

April 6, 2010

Compliance Advisor Ombudsman
International Finance Corporation
Ms. Meg Taylor, CAO Vice President
2121 Pennsylvania Avenue, NW
Room F11K-232
Washington, DC 20433
United States
Fax (202) 522-7400
cao-compliance@ifc.org

Submitted via electronic mail and U.S. mail

Dear Ms. Taylor,

We, the citizens of the Shibibo-Konibo indigenous villages of Canaán de Cachiyacu and Nuevo Sucre, hereby submit this complaint to the Compliance/Advisor Ombudsman (“CAO”) regarding human rights and environmental violations caused by International Finance Corporation (“IFC”) client Maple Energy Plc (“Maple”).

I. Introduction

We, the undersigned, are citizens of two neighboring Shipibo-Konibo villages located on the Rio Ucayali in the lower Ucayali region of the Peruvian state of Loreto. The closest town along the River is Contamana. We submit this complaint on behalf of each member of our communities. This complaint is public and we do not request confidentiality.¹

We submit this complaint because we have suffered tremendously from human rights, health and environmental harm caused by IFC client Maple and we seek assistance from the CAO in addressing this harm. As described in detail below:

- Maple did not sufficiently consult with the communities of Nuevo Sucre and Canaán about their initial operations on our lands; this includes Maple’s failure to provide us with emergency preparedness or emergency response training in the event of an oil spill;
- Maple failed to adequately disclose information to either community;

¹ We have requested that following coalition of organizations assist us in the CAO complaint process: U.S.-based Accountability Counsel and International Accountability Project, and Peru-based indigenous federations Organizacion Regional AIDSESEP Ucayali (ORAU) and Federación de Comunidades Nativas del Bajo Ucayali (FECONBU). Contact information for this working group, and more information about how to contact us directly, is attached as Document 1, below. We request that all communication with us be through email, in Spanish, and sent to each member of the working group. Each of the attached documents are described in the Document Index to the Spanish version of the Complaint (“Índice de Documentos Que Se Adjuntan A La Demanda Al CAO”).

- Maple has poisoned us through contamination of our land and water and repeated oil spills, including four oil spills in 2009 and one in 2010 (“the spills”);
- Maple has knowingly harmed us by failing to respond to those oil spills, including by failure to do the following:
 - notify affected communities about any of the spills,
 - properly contain the spills,
 - study the environmental impacts of the spills and report results to the community,
 - remediate contaminated areas after the spills,
 - study the human health impacts of the spills and report results to the community,
 - provide medical treatment due to widespread health problems resulting from the spills,
 - provide us with alternative sources of water for drinking, bathing, and washing after the spills,
 - provide us with food sources when fishing areas were contaminated after the spills,
 - provide us with food sources when crop yields were depressed after the spills;
- Maple has committed human rights abuses in Nuevo Sucre by forcing community members to clean up the April 2009 spill without training or protective equipment; and
- Maple has further harmed us by making repeated promises to take certain definitive actions to improve our situations that have not been fulfilled.

The IFC’s investment agreement with Maple was signed on July 23, 2007. The project number is 26110 and was assigned Category B.² According to the IFC Summary of Proposed Investment, the total 2007-08 project cost was \$68 million with additional costs “expected to be incurred in later years.”³

Maple requested a “financing facility consisting of an equity investment of up to \$10 million and/or debt investment(s) of up to \$30 million for IFC’s own account.”⁴ We are unclear what amount was agreed in the loan agreement and what the status of disbursements is to date.

According to the IFC webpage, “Maple Energy plc (Maple or the company) is an independent, privately-held integrated energy company with assets and operations focused in Peru. Maple engages in numerous aspects of the energy business, including exploration and production of crude oil and natural gas; refining and marketing of hydrocarbon products; gas-

² See IFC Summary of Proposed Investment, available at <http://www.ifc.org/ifcext/spiwebsite1.nsf/1ca07340e47a35cd85256efb00700cee/8225D23285C7EA84852576BA000E2A3F> (last visited April 2, 2010).

³ See IFC Summary of Proposed Investment.

⁴ See IFC Summary of Proposed Investment.

fired power generation and transmission and the development of an ethanol project.”⁵ The portions of the IFC investment that are believed to relate to impacts on our communities are “drilling and well work-over programs and related activities aimed to extend production of its existing hydrocarbon fields” and “exploration and related activities in Maple’s hydrocarbon concessions”.⁶ As described below, the IFC failed to conduct due diligence before the loan to Maple, the IFC has known that Maple has caused harm after the loan, but has failed to take action to stop the harm or help our communities.

While much of the harm caused by Maple is common to both Canaán and Nuevo Sucre, specific facts of our situations differ and are detailed in Section II (Canaán) and III (Nuevo Sucre) as follows.

II. Experience with Maple Energy in Canaán de Cachiyacu

Canaán de Cahiyacu (“Canaán”) is a Shipibo-Konibo indigenous community of 1,280 people founded in 1975. Prior to 1975, the community was located on the other side of the Rio Ucayali, but was forced to relocate due to the meander of the River. Since 1975, the community has been located on the banks of the Rio Ucayali and adjacent to the Cachiyacu tributary.⁷ The oil concession in this area is Lot 31-B.

Maple’s activities in Canaán began in 1994, when Maple took over operations from PetroPeru. From 1994 to 2004, the people of Canaán suffered from significant pollution of their lands due to Maple’s oil operations.

In March 2004, the community provided testimony to the Organizacion Regional de AIDASEP Ucayali (“ORAU”), the regional indigenous federation that represents Canaán.⁸ The community described harm from Maple’s operations including soil and water contamination from Maple’s discharged oil residues, health impacts from water contamination, harm caused to wildlife, and lower crop yields impacting community food access. The community further described the harm caused by Maple’s employees working in Canaán from other places, hurting the communities economic development, and the harm those workers caused due to sexual harassment of women in the community. The community demanded respect for their territory, culture and identity, environment and ecosystem, and provision of social support.⁹

In September 2004, the community of Canaán sent a letter to the Supervising Body for Energy Investment (“OSINERG”) requesting an inspection of Maple’s contamination of the Cachiyacu tributary. On October 23-24, 2004, in response to the community request, OSINERG supervisor Carlos Cabrera visited Plot 31B and observed that Maple Gas reinjected only 900

⁵ See IFC Summary of Proposed Investment.

⁶ See IFC Summary of Proposed Investment.

⁷ For additional history of the community, please see Nathalie Weemaels, *Fact Finding Mission Report: Oil Impacts in the Territory of the Native Community Canaan de Cachiyacu, Peru*, EarthRights International, 6-7 (Jul. 2005), attached hereto as Document 2 (in Spanish & English).

⁸ See Document 3 (3.30.04 Testimonio De La Comunidad Nativa De Canaan de Cachiyacu Frente A La Problematica De Contaminacion De Medio Ambiente Por Parte De La Empresa The Maple Gas Corporation Del Peru SAC).

⁹ See Document 3.

barrels per day (“BPD”) of its produced water; the remaining 2100 BPD flowed some 2 kilometers before entering the Cachiyacu tributary, in violation of the Maple’s agreement with the government. Due to poor testing practices, no contamination was identified despite these violations.

On January 8-9, 2005, the community of Canaán met with Maple’s head of public relations, Jorge Frohlich. The community discussed the problems given in the testimony to ORAU in 2004 (regarding health problems, environmental contamination, labor problems, harassment, and low agricultural productivity), but also identified problems around land use, education and coordination with the community. The meeting produced solutions to each problem and assigned responsibility for dealing with each issue.¹⁰ However, Maple complied with almost none of the promises made to the community during this meeting.

