

Ministry of Finance  
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Your ref.  
10/5364 WM

Our ref.  
08/2- HJE

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### Concerning the recommendation on exclusion

The Council on Ethics makes reference to the Ministry of Finance's letter of 25 May 2012, in which the Ministry requests an update on the Council's recommendation dated 1 December 2010 on the exclusion of Repsol YPF and Reliance Industries, currently under consideration at the Ministry. The Council is asked to provide an update in view of indications that Peruvian authorities have changed their approach towards indigenous peoples. The Ministry makes special mention of the new law on the prior consultation of indigenous peoples and the fact that Peru has stated that it will consider the extraction of economically important resources and social considerations in relation to each other.

The Council on Ethics' point of departure is the assessment of concrete companies, not government authorities or their policies. The recommendation on the exclusion of Repsol and Reliance Industries was issued on 1 December 2010. Together with Petro Vietnam, the companies are partners in a joint venture that explores block 39 in the Peruvian Amazon. In May 2011, it became publicly known that Conoco Phillips had sold its share in the joint venture to Petro Vietnam, which is wholly owned by the Vietnamese Government. Conoco Phillips was not included in the recommendation because the Council was aware at the time that the company was leaving the joint venture. There have been no further changes to the joint venture.

Repsol, the operator of block 39, is planning to continue its exploration activities and drilling of test wells in the block. The company submitted an environmental impact study for further seismic studies and drilling of test wells to the authorities in April 2011. This study is still under assessment by the Ministry of Mines and Energy in Peru.<sup>1</sup> The environmental impact assessment states that the drilling of test wells will take place over a period of five years.<sup>2</sup> The company expects to start drilling in 2012.<sup>3</sup>

At the core of the Council's recommendation lies the question of whether or not there is a risk that indigenous peoples in voluntary isolation – so-called uncontacted indigenous peoples – live in block 39. On the basis of an overall assessment of available information, the Council concluded in its recommendation that there is a probability that indigenous people live in

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<sup>1</sup> <http://www.minem.gob.pe/descripcion.php?idSector=2&idTitular=218>.

<sup>2</sup> Informe N. 200-2011-MEM-AAE/MB, 5th observation.

<sup>3</sup> [http://www.repsol.com.pe\\_es/corporacion/conocer-repsol/actividad/upstream/peru\\_2008.aspx](http://www.repsol.com.pe_es/corporacion/conocer-repsol/actividad/upstream/peru_2008.aspx).

voluntary isolation in block 39 and that continued exploratory activity in the block entails an unacceptable risk of the company contributing to human rights violations insofar as it exposes them to contact. The Council also maintained that the uncertainty concerning the presence or otherwise of the uncontacted indigenous peoples in the block was due to the fact that necessary scientific studies had not been carried out to clarify their existence.

To the Council's knowledge, no new studies have been carried out by the company, the multisectorial commission or others to clarify whether uncontacted indigenous people live in the block since the recommendation was issued. Likewise, there are no reports on new incidental observations of signs of uncontacted indigenous people. The factual basis for the recommendation thus remains unchanged.

The law on the prior consultation of indigenous people in keeping with ILO's convention 169 (Law nr. 29785) was adopted by Peru's Congress in August 2011. The law was positively received by many; disagreements nevertheless exist between government authorities and indigenous organisations on how the law should be implemented in order to be in line with the ILO convention, not least as concerns consultations. The law came into effect in April of this year after a multisectorial commission had drafted its regulations.<sup>4</sup>

The law does not apply retroactively and is consequently of little consequence for activities in block 39. The Council does not consider it relevant in this case as in fact it would be undesirable for companies to contact indigenous people in voluntary isolation in order to carry out prior consultations. As the law has only recently entered into effect, it is still too early to see what effect it will actually have in operations where, as opposed to the present case, indigenous peoples should be consulted.

The Council does not generally find it relevant to consider whether Peru's new government will give more attention to social matters in regards to extractive projects. This case is an assessment of two companies. As concerns activities in Block 39 specifically, the Council is not aware of any additional obligations imposed by the government on the company which could have an impact on the question of the existence of uncontacted indigenous peoples given that permission for the exploration of the block has been granted under the same conditions as previously. In the Council's eyes therefore, political developments in Peru concerning indigenous peoples do not appear to have any relevance for this particular case.

Based on this, the Council finds no reason to do otherwise than to maintain its recommendation on the exclusion of Repsol YPF and Reliance Industries.

Sincerely yours,



Ola Mestad

Chairman of the Council on Ethics

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<sup>4</sup> <http://www.andina.com.pe/Espanol/noticia-ejecutivo-publica-reglamento-ley-consulta-previa-ampliacion-406709.aspx>.