Health Directorate (DIRESA) fails to provide preventive training to communities on the risks of spills.
- e. The OEFA takes a long time to verify that the company complies with the elaboration of Rehabilitation Plans.
- f. Osinergrmin does not usually sanction when the company fails to compensate the communities for damages.
- g. OEFA often incompletely identifies the affected area. In many cases, because the company delays in remediation, the contamination spreads through the rains, without the company taking on remediation outside the initial area.
- h. In many cases, remedial interventions by companies are ineffective and may even be harmful.
- i. Despite the various regulations that mandate adequate health care, the protocols are not fully complied with. And in the case of the 2016 Imaza spill, despite the existence of a court ruling ordering the implementation of a Health Plan for the affected population, this is not being complied with.
- j. The OEFA and Osinergrmin do not usually interview the affected population to gather their perspective, even though the regulations state that they can do so.
- k. Municipalities often do not report spill information to the Risk Management System. This can hinder the delivery of humanitarian aid.

Deficiencies analyzed in the Imaza spill (2016) and Santa María de Nieva (2023)

- l. Poor coordination between social organizations and the affected population. This has particularly serious consequences when there is an existing situation of social conflict, and can also generate new conflicts. The lack of coordination affects the speed of response and the information needed to make a correct assessment of the damage.
- m. There are mechanisms that are activated in a differentiated manner, without following homogeneous criteria. For example, in Imaza, a State of Emergency and a Sanitary Emergency are declared, which allows for an injection of resources and actions by the State together with the company to attend to the population. In Nieva, although the spill was similar, these measures were not taken.
- n. In both cases the health sector reacts and visits the area, although this is not always the case in other localities. However, there is a lack of intercultural criteria and understanding of the dynamics of contamination. Thus, in Chiriaco a low-risk situation is initially considered because two population centers have a water plant, but it is not considered whether this is sufficient for the whole population and other uses of the river such as bathing, washing clothes, etc.
- o. Although required by law, there was no monitoring of the water sources on a daily basis.
- p. Compensation for damages was not carried out, as stated in the interviews.

Deficiencies in the preventive actions of Petroperú at ONP

- q. It has been 17 years since regulations have required pipelines to be brought up to safer standards for their operation, but so far Petroperú has not complied with them. For example, it has yet to take action against corrosion, update its risk study, install above-ground pipelines, and install sufficient block valves, among others.
- r. According to Osinergmin, Petroperú did not comply with its Emergency Response Plan, which is one of the most important safety instruments in oil operations.
- s. Petroperú has failed to comply with 3 measures required by the OEFA since the Imaza spill.
 1. Change the pipeline in the parts that are damaged.
 2. To give integral maintenance to the parts that are not damaged.
 3. Update its Environmental Management Instrument: PAMA (Environmental Adaptation and Management Program).



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 Community leader Roger Yampis invites other indigenous leaders to participate in the implementation of the Indigenous Rapid Response project.

IV. RECOMMENDATIONS TO THE GTAA



General recommendations for the medium and long term

- a. Demand that the state build channels of dialogue to make indigenous governance compatible with national governmentality. This is in order to strengthen the processes of environmental protection and, therefore, of the indigenous population as a whole.
- b. Based on the recommendations presented in the report and their discussion within the GTAA, create an internal GTAA policy for dealing with environmental impacts. One that can be proposed as a technical indigenous governance construction recognized by the Peruvian State.



Recommendations for action on the Imaza and Nieva spills

- c. Imaza (2016): collect, together with the communities, evidence of the contamination that persists in the territory (photos, videos, coordinates) and demand that the OEFA demand a Rehabilitation Plan for the area from Petroperú. It is worth noting that the OEFA has already identified - since 2017 - 9 points in sediments that were not properly remediated.
- d. Imaza (2016): demand that Osinergmin sanction Petroperú for not compensating the communities for the spill. At the same time, a process of dialogue should be initiated with Petroperú so that it complies with the compensation.
- e. Nieva (2023): demand that the OEFA require Petroperú to draw up a Rehabilitation Plan for the area. The regulation states that it should have done so 3 months after the spill. In addition, the GTAA can be included as an interested third party in the Administrative Sanctioning Procedure that the OEFA opens against Petroperú for the spill.



Advocacy recommendations

- f. Hold coordination and advocacy meetings with OEFA to bilaterally agree that in the territory of the GTAA the agency commits to coordinate with community authorities and the territorial government before entering, as well as to deliver the Supervision Act of each entry to the community. It should also hold assemblies in the communities at each entry to explain its actions, send the GTAA and the communities public information about its actions, among other tasks.
- g. Prepare a complaint to Osinergmin requesting that the company be sanctioned for non-compliance with the prevention measures identified in the report and that the company be required to comply.