At a subsequent meeting in Pucallpa in April 2005, the Maple refused to sign any further agreements, which the community took as a lack of commitment. On April 15, 2005, Maple wrote a letter to the Ministry of Energy and Mines stating that no consultation with the community of Canaán is necessary and that Maple’s payments to PetroPeru should contribute to the development of the community, in lieu of any direct compensation payments. Maple further argued that “Plot 31-B is a very small plot that only produces approximately 293 barrels of crude/day.”¹¹ Maple then told the Ministry that “Maple has developed different activities to benefit the populations who live in the plots where it works, as well as carried out a community relations plan.”¹² While Maple did develop such a plan, it was never “carried out.”

As a result of Maple failing repeatedly to live up to promises to the community, in June of 2005, the community of Canaán took over wells on their land to protest Maple’s broken promises. This protest led to another agreement with Maple.¹³

On July 25, 2005, an assembly was held between Maple, the community of Canaán and state representatives.¹⁴ The meeting discussed land use, health and environmental issues, community relations, compliance with agreements, and the similar issues being experienced in Nuevo Sucre. The Commissioner for the Office of the Ombudsman for Ucayali, Margoth Quispe, moderated. At the meeting, the community demanded land compensation from Maple for land use over the past ten years and that Maple establish a rent to be paid from the date of the meeting forward. Maple indicated it would comply only with “legal obligations” toward Canaán, and argued that the plot at issue (in the Canaán community) is “marginal,” produces little, and is already at the point of being exhausted. The parties agreed to form a commission to study the land use issues.

Regarding environmental issues, the community described experiences with pollution, sicknesses, and deaths, and the president of ORAU presented the results of the EarthRights

¹⁰ See Document 4 (1.9.05 Minutes of Community Meeting in Canaan).

¹¹ See Document 5 (Letter from Rafael Guillermo Ferreyros Cannock, General Manager, Maple Gas Corporation to the Ministry of Energy and Mines, April 19, 2005).

¹² See Document 5.

¹³ See Document 6 (Caso Canaan 2008, Powerpoint of Lizardo Cauper Pezo).

¹⁴ See Document 7 (7.25.05 Acta de La Reunion, meeting minutes in Canaan).

International study.¹⁵ Maple and the state argued that there is no environmental contamination, and the community argued to the contrary with examples of direct visual evidence of contamination, odor of petroleum in the water, and the death of fish. The community argued that water tests showed no contamination only because they were conducted when the river was low, it hadn't been raining, and Maple had recently cleaned its wells. The parties agreed that independent environmental and epidemiological studies would be conducted.

Regarding community relations, the community voiced concerns regarding sexual harassment, failure to pay for goods, mistreatment of indigenous community members (especially by Maple's Hugo Villavicencio), and noted that Maple has never had good relations with Canaán and that the situation is worse than when Petroperú operated the oil field. Maple's manager emphasized that Maple does not permit mistreatment in principle and requested proof of the community's accusations. The parties agreed to reformulate the community relations plan with Maple providing the community ten computers and the President of the State of Loreto, Robinson Rivadeneira, promising to provide investment projects to channel potable water to the community before the end of 2005. In February - March of 2010, they are just now working on channeling potable water.¹⁶ The meeting ended with an agreement signed that provided for monitoring of the compliance of the agreements by the Ministry of Energy and Mines and Petroperu, with oversight by the Office of the Ombudsman.

In October 2005, the company and community of Canaán met regarding demarcation of land boundaries.¹⁷

On November 15-17, 2005, Maple and the community of Canaán met to develop another community relations plan that was to be carried out in 2006.¹⁸ This included commitments by Maple to provide support to the community in terms of technical and environmental training, labor relations, health, education (including bilingual intercultural education), self-sustaining productive projects, and culture and promotion of sports. Maple committed also to making an electronic communication line available to Canaán to improve and facilitate communication.

Maple's commitments in the July and November 2005 agreements have largely not been met. Environmental and health problems continue and Maple's community development commitments have not been fully realized.

In January 2006, Maple met with the community to discuss the boundaries and the appraisal of their land.¹⁹ In July 2006, the results of land appraisal studies were presented at another meeting.²⁰ On August 15, 2006, the community of Canaán met with Maple again regarding compensation for land. The company's value of the land was far below Canaán's final proposal, which Maple did not accept. Canaán then requested that Maple withdraw from the

¹⁵ See Document 2 at 6-7.

¹⁶ Even now however, the water system being installed is likely to cause harm. Water from the Rio Ucayali will be pumped in and treated before household use, but then untreated water will be released into the Cachiyacu tributary, where community members bathe and fish.

¹⁷ See Document 8 (10.1.05 Acta de La Reunion, meeting notes).

¹⁸ See Document 9 (11.17.05 Implementation of Community Relations Plan).

¹⁹ See Document 10 (1.28.06 Acta de la tercera Reunion, notes of third meeting in Canaan).

²⁰ See Document 11 (7.3.06 Acta de la Reunion de Comunidad, notes of meeting in Canaan).

community's territory, and cease to operate its nine oil wells there.²¹ Maple responded that the oil field is State property and indicated that PeruPetro would have to address the community's withdrawal request.²²

Also in 2006, the community of Canaán and Maple agreed to a Community Relations Plan. Maple made promises to the community regarding technical environmental training, labor relations, health, education, and sustainable projects. There was poor to no implementation of this Plan because there was little follow through due to the vagueness of the commitments.²³

The 2007-08 Community Relations Plan between Maple and Canaán reiterated the need to address the same issues as the 2006-07 Plan (adding a category for culture and sports), but provided additional detail about how the commitments should be implemented. Despite the additional detail, Maple has failed to implement the vast majority of the commitments in the 2007-08 Plan to date.

At the same time, Maple received IFC financing and expanded its operations in Canaán: "During December 2008, the Maquía field produced, on average, approximately 287 bpd from 28 active wells. Maple intends to drill up to an additional 14 development wells to depths of approximately 2,000 feet. Maple commenced these drilling activities during the second half of 2008. Maple will also undertake additional work-over activities, which began in 2006, and are continuing to be performed. The Company will conduct these drilling and work-over activities with Maple-owned rigs and equipment and with Maple personnel."²⁴ Until very recently, in 2010, community members in Canaán had never heard of the IFC and had no idea that the IFC had financed Maple's oil expansion or had policies that applied to the project.²⁵

The 2009 -2011 Community Relations Plan Between Canaán and Maple described yet additional failures by Maple to meet previous commitments.²⁶ During the week of September 21, 2009, there was a Maple oil spill in Canaán in the Cachiyacu tributary.

In December 2009, Maple and representatives of the IFC came to meet with the community of Canaán. The community complained that Maple was not meeting its commitments under their numerous agreements and that only a small fraction of their promises had been kept.²⁷ The IFC did not ask questions. Maple representatives purposefully dominated the conversation so that people from Canaán would not have the opportunity to speak and raise further issues they were having with continued health and environmental harm caused by Maple's operations.

²¹ See Document 12 (8.15.06 Acta de la Reunion, notes of meeting).

²² See Document 12.

²³ See Document 13 (2008-2009 Community Relations Plan, discussing the 2006 Community Relations Plan between Maple and Canaan).

²⁴ See <http://www.maple-energy.com/crudeOilProd.htm> (visited February 16, 2010, as of April 2, 2010, the second part of the quote was deleted).

²⁵ See Document 25 (2) (video testimony of Erlinda Rodríguez Sanancino)

²⁶ See Document 14 (2009-2011 Community Relations Plan Between Maple and Canaán).

²⁷ See Document 25 (5) (video testimony of Manuel Amaringo Ruiz).

On March 3, 2010, at three in the morning, there was a second spill about 5 kilometers by boat from the community of Canaán, this one caused by an overflowing tank. The oil spilled into the Cachiaquillo tributary and then into the Cachiyacu tributary.²⁸ Community members found puddles of oil on their land and had to bathe in and drink the contaminated water from the Cachiyacu tributary. Maple took water samples after the spill to determine the level of contamination, but the community has not heard anything from Maple about the results. Maple failed to tell the community how to respond to the spill, did not communicate an emergency plan to the community after this spill, and the community does not believe such a plan exists.

