



Pacific Exploration and Production Corporation

Barry Larson

CEO

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Dear Mr. Larson,

We would like to follow up on elements of information you have submitted to Export Development Canada (EDC) in relation to our letter regarding EDC's financing of your company Pacific Exploration & Production Corp. (Pacific E&P) and of Ecopetrol S.A. (Ecopetrol).

FIDH is an international NGO that promotes all rights recognized in the Universal Declaration of Human Rights. It is composed of 184 member organizations in more than 100 countries, and benefits from consultative status with the United Nations, OAS, UNESCO and Council of Europe. It is also an Observer before the African Commission on Human and Peoples' Rights.

On 12 July 2016, FIDH, its Colombian member organization, the Corporación Colectivo de Abogados José Alvear Restrepo (CCAJAR), and PASO Internacional, presented the report "*The Human Cost of Oil*".¹ This report was the outcome of a community-based impact assessment which looked at actual and potential human rights impacts associated with the activities of Pacific E&P and Ecopetrol in the Rubiales and Quifa oil fields. The report is based on government and court documents, interviews with numerous stakeholders including national authorities, companies, union representatives and public institutions, a scientific analysis of social and environmental impacts, as well as nearly 600 surveys and interviews conducted with local residents, workers and indigenous communities living within or on the outskirts of the Quifa and Rubiales fields. Throughout the investigation process, the research team - made up of members from FIDH, CCAJAR and PASO Internacional - met on several occasions with the authorities and with representatives from Ecopetrol and from your company in order to discuss elements of the research.

On the basis of this report, and together with Above Ground in Canada, our organizations contacted Export Development Canada (EDC) to obtain information about the agency's due diligence practices in relation to this case.

As per EDC's letter dated 11 November 2016, the agency sought clarification from Pacific E&P

¹FIDH/ CCAJAR/ PASO Internacional, *The Human Cost of Oil. A Human Rights Impact Assessment on the Activities of Pacific Exploration & Production Corp. in Puerto Gaitán*, July 2016, available in Spanish at https://www.fidh.org/img/pdf/colombie_informe_es_version_web.pdf.

about the concerns we raised and shared your company's response with us.

After carefully reviewing the answers your company provided, the signatory organizations would like to respond to the elements provided by your company to EDC. Our responses build on information contained in “*The Human Cost of Oil*” report as well as on results of follow-up actions carried out after the investigation.

In particular, we would like to call your attention to the intensification of violence against local environmental, union and human rights defenders in Puerto Gaitán and the fact that in December 2016 the Inter-American Commission on Human Rights requested that the Colombian State adopt precautionary measures to protect their lives and personal integrity.²

Pacific E&P response on the rights of indigenous peoples

1. Pacific E&P states that, “the pre-requisite to prior consultation in Colombia is the certification of the presence of indigenous communities by the Ministry of Interior within the area to be licensed” and maintains that, “the Court's decision to compensate activities within a 2 km buffer outside of indigenous territory was unprecedented, and so could not have been anticipated by Pacific E&P.”
2. It also maintains that the company is in a “constant and direct stakeholder engagement which we carry out with this community, alongside our specialized on field team.”
3. In addition, Pacific E&P states that the “voluntary social investment plan” this year “focused mainly on expanding agricultural practices and helping the community with food packages to help insure nutritional security.”
4. It says that, “Colombian law requires that these parties [Human Rights Ombudsman's Office or Public Ministry] be invited to participate, but that their presence is not a requirement.”