- h. Form Community Civil Defense Committees in the communities or request the incorporation of the GTAA into the district Civil Defense Committees. This will improve the response of the risk management system to spills.
- i. Promote a special commission for Risk and Disaster Management due to oil spills with the participation of the GORE, District Municipality, Petroperú, health sector entities, Indeci, the GTAA and OEFA.
- j. Generate coordination spaces with the DIRESA, as well as with the micro-networks and health posts to promote their training in health response guidelines and the incorporation of intercultural criteria in the event of spills.
- k. Advocacy for research leading to the adaptation of FFS to Amazonian ecosystems.
- l. Promote that OEFA establishes milestones of control in case a Rehabilitation Plan is ordered, so that the absence of control for 18 months is not repeated as happened in the case of the mandate of particular character for the Rehabilitation of Section I of the ONP.
- m. Find out what insurance policy the ONP has and analyze what actions can be taken to cover damages in the event of spills.
- n. Advocate for municipalities and the Regional Government to allocate resources to the 068 (disaster prevention) program to finance environmental monitoring and emergencies.
- o. Review the proposed ToR presented by Petroperú and its Work Plan for the updating of its PAMA. Likewise, once Petroperú presents its proposal for modification, it is recommended that the GTAA be constituted as an administered third party in order to influence the improvement of the instrument. Beforehand, the GTAA's technical team and technical team of Petroperú can work together on the central points that they consider should be included in the PAMA update. It is suggested to build an alliance with other indigenous organizations. In addition, when the PAMA update is under evaluation, a Prior Consultation can be demanded.



Recommendations for regulatory changes

- p. Modification of the Regulation on Environmental Protection of Hydrocarbon Activities so that the State can intervene in the event that the company fails to comply with the remediation.
- q. Modification of Annex 4 of the Hydrocarbon Pipeline Transport Regulation to improve provisions related to compensation, water delivery and that food delivery by the company is considered when a spill occurs.
- r. Promote a law authorizing the use of a percentage of OEFA and Osinergmin fines for spill remediation.
- s. Promote the modification of Law 28804 so that, during Environmental Emergency Declarations, the selection processes for procurement and contracting necessary to deal with the emergency can be exempted.

- t. Promote the modification of the Sanitary Emergency Directive so that it considers intercultural criteria.
- u. It is recommended to coordinate or support 2 initiatives for regulatory changes that could have positive repercussions for the territory of the GTAA
 - 1 Modification of a law so that territory where there is oil infrastructure can be titled.
 - 2 Modification of oil concession Abandonment Plans, so that when the ONP is no longer used, it is ensured that everything is left remediated.
- v. Promote an addendum to the ONP concession contract to establish new and improved clauses. This will secure various environmental and social rights, thereby improving the provisions for the company's relations with the communities. The Supreme Decree approving the addendum must go through Prior Consultation.
- w. Encourage the regulation of more drastic measures in the face of repeated and continuous non-compliance by oil companies. Civil death for the companies, embargoes, effectiveness of contractual terminations, among others.
- x. Promote that OEFA establishes a Directive for the delivery of mandatory information to the affected population, with criteria of risk, interculturality and geographical relevance. In this way, the population will be clearly and precisely informed of the risks and damages they run and will be able to take preventive measures.

V. RECOMMENDED MILESTONES AND LINES OF ACTION FOR THE GTAA RAPID SPILL RESPONSE PLAN

Actions to prevent spills	Actions when a spill occurs	Post-spill actions
<p>1 Accompaniment of the GTAA through an environmental technical team that is familiar with and monitors the procedures related to spill response. This can be done by intensively training the existing team of the Territory and Nature area.</p>	<p>1 Monitors and authorities identify and record data on the spill: probable date of the event; ONP kilometer reference; main impacts: water, soil, fauna, flora; approximate extent of the spill; communities near the spill.</p>	<p>1 The GTAA follows up on OEFA's supervision report and the measures it establishes. In addition, the monitors will accompany OEFA on entry for supervision after the company carries out containment and clean-up actions.</p>
<p>2 Implementation of a monitoring program independent of the GTAA.</p>	<p>2 The GTAA reports the environmental event to OEFA, Petroperú, the health center and the person responsible for emergencies and disasters in the Municipality or Regional Government. They must coordinate and present themselves to the community authorities and the community assembly to inform about the tasks they are going to carry out.</p>	<p>2 The communities request that the company inform in assemblies (and not individually) the schedules and scope of the clean-up and subsequent remediation of the impacted areas.</p>