A. Environmental Impacts

Maple's practices in the earlier years consisted of dumping produced waters into the Cachiyacu tributary that leads to the Rio Ucayali and is adjacent to the community. Community members witnessed this practice and felt the impacts in the form of sickness disease and premature deaths. In 2005, water pollution was evident as oily, iridescent reflections could be seen on the surface of water and on riverbanks and there was a distinct smell.²⁹

Although the company says that they now re-inject 100% of produced waters, this is not the case.³⁰ According to Canaán resident Miguel Anuonari Teco ("Anuonari"), who has worked for Maple, the company has a hidden tank of produced waters and crude oil residue from cleaning their tanks that is uncovered. Ahunori personally witnessed this tank and its contents around February 1, 2010. When it rains, the tank overflows and the residues and produced waters flow into the Cachiyacu tributary.³¹ This is what caused the spill on March 3, 2010. The community can see, smell and taste the contamination. Anuonari has also seen yellowish residue and contamination flow from Maple's central base of operations into a tributary that runs in front of and into the Cachiyacu.

Community members Manuel Amaringo Ruiz ("Amaringo") and Alberto Rodriguez Sanancino ("Rodriguez") also attest to the continued contamination in the Cachiyacu tributary.³² According to Amaringo, the water still smells of petroleum and the fish still taste of petroleum because Maple is disposing contaminated water into the Cachiyacu tributary.

In addition to the regular contamination of the Cachiyacu tributary from disposal of produced waters and oil residue from the cleaning of tanks, in November 2009, Maple had an oil spill in the Cachiyacu tributary.³³ Maple workers saw the spill, came through the community, but did nothing to speak to the community or inform them of the dangers from the spill. The community felt health and environmental impacts from this spill.³⁴

²⁸ See Document 15 (photos of Contamination in Canaan taken on March 4 at 4:00pm).

²⁹ See Document 2 at 6-7.

³⁰ See Document 25 (6) (video testimony of Miguel Anouari Teco).

³¹ See Document 25 (8) & (6) (video testimony of Joaquin Sanancino Rodriguez and Miguel Ahuonari Teco).

³² See Document 25 (5) & (10) (video testimony of Manuel Amaringo Ruiz and Alberto Rodriguez Sanancino).

³³ See Document 25 (5) (video testimony of Manuel Amaringo Ruiz).

³⁴ See Document 25 (5) (video testimony of Manuel Amaringo Ruiz).

B. Health Impacts

Manuel Amaringo Ruiz describes continual sickness in the community since the arrival of Maple. In 2004, Amaringo's son died at 21 years of age from illness related to exposure to contamination of the Cachiyacu tributary. His symptoms prior to his death were tumors, lesions and cirrhosis. Samuel Rodriguez Mori, the leader of Canaán, also died prematurely in 2004. A number of other people in Canaán have died prematurely as well.³⁵ The community has complained to Maple. To this day, there has been no answer to their complaints to Maple about these deaths.³⁶

Jilberto Rodriguez Mori and his sister Hilda Rodriguez Mori have ten family members who are sick with similar symptoms resulting from the contamination. Three years ago, their sister died from the impacts of the contamination at age 34.³⁷ Their mother has been sick for five years and Hilda now has similar symptoms. Their mother has been to a hospital for analysis and an endoscopy determined she has chronic gastritis. The symptoms of each person in the ten-person family include muscular pain, heartburn, and stomach pain. They all have a bitter taste in their mouths and the constant sensation that they are drinking something warm.³⁸

The health of most of the children in the community of Canaán is affected by Maple's contamination of the Cachiyacu tributary. Because the children bathe in and drink contaminated water directly from the tributary, they get frequent diarrhea and, like the adults, suffer from pain in their backs.³⁹ This contamination has also led to cancer.⁴⁰ Other problems from the contamination include bodily pains,⁴¹ skin diseases, difficulty with urination and vaginal infections.⁴²

The community has repeatedly requested a full epidemiological study and medical care. To date, there has been no systematic study of the health of the community. Maple promised everyone in the village that they would conduct a complete medical examination but has failed to deliver on that promise.⁴³ The medical post in the village is not equipped to deal with the scope and depth of the health problems in the community. The health worker is not able to diagnose or treat illnesses, and just hands out pills to calm people down but that provide no more than an hour or two of pain relief.⁴⁴

In addition to health impacts, contamination has hurt the community of Canaán's ability to treat illness using their own traditional medicine. A number of Antonio Sanancino

³⁵ See Document 25 (3) & (1) (video testimony of Luisa Mori Iposhima, whose 29-year-old son died April 28, 2003, from contamination; video testimony of Diana Amaringo Vásquez, whose daughter died at age 16 after suffering from sweats and then sores all over her body on July 25, 1999 and whose son is also presently sick).

³⁶ See Document 25 (5) (video testimony of Manuel Amaringo Ruiz).

³⁷ See Document 25 (11) (Video Testimony of Hilda Rodríguez Mori).

³⁸ See Document 25 (12) (Video Testimony of Jilberto Rodríguez Mori).

³⁹ See Document 25 (7) & (8) (Ricardo Pezo Valera and Joaquín Sanancino Rodríguez).

⁴⁰ See Document 25 (8) (Joaquín Sanancino Rodríguez).

⁴¹ See Document 25 (2) (video testimony of Erlinda Rodríguez Sanancino).

⁴² See Document 25 (7), (5) & (3) (Ricardo Pezo Valera, Manuel Amaringo Ruiz and Luisa Mori).

⁴³ See Document 25 (3) (video testimony of Luisa Mori Iposhima).

⁴⁴ See Document 25 (8) & (2) (Joaquín Sanancino Rodríguez and Erlinda Rodríguez Sanancino).

Rodriguez's medicinal plants have disappeared due to the contamination and are now not available for use as medicine.⁴⁵

Maple has treated the community of Canaán inhumanely by failing to provide proper medical diagnosis and care.⁴⁶

C. Food Security Issues

Due to Maple's contamination of the Cachiyacu tributary, the primary source of community water is not fit for human consumption. In addition, fish taste like petroleum.⁴⁷ Furthermore, agricultural land right near the Cachiyacu tributary now produces less due to the contamination.⁴⁸ This is particularly the case with yucca⁴⁹ and plantains.⁵⁰

D. Worker's Rights

Community members hired by Maple have been discriminated against on the basis of their ethnicity as Shipibo. Maple's regular employees from outside the village call the Shipibo insulting and disparaging names.

Maple regularly hires workers from 6:00 a.m. to 9:00 p.m. They are not given a break and are not paid for overtime, such that they work for 15 hours but are only paid for 8. If the workers complain about the underpayment, they are not re-hired.⁵¹ Ricardo Pezo Valera worked these type of hours for Maple as recently as December 2009 without receiving any overtime pay.

The company treats the workers from Canaán like slaves. They are given jobs to do with inadequate equipment, protective clothing, shoes or safety gear. As one example, community members are hired to fell trees with hand saws, while regular Maple employees are given chainsaws. Community members from Canaán have learned that if they complain about these conditions, they are not re-hired. On the contrary, Maple gives work to community members who snitch to Maple about what happens at community meetings.⁵²

Workers in the Canaán community, such as Miguel Anuonari Teco ("Anuonari"), have been the victims of discrimination, poor working conditions, and maltreatment by Maple. Anuonari complained about the conditions and has not been rehired since July 2009 as a result. Anuonari states that none of the Shipibo workers are given training so that they are forced to work menial jobs.⁵³

⁴⁵ See Document 25 (4) (video testimony of Antonio Sanancino Rodríguez).

⁴⁶ See Document 25 (8) (video testimony of Joaquín Sanancino Rodríguez).