Response from the signatory organizations:

1. Since 2011, the Colombian Constitutional Court has, by means of Ruling T-693/11, urged the Ministries of Interior and Environment, and in particular Meta Petroleum to **review and adjust its protocols to define areas of influence** in the territories of indigenous communities taking into account a broad concept of territory. This broad concept should, according to the Court, be taken into account in the prior consultation process with the communities. Thus, the signatory organizations would highlight that:
 - The fact that the Ministry of Interior has failed to update its protocols in compliance with the Court’s ruling does not exempt the company from its obligation to carry out impact assessments taking into consideration both direct and indirect actual and possible adverse impacts. These studies would have shown that even though these projects do not cross indigenous territory, they have a considerable impact on the indigenous communities in the zone and therefore these communities should have been appropriately consulted. A lack of clear criteria to determine areas of influence and the direct and indirect impact of operations on the communities creates significant risks for those communities, and means that the studies should be carried out in an even more rigorous manner.
 - Ruling T-693/11, which establishes a clear judicial precedent regarding impact in

²Inter-American Commission on Human Rights (IACHR), Resolution 65/2016 of 17 December 2016, Precautionary Measures No. 382-12, Members of the Community Action Board of the Village of Rubiales, Colombia, available at www.oas.org/es/cidh/decisiones/pdf/2016/MC382-12-ES.pdf.

untitled territories of indigenous communities, is specifically relevant to the activities of Meta Petroleum (subsidiary owned 100% by Pacific E&P). As such, the assertion that the 16 December 2015 Constitutional Court ruling was unforeseeable on Pacific E&P's part is invalid.

2. It is concerning that, whilst Pacific E&P states that it maintains permanent dialogue with the communities and has a specialized team in the field, the communities are forced to process claims related to impacts generated by Pacific E&P activities via judicial channels. Indeed, it is very difficult for the communities to access courts due to the municipal county seat's distance, transportation costs and the long duration of judicial processes.
3. As documented in "*The Human Cost of Oil*" report, the "rapprochement" phase (*fase de acercamiento*) included by Pacific E&P in its protocols for Free, Prior and Informed Consultation (FPIC) has generated distortions and risks to the guarantee of community rights. This is particularly so where state oversight entities (the Inspector General's Office and the Ombudsman's Office) are absent (in this phase and subsequent consultation phases), and where:
 - The communities cannot fully assess the project's implications themselves; and
 - Pacific E&P's protocol to carry out FPIC increases the risks of creating a conducive environment for corruption and the procurement of personal benefit. For example, offering food packages as a form of compensation can encourage corruption among communities and/or skews community decisions in favor of company interests, negating the extent to which those decisions are free and informed regarding the real impacts of the company's activities. Indeed, such decisions are instead founded solely on the community's need to access these specific benefits at the time of decision making.
4. Contrary to what is indicated by Pacific E&P, Colombian law requires that state oversight entities attend consultation meetings, and not simply that they be invited. Ruling T-129 of 2009 established a series of requirements in the conduct of prior consultation, including "that the communities be accompanied by the Human Rights Ombudsman's Office and the Inspector General's Office." Consultations should therefore not be conducted when communities cannot benefit from the accompaniment of human rights monitoring bodies. The absence of human rights monitoring bodies creates a significant asymmetrical power relationship with regard to the use of information, obviating the possibility of a meaningful dialogue between the parties.

Pacific E&P responses on environmental impacts

1. According to the 2015 Sustainability Report
 - "Both Rubiales and Quifa have low level of water stress";
 - "Between 2014 and 2015 superficial water use was reduced in 11% [...]. The underground water source usage [...] [was reduced] in over 26%."
2. Pacific E&P reports that "wastewater measurement related to the extractive sector is monitored by the ANLA, Colombia's environmental authority. Accordingly, the ANLA carries out a minimum of two random audits per year."
3. The company states that, "in all audits, the company met all [environmental] compliance requirements."
4. Pacific E&P reports that:

- “In 2013, Pacific E&P invested in the installation of seismographs operated by an independent third party in the Rubiales field.”
 - “The company confirms that the activity was micro-seismic in nature, never exceeding level 3 on the Richter scale.”
 - “More recently, the seismic monitoring found a significant reduction in activity since 2015.”
5. Pacific E&P notes that the “Colectivo Alvear and FIDH have filed a lawsuit against the Company regarding this issue [of seismic activity], representing an appropriate mechanism for assessing the allegation.”