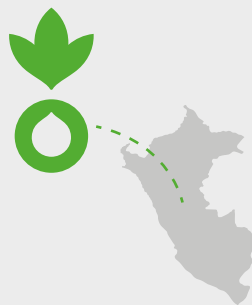
Actions to prevent spills	Actions when a spill occurs	Post-spill actions
<p>3 Training of community leaders and key actors on standards, competencies, and obligations of state institutions and the company in the event of a spill.</p>	<p>3 Community authorities and the GTAA alert nearby communities that may be affected by the spill to take precautions and stay away from the spill.</p>	<p>3 It is possible to request that the monitor be hired by the company in charge of cleaning to accompany all the activities that are carried out.</p>
<p>4 Strengthening territorial control to prevent pipeline cuts and propose internal regulations to sanction such acts if the perpetrators are found. Territorial surveillance and monitoring can be carried out using technological tools such as drones.</p>	<p>4 GTAA alerts in digital and print media. Communicate to NGO partners and other indigenous organizations.</p> <p>Establish a direct communication channel with affected communities and local authorities.</p>	<p>4 OEFA and Petroperú should report on the next actions to be taken. Also, if a PAS is initiated, the communities or the GTAA should be asked to participate as interested third parties in the process.</p>
<p>5 Articulation with emergency and disaster prevention strategies implemented at the local and regional level.</p>	<p>5 Environmental monitors from the communities accompany PETROPERÚ when it initiates first response actions. Namely, to check that they clamp the pipeline to stop the source of the spill and that they install containment barriers on the ground or water body.</p>	<p>5 Environmental monitors from the communities accompany the remediation actions to be carried out in the area. For this purpose, they should ask to be trained in the technology to be used in the area.</p>
<p>6 Execution of activities mapped in the diagnosis of Disaster Risk Management carried out by the GTAA.</p>	<p>6 Monitors accompany entry of OEFA and other institutions (ANA, Osinergmin, DIGESA, prosecutor's office, etc.). Special attention should be paid to the soil or water samples that could be taken. And verify that the supervision reports contain all relevant information and that nothing is omitted.</p>	<p>6 Where appropriate, reports on Humanitarian Aid Goods (HAB) delivered by local and regional government should be followed up.</p>
<p>7 Follow-up of Petroperú's maintenance actions and compliance with environmental regulations and instruments.</p>	<p>7 Special attention should be paid to the monitoring records of institutions entering the territory to verify that they record all details of the emergency.</p>	<p>7 The GTAA requests its incorporation as an administered third party in the PAS that the OEFA initiates against the company for the spill.</p>
<p>8 Indigenous environmental innovation projects for spill containment and health care.</p>	<p>8 Follow-up on reports from INDECI, COER, Municipalities and local and regional authorities on emergency response and humanitarian aid (health care, water, food, etc.). Verify that they request adequate quantities to cover the entire population.</p>	<p>8 The GTAA will need to assess with its legal team the possibility of criminal, constitutional and civil proceedings.</p>
<p>9 Advocacy for regulatory changes to improve pipeline operation and rapid spill response to prevent the spread of contamination.</p>	<p>9 GTAA identifies, accompanies and monitors the response to potential conflicts.</p>	<p>9 If OEFA orders the presentation of a Rehabilitation Plan. The GTAA requests MINEM to incorporate it as a third party interested in the evaluation of the RP.</p>

Actions to prevent spills	Actions when a spill occurs
<p>10 Identification of high-risk areas for spills in the territory of the GTAA and the potential routes of migration and exposure to oil in order to identify which communities are exposed downstream (it may even be possible to estimate the time of advance of the pollutant from community to community). In addition, have a register of families per community so that in the event of a spill it is known how many people should be provided with drinking water and humanitarian aid goods.</p>	<p>10 GTAA monitors that health care and health surveillance protocols are activated. If appropriate, it carries out advocacy for the Declaration of Health Emergency at regional level and the Declaration of Environmental Emergency.</p>
	<p>11 11 days after the spill, the GTAA requests the OEFA a copy of the First Response Action Plan and its schedule prepared by the company in order to carry out the necessary monitoring. After 16 days, it asks Osinergmin for the damage assessment report that the company must submit, and if it has not submitted it, to request the initiation of the PAS and administrative measures.</p>



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Shusui native community receives training in risk management.



Action Against Hunger (ACH) has been operating in Peru since 2007, implementing programs focused on providing humanitarian assistance and building resilience in different sectors. Its actions emphasize access to resources and strengthening the operational capacity of local authorities, institutions and civil society to promote emergency response and foster development.



The mission of the Awajún Autonomous Territorial Government (GTAA) is to exercise Awajún self-government in the framework of the right to self-determination of the indigenous people within our territory in order to strengthen the customary institutionality that is to ensure the perpetuity of the 3 million hectares of territory that we have as Awajún people and the biodiversity that is central to our collective cosmovision.



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