⁴⁷ See Document 25 (3) (video testimony of Luisa Mori Iposhima).

⁴⁸ See Document 25 (2) (video testimony of Erlinda Rodríguez Sanancino).

⁴⁹ See Document 25 (7) (video testimony of Ricardo Pezo Valera).

⁵⁰ See Document 25 (1) (video testimony of Diana Amaringo Vasquez).

⁵¹ See Document 25 (10), (7) & (6) (Alberto Rodríguez Sanancino, Ricardo Pezo Valera and Miguel Anuonari Teco).

⁵² See Document 25 (1) (video testimony of Diana Amaringo Vasquez)

⁵³ See Document 25 (6) & (8) (Miguel Anuonari Teco and Joaquín Sanancino Rodríguez).

In addition, the community of Canaán has 70 individuals who are on Maple's work roster, while only two or three are regularly hired for work. Each of the 70 individuals are in need of the jobs.⁵⁴ Maple calls the workers from Canaán contract workers, but there is no contract that is respected. Workers often work only a few days at a time when they are hired.⁵⁵

E. Abuse of Women

Gilberto Rodriguez Mori describes how a Maple security guard had sexual relations with his underage niece. She became pregnant and the child is now 10 years old. The security guard abandoned his niece and the child, providing no help with food or clothing. Although this incident happened 10 years ago, Maple never addressed this issue and the effects are continually being felt.

This and other incidents have led to a general sense of distrust of Maple workers around Shipibo women. The women in the community do not venture onto parts of their own land where Maple operates because of this lack of trust and fear by Shipibo men and women that the women will be sexually abused.

F. Discrimination Against Shipibo

As described above, Maple shows overall discrimination against the Shipibo based on disregard for the health of the Shipibo, mistreatment of workers, and overt discriminatory insults of workers. The community of Canaán also views the failure to hire more than a couple workers from Canaán as discrimination. Giving the citizens of Canaán simple pills to treat serious illnesses instead of diagnosis and treatment of their health problems is also seen as an insult to their humanity.⁵⁶

G. Bad Faith Negotiation and Failure to Comply with Promises

As described above, Maple has made numerous promises to the community that have not been kept. In addition to those described above, the Shipibo women feel particularly wronged because Maple promised to assist with creation of a market for their original folk art. Maple promised the assistance over a year ago but there has been no action taken.⁵⁷

H. Lack of Information Disclosure and Consultation

Maple has inadequately consulted with the community of Canaán about their initial oil operations on their land. Although there was consultation in 2007 where Maple discussed their project, the consultation was inadequate because it was conducted in Spanish, not Shipibo, the first language of the community members. Community members left the consultations unaware of the IFC's involvement in the project.

⁵⁴ See Document 25 (6) and (10) (Miguel Ahuonari Teco and Alberto Rodríguez Sanancino).

⁵⁵ See Document 25 (8) (Joaquín Sanancino Rodríguez).

⁵⁶ See Document 25 (8) (Joaquín Sanancino Rodríguez).

⁵⁷ See Document 25 (9), (3) and (8) (Leocadia Gomez Amaringo, Luisa Mori, and Joaquín Sanancino Rodríguez).

Community members in Canaán were also not made aware of any emergency plans to deal with Maple oil spills or other disasters.⁵⁸ Finally, Maple and the IFC have failed to provide required information to the community of Canaán in an accessible and culturally appropriate manner.

III. Experience with Maple Energy in Nuevo Sucre

Like the community of Canaán, the Shipibo village of Nuevo Sucre settled in its present location in 1974 after the Rio Ucayali inundated their land on the opposite side of the River.

Maple began operating in Nuevo Sucre in 2001 when it assumed control of PetroPeru's wells in the area known as Pacaya, Lot 31-E. According to Maple's website, "The Pacaya Field is located in Block 31-E in the Loreto Region, approximately 120 km north of the city of Pucallpa. This block is situated in the Ucayali Sedimentary Basin, approximately 20 km southeast of Maple's crude oil production in Block 31- B. The field was initially discovered in 1958 with the drilling of the Pacaya 31-1X well. In March 2001, Maple obtained the concession rights to this field and Block 31-E through private negotiations with Perupetro. Under the terms of this 30-year concession arrangement, Maple is the operator and holds 100% working interest in the field."⁵⁹

From 2001 to 2005, although people from Nuevo Sucre saw Maple workers on their land, the workers never spoke to anyone who lived in the community. From 2001 up through the present, Maple has never consulted with the community about operations on their land.

In 2005, the community of Nuevo Sucre first learned that Maple was operating on their land when Maple felled trees in Nuevo Sucre, constructed a road, and re-started abandoned wells – all without consultation. That same year, the community of Nuevo Sucre complained orally to Maple about their operations on Nuevo Sucre land. Upset at the lack of response to their oral complaint, the community of Nuevo Sucre joined Canaán in their opposition to Maple's practices by supporting the community of Canaán as they shut down Maple's oil wells in protest.

On April 7, 2006, the community of Nuevo Sucre submitted a written complaint to Maple about their operations on Nuevo Sucre's land without consultation or compensation. There was no response to this written complaint.

Sometime after July 2007, Domus produced an undated Social and Environmental Impact Study ("the Study") which Maple commissioned in order to comply with Peruvian law.⁶⁰ The study concerns Plot 31-E, which includes the Shipibo territory of Nuevo Sucre. The study states that the proposed new activity will directly impact the community of Nuevo Sucre, 1,270.02 meters of pipeline, affecting 1.52 hectares of land.⁶¹ In addition to having no date, the copy of the Study that is in the possession of the community of Nuevo Sucre has a number of sections and pages missing from the text and the pages are not numbered. Nonetheless, the study shows

⁵⁸ See Document 25 (1) (video testimony of Diana Amaringo Vasquez).

⁵⁹ See <http://www.maple-energy.com/crudeOilProd.htm> (last visited April 2, 2010).

⁶⁰ See Document 16 (Domus Estudio De Impacto Ambiental).

⁶¹ See Document 16.

likely direct impacts of the proposed activities on: erosion/sedimentation, soil quality, productive capacity, gas, water quality (both surface and subterranean), availability of water (both surface and subterranean), plant diversity, vegetation, aquatic fauna, habitat of aquatic fauna, terrestrial fauna and their habitat, sound level, scenic quality, hunting land animals and fish, forest resources, archeological and religious places of interest.⁶² There is no summary of the study that was provided to the people of Nuevo Sucre in an easily understandable format, and the study is in Spanish, not Shipibo, the primary language of the people of Nuevo Sucre.

It was not until 2007 that Maple held their first meeting with community members in Nuevo Sucre. At that meeting, Maple discussed the Environmental Impact Assessment (EIA) that had already been completed.⁶³ It was summarized to the community by Maple as stating that “the water was normal and everything was fine.” Not one person from Nuevo Sucre had been consulted about the EIA. In addition, the EIA was never translated into Shipibo, the primary language spoken by most of the inhabitants of Nuevo Sucre. Also in 2007, Maple installed a new oil duct.

According to Maple’s website, the “approval of the EIA for the reactivation of the Pacaya oil field was obtained in February 2008, and Maple has commenced the reactivation of the field. In the second half of 2008, Maple completed the reactivation of the Pacaya oil field. During December 2008, the Pacaya oil field produced, on average, approximately 100 bpd from 4 active wells.”⁶⁴

On April 27, 2008, after additional complaints from the community of Nuevo Sucre about Maple’s operations on their land, Maple and Nuevo Sucre entered into to an Easement Agreement and Maple finally began paying the community for the use of their land.⁶⁵ No back compensation was awarded for the use of their land from 2001 to 2008. Payments were only made from that day forward and amount to Soles 18,544.99/ year (apx. USD 6,505/year). Payments are designed to compensate the community for the indirect impacts of re-activation of oil wells, and the direct and indirect impacts of pipe-laying/situating. Maple also agreed to pay Soles 6,181.90/ year to carry out social outreach activities benefiting the community. It was agreed that at the beginning of each year, the Maple and Nuevo Sucre will coordinate to establish a plan for the activities that Maple will carry out that year. As of today, Maple has not carried out *any* programs to benefit the community of Nuevo Sucre.