Response from the signatory organizations:

1. The company’s practice of discharging industrial wastewater to surface waters and injecting it underground artificially lowers overall levels of underground and surface potable water sources. The company has requested that its environmental licence be modified to allow a significant increase in its wastewater discharges.
2. In relation to contamination, 80% of the people interviewed stated that they have observed impacts on water used for consumption since oil activity started in the area. **The Solenergy audit confirmed these impacts and specifically demonstrated** that:
 - An additional discharge line exists that does not pass through the tanks and as such water discharged by this line is not regularly monitored by the contemplated mechanisms;
 - Four out of five lines discharge water that exceeds permitted contaminant levels;
 - In total; data collected in 2015 reveals that the volume of wastewater discharged by Pacific E&P into the Rubiales creek was 47% in excess of that authorized by the company's environmental permits.

In light of the above findings, we maintain the analysis of the “*The Human Cost of Oil*” report:

- The monitoring system is not reliable;
 - It does not register discharges that take place at night;
 - The monitoring mechanism in place does not provide real time results/measurements; and
 - The National Environmental License Authority (ANLA) fails to effectively verify the information submitted by companies.
3. ANLA, in its Technical Concept No. 9835 of 21 July 2014, recognized the validity of concerns raised by local environmental groups and civil society organizations and therefore decided **to impose measures to temporarily suspend the discharge of industrial wastewaters** at the five points authorized for CPF1 (Central Processing Facility).³ This was confirmed in its Technical Concept No. 1990 of 2 May 2016, and by Ruling 2987 of 8 July 2016, under which the same entity **opened an environmental sanctions investigation** into impacts of the wastewater discharges on water levels and quality of the Rubiales creek.⁴

³ ANLA, Resolution 836 of 25 July 2014 by which preventive measures are imposed and other determinations are made, available at http://www.anla.gov.co/sites/default/files/13147_res_0836_250714.pdf.

⁴ ANLA, Ruling 2987 of 8 July 2016 by which an environmental investigation is opened, available at http://www.anla.gov.co/sites/default/files/auto_2987_08072016.pdf.

4. A report from the Colombian Geological Service⁵ shows an increase in seismic activity in Puerto Gaitán starting in 2013. From 2 April 2013 to 28 June 2016, 976 earthquakes were registered, and as of 31 January 2017 at least 9 measured four or more on the Richter scale.
 - Pacific E&P has injected up to three times the number of barrels of wastewater considered critical to induce seismic activity.⁶ This activity constitutes a high risk factor for the community.
 - In relation to the monitoring system mentioned by the company in its response, Pacific E&P and Ecopetrol contracted the company SEISMIK with the aim of deepening its comprehension of the seismicity phenomenon. The report from this firm⁷ reveals a correlation between injection activities and the seismicity taking place in the field.
 - A presentation from the same company, by Mr. Roderick Pérez Altamar, Ph.D., concludes that “a real correlation exists between water injection and seismicity.”⁸
 - The connection between injection activities and seismic activity is even more evident when one considers that the reduction in seismic activity mentioned by the company coincides with a lowering of injection volumes by Pacific E&P starting in December of 2015, precisely at the PADs that SEISMIK recommends in the aforementioned study.⁹
 - In fact, Ecopetrol acknowledged this connection in the context of the public interest lawsuit (*acción popular*) that has been filed to protect a healthy environment. In court documents, Ecopetrol states that the implementation of a plan to reduce injection volumes explains the reduction in earthquakes during 2015.