On February 13, 2010, the community of Nuevo Sucre and the indigenous federations of ORAU and FECONBU sent a letter to the Manager of Maple requesting assistance with urgent medical care for three community residents, Liz Charo Buenapico Maldonado, Enrique Buenapico Soria, and Rosa Saldaña Saldaña (described below).⁶⁶ While Maple has made some minimal effort to respond to these urgent cases, the response is still currently inadequate.

⁶² See Document 16.

⁶³ See Document 16.

⁶⁴ See <http://www.maple-energy.com/crudeOilProd.htm> (last visited April 2, 2010).

⁶⁵ See Document 17 (Convenio Para La Constitucion de Derecho; April 27, 2008 Easement Agreement Between Nuevo Sucre and Maple).

⁶⁶ See Document 21 (February 13, 2010 Letter from Nuevo Sucre to Maple Gas Corporation).

A. Environmental Impacts

In 2009, there were three oil spills caused by Maple's operations in Nuevo Sucre. Each of these spills caused environmental contamination.⁶⁷ In each case, there was no emergency contingency plan communicated to the community before hand, there was no communication with the community by Maple after the spill, there was no proper or immediate clean up or remediation by Maple, and there was no care taken to provide food or water to the people of Nuevo Sucre when their food and water sources were contaminated by the spills.

i. Spill 1: January 13-14, 2009 – Mashiria Tributary

On January 13, and through January 14, 2009, a Maple-operated pipe broke and spilled oil for an entire day. The oil flowed directly into the Mashiria tributary, directly adjacent to the village of Nuevo Sucre. The community of Nuevo Sucre use this tributary for drinking water, fishing and for transportation. A sheet of oil came down the tributary, by the village, and flowed to the main river, the Ucayali.

Just after the spill, the community of Nuevo Sucre knew immediately that there had been a spill because of the strong odor of petroleum. However, no one from Maple came to notify the community about the spill and the appropriate response to avoid risk. Maple made no contact with the community whatsoever. People of Nuevo Sucre observed Maple employees repairing the oil duct at the site of the leak on January 14, 2009, but there were no steps taken to clean up the sheets of spilled oil.

The community of Nuevo Sucre observed dead fish in the tributary as a result of the spill. People of Nuevo Sucre did not complain to Maple after this spill because they did not know that they had the right to make a complaint.

ii. Spill 2: January 24-25, 2009 – Yarinillo Tributary

On January 24, 2009, Maple was responsible for a second oil spill in the community of Nuevo Sucre. This time, the spill was to a narrower pipe that gushed oil when it broke. The oil spilled onto the earth and then flowed 10 meters to the Yarinillo tributary. The community uses the Yarinillo tributary for drinking water, bathing, cleaning clothes and kitchen supplies, and for fishing. Again, everyone in the community of Nuevo Sucre immediately knew about the spill because of the intense odor of petroleum. The oil spilled from the broken pipe until January 25, 2009, when the break was repaired by the head of Maple Industrial Security, David Cerán. Again, Maple took no action to communicate with the community about the spill or how they should respond.

Julian Burga, a citizen of Nuevo Sucre, approached Cerán on January 25th and demanded that Cerán take samples of the contaminated soil and water. Cerán only took samples because of Burga's demand.

⁶⁷ See Document 22 (Photos of Nuevo Sucre Contamination).

As a result of the January 24-25, 2009 spill, trees were covered with petroleum. Many fish died as a result of the spill, and afterward there was almost no fish population remaining in the Yarinillo tributary. The fish that did remain tasted – and still taste – of petroleum. When people bathed in the Yarinillo, an oily residue remained on their bodies, which they could not wash off. As their bodies became covered with oil, which made them itch, caused poor vision and pain in their eyes, diarrhea, stomach pain, blotches on their skin, and coughs. Children in particular have had severe pain as a result of this spill. According to Julian Burga, the community's health promoter who studied nursing, children developed coughs, fevers and diarrhea.⁶⁸ Every person in Nuevo Sucre bathed in the Yarinillo tributary and suffered health impacts after the January 24-25, 2009 spill. After the spill, the community began to hike the long walk to the Rio Ucayali to get water for drinking. They made the trip to the Ucayali for drinking water for three months following the spill. Some however, including the elderly, were not able to make the trip and continued to rely on the Yarinillo during that period.

It was not until February 18, 2009 that a study was done regarding the contamination caused by the January 24-25, 2009 spill.⁶⁹ Over a year after the spill, on February 5, 2010, the Maple Head of Industrial Security, Juan Carlos Rivero, along with Maple Head of Public Relations Jorge Frolich and Maple Community Relations Supervisor Angel Peña, called a meeting in Nuevo Sucre. The community of Nuevo Sucre believes that this meeting was called only because Maple heard that representatives of FECONBU and ORAU were coming to Nuevo Sucre to hold a meeting. Maple conducted the February 5, 2010 meeting only in Spanish. At the meeting, the results of the February 18, 2009 study of the impacts of the January 24-25, 2009 spill were communicated to the community for the first time – *over a year after the spill*. The results of the study were summarized to the community as stating that there was *no contamination* resulting from the spill.⁷⁰ The community demanded to know how it was possible that there were no impacts given that they were sick and could smell the spill, taste the contamination in the water and in the fish. Maple representatives did not respond. The community demanded to know why the report was not released until over a year after the spill. To this, there was also no response. The meeting was called for the sole purpose of delivering the report, not to answer questions by the community of Nuevo Sucre about the spill or the findings of the report.

iii. Spill 3: April 8-12, 2009 – Yarina Tributary

The third spill occurred on April 8, 2009, and petroleum continued to flow until April 12, 2009. This spill occurred as a result of a Maple worker digging with heavy machinery breaking a pipe that lay just 60 centimeters under ground. This spill poured oil into the Yarina Tributary at larger quantities than the first two spills. Each of four major turns of the tributary was full of oil as a result of this spill. The oil was seen as far as Contamana after this spill.

⁶⁸ Document 26 (6) (video testimony of Julián Burga Ochevano).

⁶⁹ See Exhibits 19 and 18 (Test Report: Water and Soil Quality, No. 70218, February 17, 2009; Test Report: Water and Soil Quality, No. 70219, February 17, 2009).

⁷⁰ Note that Report 70219 and 70218 are from the same day, but different quantities were taken in the two reports. The analysis is for different elements as well with no explanation of why. The results are confusing and were not clearly explained to the community of Nuevo Sucre. A report numbered 73000 of December 31, 2009 based on testing from November 28, 2009 was also not properly communicated. See Document 20.

On the night of April 9, 2009, Maple workers arrived at the community by boat and walked through the community without saying a word. They could not travel up the tributary due to the huge sheets of oil from the spill.⁷¹ Maple's Industrial Security worker Angel Dionisio then spoke to the community and said "no one can leave Nuevo Sucre for Contamana [the nearest city], because everyone is going to work here, the young and adults too." Dionisio *rented all the boats in Nuevo Sucre from April 9-12, 2009 so that no one was able to leave the contaminated village*. Maple offered community members Soles 50/day for one month to clean up the petroleum that began to spill on April 8th. Because the people of Nuevo Sucre were desperate for money, 33 men accepted the offer. Maple's own employees did not take part in the clean up effort, they only supervised the work of the people hired from Nuevo Sucre.

The 33 citizens of Nuevo Sucre began the clean up without protective gear. Only six were provided with gloves, and none were given protection for their faces, no protective shirts, pants or boots. Maple provided only very small amounts of drinking water for the Nuevo Sucre workers they had hired, and none for community members that had not been hired. Maple did not train the workers from Nuevo Sucre. They were only given sponges and told to clean up the petroleum and to place it in barrels.⁷² The workers from Nuevo Sucre entered the Yarina Tributary, full of petroleum, up to their chests to clean up the spill. They worked like this on April 10th and 11th.

On April 11, 2009, Maple worker Eduardo Gomez told the workers from Nuevo Sucre to take the leaves and twigs they had gathered and to put them in a pile. At approximately 5:00 p.m., Gomez lit the pile on fire and it exploded with a noise so loud it was heard in neighboring villages. The explosion caused a fire.

That night it began to rain. It rained hard for two days and this rain washed much of the petroleum into the Rio Ucayali. Maple then went back on its contract with the workers, paying them only Soles 40/day, not the agreed 50, and paying them for only a few days of work, not a month that had been agreed. On April 12th, Maple employed only five people per hour from Nuevo Sucre to clean up the spill in one-hour rotations. In the days in which they were engaged in the clean-up effort, workers from Nuevo Sucre could not wash the oil off their bodies.⁷³ They would bathe and bathe, and it would not leave their skin. They laid in bed with the smell as if there were an open gallon of oil right next to them.

On April 9, 2009, Maple had orally agreed to rent all the boats in the village. However, in the end, *Maple did not pay for any of the boats* which the community was not able to use for the entire period of four days that Maple remained in the village.

On April 12, 2009, Maple engineers spoke to the community of Nuevo Sucre and did not ask the community what they wanted, but rather told the community that they needed an elevated water tank and a medical station, which they then orally promised to provide. The company did not fulfill their oral promise, and *Maple had no further contact whatsoever with the community until the meeting of February 5, 2010* when the company came to deliver the study of the

⁷¹ See Document 26 (7) (video testimony of Mauro Burga Ochevano).

⁷² The community kept several of these barrels that are full of petroleum. See Document 23.

⁷³ See Document 26 (7) (video testimony of Mauro Burga Ochevano).

impacts of the second spill. During that February 5, 2010 meeting, Maple promised the community the same water tank and medical station as they had promised the previous April. This meeting was conducted only in Spanish, not in Shipibo.

As a result of the third spill that contaminated the Yarina Tributary, which is the third and final water source available to the community after the Mashiria and Yarinillo had already been contaminated by the previous two spills, the health of the people of Nuevo Sucre deteriorated. See section B, below.

B. Health Impacts

In addition to the health impacts described above after each spill, there has been widespread illness in the community of Nuevo Sucre. Before the spills, there was no illness in the community. People were strong and healthy. Now, after the spills, the entire community has less energy, suffers from stomach pain, nausea and diarrhea, a number have skin conditions, and the community has greater immune system vulnerability. Many community members have pains throughout their bodies and feel heat inside them that does not abate.⁷⁴ The impacts of the 2009 spills on the following five Shipibo community members from Nuevo Sucre provide examples.

i. Leonardo Tuesta, age 54, died after severe stomach pain, vomiting

Eight months after the April 2009 spill, the Shipibo chief of the community of Nuevo Sucre, 54-year-old Leonardo Tuesta (“Leonardo”), became violently ill. According to his son, Walter Tuesta Lomas (“Walter”), Leonardo had been a strong and healthy man prior to the 2009 oil spills. He drank and bathed in the Yarina tributary, including after the four days of contamination during the April 2009 spill. Walter reports that on Sunday, December 27, 2009, his father developed an unknown illness. His symptoms were extreme stomach pain and vomiting. The doctors in the hospital performed blood tests and they were negative for any known illnesses. Leonardo Tuesta died an excruciatingly painful death in a Contamana hospital, 14 hours after becoming violently ill.⁷⁵

ii. Liz Charo Buenapico Maldonado, age 12, in severe pain, near death

Liz Charo Buenapico Maldonado is 12-years old.⁷⁶ Before the 2009 oil spills, community members describe her as having been very bright and the “hope of the community.”⁷⁷ Liz became sick nine months ago after bathing in and drinking from the Yarinillo tributary and is now unable to walk unassisted. Her first memory of becoming sick was when she began vomiting blood, which was the beginning of her stomach pain. She is in severe pain throughout her body and has intense headaches. She has pain in her chest and continues to have stomach pain as well. Liz has a cough and difficulty breathing. She is malnourished and has lost so much weight that her bones are clearly visible just beneath her skin.⁷⁸

⁷⁴ See Document 26 (7) (video testimony of Mauro Burga Ochevano).

⁷⁵ See Document 26 (3) (video testimony of Walter Tuesta Lomas).

⁷⁶ See Document 24 (a) (photograph of Liz Charo Buenapico Maldonado).

⁷⁷ See Document 26 (2) (video testimony of Raúl Tuesta Burga).

⁷⁸ See Document 26 (4) (video testimony of Liz Charo Buenapico Maldonado).

iii. Enrique Buenapico Soria, age 43, suffered hearing loss, in severe pain

Enrique Buenapico Soria, age 43, is the father of Liz Charo Buenapico Maldonado. Before the 2009 oil spills he was healthy. After the spills, as a result of bathing in and drinking from the Yarinillo Tributary, he lost hearing in both his ears and suffers from pain throughout his body.⁷⁹ He has received no medical care, including no pain medication.

iv. Rosa Saldaña Saldaña, age 18, painful oozing wounds on face, chest

Rosa Saldaña Saldaña is an 18-year-old mother of two who lives just at the confluence of the Mashiria, Yarina and Yarinillo Tributaries in Nuevo Sucre.⁸⁰ She is pregnant with her third child and is nearly full term. Prior to the 2009 oil spills she was healthy. She now suffers from pain. In the fall of 2009, Rosa developed festering wounds as a result of drinking water from the Yarina Tributary and bathing in the water.⁸¹ The wounds cover her face and chest, are extremely painful, and ooze fluid.

v. Luis Saldaña Carayo, age 42, suffering from severe stomach pain

Luis Saldaña Carayo, a 42-year-old resident of Nuevo Sucre, was healthy before the 2009 spills. As a result of bathing in and drinking from the Yarina Tributary, Luis developed severe stomach pain which is nearly unbearable. He has received no medical care, including no pain medication.

These are just five among many stories of the suffering of the people of Nuevo Sucre as a result of the 2009 Maple oil spills.

C. Food Security Issues

The community of Nuevo Sucre has witnessed the impacts of the oil contamination on fish, water, crops and wildlife. Hunters have found dead animals, including deer, majáz (a giant rodent) and yapa fish. Before the spills of 2009, these animals were abundant and were consumed by the community for protein. Now there are far fewer and many of them are sick.

Due to the impacts of the three 2009 spills in Nuevo Sucre, the community, which has traditionally relied on fishing in the tributaries next to the community, has had to travel three hours by foot to reach fish not contaminated with petroleum.

The spills have impacted agricultural production in the community as well. Production of vegetables is much lower than previously because seeds produce less. Rice dries up before it grows to full grain size and cannot be used. Plantains, a staple in the diet, are smaller than before the contamination as well. Because the community cannot afford to make up for this loss of food

⁷⁹ See Document 26 (5) (video testimony of Enrique Buenapico Soria).

⁸⁰ See Document 24 (b) (photograph of Rosa Saldaña Saldaña).

⁸¹ See Document 26 (8) (video testimony of Rosa Saldaña Saldaña).

by buying replacement food, they are simply eating less. Whereas food supplies were abundant before the 2009 spills, they are currently inadequate.

The contamination of the tributaries in Nuevo Sucre means that community members have to travel a long distance to obtain clean water.