5. It is mistaken to believe, as Pacific E&P does, that suitable response mechanisms for community claims, particularly those related to seismic activity, are judicial and administrative channels. This is because these communities generally do not have the capacity to access the justice system. It is Pacific E&P's responsibility to collaborate with state authorities to ensure that it prevents, mitigates, and remedies the human rights and environmental impacts associated with its activities. Under no circumstance is a company absolved from fulfilling its responsibilities simply because affected groups may turn to judicial bodies to denounce the violations associated with the company's activity. Additionally, injection activities are not duly regulated, nor are their impacts adequately documented, which limits the administrative remedies available. Under the precautionary principle, Pacific E&P has an obligation to carry out prior and rigorous impact studies. However, such studies do not appear in the Environmental Impact Study carried out by Pacific E&P. Studies carried out after the project was approved do not address the problem

⁵Information from the Red Sismológica Nacional de Colombia - Servicio Geológico Colombiano which provides daily reports on the country's seismic activity. Available at <http://seisan.sgc.gov.co/RSNC/index.php/consultas>.

⁶Pacific E&P stated in its Environmental Compliance Report 14 to the National Environmental Licence Authority (ANLA) that it injected between 54,924,978 and 80,965,815 barrels per month in a total of six PAD injections in 2013. The PAD had daily injection rates that varied between a minimum of 171,576 and a maximum of 855,097 barrels. Research from Science Mag indicates that 300,000 barrels per month is a critical threshold for the induction of seismic activity. Some of Pacific E&P's PAD injections injected almost three times this amount in a single day. See Weingarten et al., “High-rate injection is associated with the increase in U.S. mid-continent seismicity” (Science Mag, 19 June 2015), Vol. 348, Issue 6241, p. 1336 - 1340.

⁷SEISMIK (L. Eisner et al.), *Seismic analysis for Campo Rubiales*, Final Report, 01.08.2015.

⁸Pacific E&P, *Análisis de Sismicidad – Rubiales – Quifa*, 15 February 2016, p. 39, developed by Roderick Pérez Altamar, Ph. D., specialist in seismic interpretation of Pacific E&P, dated 06.07.2016.

⁹According to the response Ecopetrol submitted to the lawsuit, the Company has carried out a pilot plan in PAD 6 with a 90,000 barrel reduction of injection volume since December of 2015.

in depth but are limited to establishing a relationship between the earthquakes' location and that of the injection PAD.

Pacific E&P response on labor rights

1. Pacific E&P has stated that it uses temporary companies “to carry out temporary activities related to the core Exploration and Production activities.” It observes that both are legal according to Colombian legislation, and that it “has less than 60 temporarily affiliated workers to date, most of which are addressing catering and transportation needs, or supporting specific activities necessary for a phase of the business that is not recurrent.”
2. Pacific E&P notes that it “only hires legally constituted companies whose management, economic and technical activities are independent and autonomous.”
3. Pacific E&P reports that it works to “guarantee these rights by regularly carrying out meetings with contractors and employees.” In addition, it reports that “the majority of its employees are affiliated to UTEN.”

Response from the Escuela Nacional Sindical (ENS) to these statements:

1. According to data collected and legal analysis undertaken by ENS and in light of Colombian legislation, investigative findings demonstrate that Pacific E&P carries out illegal labor outsourcing. In this case, what a detailed analysis in the “*The Human Cost of Oil*” report shows is that workers are contracted to carry out core and permanent activities, which should be considered part of the company's daily operations since they constitute essential activities for the company to fulfil its corporate purpose in commercial terms. Even if Pacific E&P subcontracts through legally constituted companies, it results in situations whereby standards of decent work are not respected and various elements indicate that labor relations have become more precarious. These include situations where:
 - Pacific E&P subcontracts activities that are core to the corporate purpose, as described in its current registration with the Chamber of Commerce in Colombia, to several operators.
 - Some workers are contracted directly by Pacific E&P and some workers are hired through contractors, yet both carry out the same activities in the same place and time. This shows that in effect there are subcontracted workers carrying out permanent core activities.
 - The tendency to provide fixed term work contracts for a period of one year or less allows a worker to be hired by different subcontracting companies at different moments while carrying out the same activity. This practice results in a lack of stability for workers, therefore impeding workers' ability to effectively exercise their right to freedom of association.
 - Interviews with workers have clearly indicated that Pacific E&P exercises an influence over all procedures, controls, and supervision of activities carried out by workers hired through contracting companies.
2. Pacific E&P’s commercial relationship with legally constituted companies is not in question. Rather, what is at issue is the fact that these companies have labor practices that function at the expense of worker's rights and that Pacific E&P turns a blind eye. It is objectionable that a commercial relationship established between Pacific E&P and contracting companies permits the latter to carry out the same activities as are established in Pacific E&P’s corporate purpose.

3. In relation to the arguments presented by Pacific E&P in reference to freedom of expression and association we would like to clarify several facts:
 - Even if the workers hired by contracting companies enjoy a work contract that includes payment of the country's legally mandated social security benefits, what is truly at issue is how the improper use of the formal subcontracting concept negatively affects workers' labor conditions. The concept of a fixed contract for less than a year is legal in Colombia, but in reality it does not allow workers to exercise their right to association, increases ambiguity and therefore makes it difficult for a worker to feel supported to exercise the right to association and enjoy the benefits of collective bargaining. Indeed, the possibility of strike action is almost null. By designing its business model around subcontracting (in ways which amount to illegal outsourcing according to our analysis of Colombian law) the company negatively affects workers' rights to freedom of association and collective bargaining.
 - Regarding affiliation to different trade union organizations, a timeline shows that before 2011 the Unión Sindical Obrera (USO) represented the majority of workers, and was considered the majority union. However, after the strike of that same year, persecution of the trade union organization's leadership weakened the trade union structures, and led to the progressive disappearance of the USO in Pacific E&P. UTEN entered Pacific E&P not only as a trade union organization, but also as a tool for labor intermediation to recruit and hire workers.
 - Lastly, Pacific E&P does not treat the two unions, USO and UTEN, equally. USO faces significant difficulties in the collective bargaining process, as a consequence of issues that are currently before the courts. In contrast, UTEN is not autonomous, working as a recruitment agency for the company. The Union Contract concluded between UTEN and Pacific E&P limits freedom of association and allows undue interference from the company on the union's internal administration and membership.

Union contracts are permitted in Colombia. Nevertheless, such contracts do not correspond with a democratic process where workers have the possibility of impacting their labor conditions. On the contrary, such contracts have been used to conceal the true nature of labor relations with Pacific E&P, where the company does not assume the workers' occupational liability. Consequently, these contracts serve as a tool for illegal labor intermediation.

Pacific E&P response on human rights

1. The company observes that “Pacific E&P, along with 28 other companies from around the world, is a signatory to the Voluntary Principles on Security and Human rights (VPSHR).” In addition, “its VPSHR commitments have been recognized as effective by the Mining and Energy Committee (*Comité Minero Energético*) and Guías Colombia. The Company has also made publicly available its Declaration of Human Rights.”
2. Pacific E&P “has publicly denounced that certain unions or activists engage in intimidating behavior in pursuance of their agendas.”
3. The company reports that “the only restriction the company imposes to enter the field is to comply with measures of health and safety. Having said that, the company reports that Campo Rubiales and Quifa field are areas of 55,000 hectares and has 171,000 hectares, respectively, which are mostly open fields with free movement of personnel and people.”
4. Pacific E&P reports that, “when the Government provides a license to operate in these areas [traditional guerilla or paramilitary group controlled territories], it encourages state

protection in order to enter and exit the areas safely. However, on many occasions, the state lacks capacity to carry out these activities at the pace the company requires them, which is why working agreements are created. These agreements are focused upon covering the Government's costs for the movement and shelter of public forces to these remote areas.”