D. Worker's Rights

After the April 2009 spills, 33 people from Nuevo Sucre were hired under extreme duress. Maple's Industrial Security worker Angel Dionisio ordered the people to work under non-negotiable terms. The 33 people from Nuevo Sucre who accepted the work had no other option because Maple had rented all the boats in the community to prevent them from leaving in search of alternate employment. Maple trapped the workers in the contaminated village and forced them to work in inhumane conditions. The workers who participated in the clean-up of the April, 2009 spill were exposed to the constant smell of crude oil. Maple prohibited the workers from speaking to their co-workers during their days of working from 5:00a.m. to 6:00p.m. to clean up the spill.⁸²

The workers were given no protective gear, including no protective shirts, pants, boots or masks. Only six workers were given gloves, while the rest were left to collect the oil with their bare hands. The workers were in the contaminated water up to their chests as they used sponges to soak up the oil. The workers developed rashes as a result of this exposure. They could not wash the oil residue off their bodies after the work and felt a constant heat in their bodies.⁸³

E. Discrimination Against Shipibo

The Shipibo of Nuevo Sucre feel discriminated against due to general lack of respect and the harsh treatment they have experienced during Maple's handling of the 2009 oil spills. The community felt discriminated against when Maple workers walked through their community without addressing the inhabitants and without saying a word on a number of occasions.

The community felt discriminated against when they received no information about the 2009 spills and were left to suffer the consequences of Maple's spills without assistance. The Shipibo workers suffered harmful conditions during the April 2009 clean up that Maple's own regular workers were not exposed to because they only supervised the work of the people from Nuevo Sucre.

F. Bad Faith Negotiation and Failure to Comply with Promises

Maple originally entered the community of Nuevo Sucre without authorization or consultation.⁸⁴ Maple acted in bad faith by failing to compensate Nuevo Sucre for the use of

⁸² See Document 26 (7) (video testimony of Mauro Burga Ochevano).

⁸⁴ See Document 26 (6) (video Testimony of Julián Burga Ochevano).

their land from 1994 to 2005. Maple rejected a demand for compensation from this time period and agreed to compensate the community of Nuevo Sucre only from 2008 forward.⁸⁵

Maple failed to compensate the community of Nuevo Sucre for the harm caused by the 2009 oil spills. After the second oil spill, the community met with Maple and asked that Maple provide medicine to community members. Maple purchased medicines, but subtracted the money used to purchase the medicine from Maple's annual payment to the community.⁸⁶

As discussed above, Maple has twice promised the community of Nuevo Sucre that they would fully equip the village with a health center and provide the community with access to clean water through construction of an elevated water tank. The community has demanded that Maple conduct a full medical analysis, including blood and stool samples, and that Maple provide doctors. Community members have made this demand verbally and in writing to Maple community relations officers. Maple has not met its promises and requests have not been answered.⁸⁷

G. Lack of Information Disclosure and Consultation

Maple did not consult with the community of Nuevo Sucre about its operations on and near Nuevo Sucre Shipibo lands before Maple's operations began. Maple failed to consult with the community of Nuevo Sucre for social or environmental impact assessments, or for creation of an Indigenous Peoples' Development Plan. In addition, when Maple began to transport heavy vehicles through the community, there was no consultation. While meetings were held with the community of Nuevo Sucre in 2007, they were not in Shipibo, and the meetings did not seek informed input from the community on plans. Rather, they were informing the community in Spanish about foregone conclusions.

Furthermore, Maple and the IFC failed to disclose documents to the Shipibo of Nuevo Sucre, such as draft environmental and social impact assessments, emergency preparedness plans, and Action Plans. In addition, the community of Nuevo Sucre was not given a complete version of the completed Social and Environmental Impact Assessment.⁸⁸ The IFC has also failed to disclose required documents even on the IFC website.

Of the incomplete, untimely and inadequate information that the community did receive, the information was not relayed to the community in a culturally appropriate manner. Shipibo is the first language of people in Nuevo Sucre, and all information was disseminated in Spanish.

⁸⁵ See Document 26 (6) (video Testimony of Julián Burga Ochevano).

⁸⁶ See Document 26 (6) (video Testimony of Julián Burga Ochevano).

⁸⁷ See Document 26 (6) (video Testimony of Julián Burga Ochevano).

⁸⁸ See Document 16 (Domus Study).

IV. Maple and the IFC's Conduct Violates the Rights of the Two Shipibo Communities by Failing to Comply With IFC Policies and Procedures and Applicable Laws and Regulations

Maple and the IFC's conduct *has violated every IFC Performance Standard ("PS") in some way*. In addition, Maple and the IFC's conduct violates a number of international laws and norms. Examples of IFC policy violations are in Section IV(A) and examples of violations of international laws and norms are discussed in Section IV(B).

A. IFC Policy Violations

As an overarching violation, the IFC has violated its own policies and procedures by failing to conduct due diligence that would have easily identified the numerous and severe deficiencies in Maple's performance that are detailed in this complaint.

i. IFC Performance Standard 1

Miscategorization

The IFC's failure to properly categorize this project has had, and continues to have, serious implications for the Shipibo. As an extractive industry project in the middle of a populated indigenous community, using outdated pipeline infrastructure, this project should have been categorized as "A", which requires comprehensive social and environmental impact assessments. See G36. Poisoning of communities and their environments due to numerous oil spills and environmentally contaminating extraction processes is not "largely reversible." PS1, para. 10. Instead, this highly risky project was improperly categorized as "B". However, even when analyzed under the erroneous B standard, this project has failed to meet IFC policy requirements.

The IFC was on notice that this project was Category A, not B, well before its investment in 2007. In 2005, the community of Canaán shut down Maple's operations as a result of the social and environmental harm caused by Maple's activities. This alone should have given the IFC pause regarding whether investment was appropriate at all. This event should have at least put the IFC on notice that this project would require comprehensive assessments due to the project risks. See para. 9.

Failure to Collect Baseline Data and Conduct Assessment

IFC PS 1 states that the client's adequate, accurate and objective Social and Environmental Assessment must be "based on current information, including an accurate project description, and appropriate social and environmental baseline data." Para. 4. As discussed above, baseline data was not properly collected and assessed.

Furthermore, the "Assessment will consider all relevant social and environmental risks and impacts of the project, including the issues identified in Performance Standards 2 through 8, and those who will be affected by such risks and impacts." Para. 4; see also para. 7. Such risks

and impacts were not identified or considered. Neither were the risks and impacts “analyzed for the key stages of the project cycle.” Para. 6.

In any event, the July 2007 Domus Assessment related to Nuevo Sucre is deficient because it is incomplete, and is missing a number of pages and sections. There is no “adequate, accurate, and objective evaluation and presentation of the issues” that would have been available for the IFC to consider prior to the Board decision on the Maple investment. See para. 7.

Maple’s failure to specifically assess risks with existing activities (para. 8) is particularly egregious given their work with old pipelines in a populated area.⁸⁹

Failure to Identify Affected Groups

The IFC also requires that as part of the Assessment, the client should identify vulnerable groups and “propose and implement...measures so that adverse impacts do not fall disproportionately on them.” Para 12. Maple’s failure to abide by this paragraph of the Performance Standards has caused great suffering for the vulnerable Shipibo in Maple’s area of operation, as detailed above. In addition, Maple did not identify gender dimensions of their operations sufficiently – if they were identified at all – because there has been, and is currently, a climate of fear among Shipibo women such that they are kept from their own lands near Maple’s work areas due to fear of sexual abuse by Maple workers.

No Management Program

Maple also failed to prepare a management program (paras. 13-14) or action plan (para. 16). If they were prepared, they have not been disclosed despite the request of the communities. The mitigation measures and corrective actions that should have been identified in an action plan were not taken, resulting in social and environmental harm to the Shipibo.

In addition, failure to create an action plan translated into the IFC’s failure to confirm that Maple was taking “mitigation measures and actions” to ensure that the “project operates in compliance with applicable laws and regulations”, resulting in the violations described in Section VI(B), below. See paras. 14-16.