Response from the signatory organizations:

1. Whilst we value that Pacific E&P has signed the non-binding VPSHR instrument, this initiative does not enjoy any monitoring mechanism that has proven effective. It relies on a reporting mechanism reviewed by peers, which has not contributed to improve the human rights situation¹⁰. The affected communities continue to express multiple complaints concerning Pacific E&P activities. The report “*The Human Cost of Oil*” documents in detail the illegal surveillance and excessive use of force used by police authorities and the company’s private security operator. This excessive use of force is not adequately controlled or sanctioned by the State.
2. The behavior of trade unionists and social leaders, referred to by the company as intimidating, is in fact civil protest and constitutes a legitimate means of exercising freedom of association and freedom of speech. On this matter, the Inter-American Commission on Human Rights has highlighted that when dealing with expressions from traditionally marginalized sectors of society that cannot access denunciation channels such as the traditional media or face deficient institutional contexts for denunciations, protest constitutes a vital tool for citizen's effective and inclusive participation in public matters.¹¹
3. Whilst the fields have an area of 55,000 and 171,000 hectares respectively, the limitations to freedom of movement denounced in the report relate to roadblocks on public roads and routes. Currently, Ecopetrol and Pacific E&P maintain roadblocks that are controlled by private companies and that involve registering local people. The **Superintendencia of Surveillance and Private Security** (*Superintendencia de Vigilancia y Seguridad Privada*) **opened a preliminary investigation due to these incidents.**¹²
4. The signatory organizations question the agreements between private companies, the Prosecutor General's Office and the armed forces, given that:
 - These agreements are not guided by a clear mandatory regulatory framework; and
 - Colombia’s context of conflict implies that the risks created by these agreements are considerably high.

The company therefore should grant public access to the existing agreements and abstain in the future from this type of expenditures.

As signatory organizations, we are grateful for the attention you have given to our clarifications and we would like to reiterate the recommendations made in our report. These are, specifically:

¹⁰According to the information available in 2016 Pacific E&P did not submit an annual report.

¹¹ Inter-American Commission on Human Rights (IACHR), Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2005. Chapter V: Public demonstrations as an exercise of freedom of expression and freedom of assembly. OEA/Ser.L/V/II.124. Doc. 7. 27 February 2006. pp. 121-145, available at <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=662&lID=1>.

¹²On 17 July 2016, the Superintendencia of Surveillance and Private Security informed CCAJAR that it had opened a preliminary investigation into the company Fidelity Security Company Ltd. on charges of “assuming conducts reserved for the public forces” and “affecting the public confidence in security services”. This was due to the company’s engagement in surveillance, harassment and attempts to register our organizations.

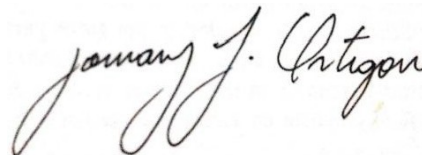
1. The rights of human rights defenders, including those who work in defense of the right to land, should be fully respected.
2. Those who defend human rights should not be the object of any form of harassment, illegal monitoring, undue pressure, or violence.
3. The companies in question should collaborate with judicial bodies in good faith in cases that involve alleged human rights violations resulting from their direct behavior.
4. Information that describes investment projects, including contractual documents and impact assessments, should be made available in good faith to the public to support those who work to defend the right to land and prevent conflict.
5. Full respect of the exercise of trade union freedoms should be ensured at Pacific E&P's operations including by the firms it contracts. There must be venues for dialogue and negotiation with all unions.
6. Workers who carry out core, permanent activities should be hired directly.
7. Environmental Impact Assessments and Environmental Management Plans should analyze areas of influence as established by Colombia's Constitutional Court with regards to untitled indigenous territories.
8. Real-time monitoring mechanisms should be installed to measure the quality and quantity of crude oil and water produced in oil operations, including water that is reinjected. Monitoring data should be accessible to affected communities.
9. Reinjection activities should be suspended until the possible correlation between these and increased seismicity activity throughout recent years has been examined.
10. Responses should be offered to the communities in detail and in good faith, and generalised answers to specific questions regarding a healthy environment should be avoided.

The signatory organizations express their openness to ongoing dialogue on the elements mentioned in this letter, either in writing or through in-person meetings with representatives of Pacific E&P. The aim of such dialogue must be furthering respect for the human and environmental rights of the affected populations of Puerto Gaitán.

Best regards,



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