Lack of Engagement, Disclosure and Consultation

Failure to disclose any action plan is its own further violation. See para. 16. Maple has done no “external reporting” of an action plan despite requests.

Maple also violated PS 1 through failures in community engagement (para. 19), failure to disclose information (para. 20), and failure to properly consult with the Shipibo (para. 21). Maple failed to provide the communities with “access to information [early in the process] on the

⁸⁹ Maple is using PetroPeru pipelines that are a number of decades old. As we have seen from the four spills in 2009, and the one in 2010, using old facilities has particular risks that the IFC required be assessed and mitigated. (See IFC Guidance Note 1, Annex B). Failure to assess and mitigate those risks resulted in severe harm to the Shipibo.

purpose, nature and scale of the project, the duration of proposed activities, and any risks to and potential impacts on such communities.” Para. 20. While there was some information disclosure, even those few documents that were disclosed were not in Shipibo and were not complete (i.e. there were missing pages and sections of at least one main document). Failure to provide and Action Plan is another clear violation. Para. 26, G48.

As discussed above, the communities of Canaán and Nuevo Sucre received no information from Maple following the four oil spills in 2009 (three in Nuevo Sucre and one in Canaán) and the one in 2010 (in Canaán). Neither community received an emergency response plan before the spills and no plan was communicated after the spills.

Performance Standard 1, para. 21, states that:

If affected communities may be subject to risks or adverse impacts...the client will undertake a process of consultation in a manner that provides...opportunities to express their views on project risks, impacts, and mitigation measures, and allows the client to consider and respond to them. Effective consultation: (i) should be based on the prior disclosure of relevant and adequate information, including draft[s]...; (ii) should begin early...; (iii) will focus on...risks and adverse impacts, and the proposed measure to address these; and (iv) will be...ongoing... The...process will be...inclusive and culturally appropriate.

Guidance further states that: “Consultation involves two-way communication... [and]...provides opportunities for the client to learn from the experience, knowledge, and concerns of the affected communities, as well as to manage community expectations...[P]roject information needs to be disclosed and explained to the communities, and sufficient time should be allocated for them to consider the issues.” Para. G51. The communities of Nuevo Sucre and Canaán were not asked to provide input when Maple entered their territory. In Nuevo Sucre in particular, the community was not invited to express views at all. Maple never informed nor consulted with the community. Only after the uprising in Canaán, in which Nuevo Sucre participated, did Maple inform the community that they were working in their territory and using a road, pipelines, and passing through the community. Details of this lack of appropriate consultation are recounted above.

No Grievance Mechanism

Neither the community of Canaán nor Nuevo Sucre is aware of a grievance mechanism for either workers or community members that pertains to Maple’s operations. In the community of Canaán, people who have complained to Maple are offered day labor as a means of silencing the complaint. Because people are desperate for work, this type of bribe often works. Failure to have grievance mechanisms in these communities violates PS1, para. 23 and PS 2, para. 13.

This non-exclusive list provides examples of Maple’s failures to follow IFC Performance Standard 1 and IFC’s failures to ensure their policies were met (see IFC Guidance Note 1, para. G2).

ii. IFC Performance Standard 2

The IFC's Performance Standard 2 requires respect for workers. Guidance, para. G13, requires that working conditions include "health and safety precautions" and "respect for the worker's personal dignity (such as avoiding...abusive language)." As described above, Shipibo workers from Canaán who are repeatedly hired have been subject to abusive working conditions, insults and discrimination. In Nuevo Sucre, workers' health and safety was severely compromised in the wake of the April 2009 oil spill through forced work in and near toxic materials without protective gear.

This treatment also violates PS 2, paragraph 11, which requires that "The client will base the employment relationship on the principle of equal opportunity and fair treatment, and will not discriminate with respect to aspects of the employment relationship, including recruitment and hiring, compensation, working conditions and terms of employment, access to training, promotion, termination of employment...and discipline."

Maple's use of community members from Nuevo Sucre to clean up the April 2009 oil spill amounted to forced labor. Maple confiscated all of the boats in the community that community members would have used to look for day labor in Contamana in the days after the spill. Then, Maple announced that the community would work for Maple to clean up the spill. The community was offered no choice, as they would have been forced to go without work and any income if they did not follow Maple's orders. While they were paid for their work, they were paid less than the amount Maple stated that they would receive and they were offered non-negotiable terms. Once they began the work, it was without protective gear or equipment and in extremely dangerous conditions. This conduct violated paragraph 15 which states that the "client will not employ forced labor, which consists of any work or service not voluntarily performed that is extracted from an individual under threat of force or penalty. This covers any kind of involuntary or compulsory labor..." The definition of forced labor in the IFC Guidance Note includes work *coerced* from a person under threat of force or penalty, not just *extracted*. An example of forced labor contract arrangements in the Guidance Note includes "limitations on freedom of movement" as was the case here. G46-G50.

Maple's conduct was also in direct violation of the PS 2 Occupational Health and Safety directives in paragraph 16. See also G56-G58.

Failure to have a grievance mechanism is also a violation of PS 2, para. 13. In the community of Canaán, people who have complained to Maple about working conditions are offered day labor as a means of silencing the complaint. Because people are desperate for work, this type of bribe often works.

iii. IFC Performance Standard 3

Maple's conduct fails to comply with IFC Performance Standard 3 on Pollution Prevention and Abatement. Paragraph 3 requires that Maple "apply pollution prevention and control technologies and practices...best suited to avoid or, where avoidance is not feasible, minimize or reduce adverse impacts on human health and the environment while remaining

technically and financially feasible and cost-effective...consistent with good international industry practice, reflected in various internationally recognized sources, including IFC's Environmental Health and Safety Guidelines." Para. 3. Maple's conduct fails to meet good international industry practice under the Guidelines and has failed to prevent, control, minimize or abate pollution.

Paragraph 4 states that the "client will avoid the release of pollutants or, when avoidance is not feasible, minimize or control the intensity or load of their release. This applies to the release of pollutants due to routine, non-routine or *accidental circumstances*". Para. 4 (emphasis added). The four oil spills in 2009, the recent 2010 spill, and continual failure to properly contain oil production wastes and residues demonstrates violation of this provision.

Maple's conduct similarly violates paragraph 5 which mandates that the "client will avoid or minimize the generation of hazardous and non-hazardous waste...[and] will treat, destroy, and dispose of it in an environmentally sound manner." Likewise, Maple has violated paragraph 6: "The client will avoid or, when avoidance is not feasible, minimize or control the release of hazardous materials resulting from their production, transportation, handling, storage and use for project activities."

The numerous health, safety and environmental emergencies caused by Maple are in violation of the IFC requirement that Maple "be prepared to respond to process upset, accidental, and emergency situations in a manner appropriate to the operational risks and the need to prevent their negative consequences." Para. 7. These are just examples of Maple's numerous violations of Performance Standard 3.⁹⁰

iv. IFC Performance Standard 4

Maple has failed to "evaluate the risks and impacts to the health and safety of the affected community...and [has failed to] establish preventive measures...[that] will favor the prevention or avoidance of risks and impacts over minimization and reduction." Para. 4. The failure to reinject all produced water and to treat and dispose of all waste properly are just two examples, of many, of how Maple has violated this provision.

As discussed above, Maple has harmed the health of the Shipibo by failing to consult with the communities about an action plan and to disclose the plan. The IFC requires that "Where the project poses risks to or adverse impacts on the health and safety of affected communities, the client will disclose the Action Plan and any other relevant project-related information to enable affected communities...to understand these risks and impacts, and will engage the affected communities...on an ongoing basis..." Para. 5. Also against guidance, Maple failed to "design its community engagement process [in a way] that reflects communities' capacities to understand and act on health and safety information." Guidance Note 4, G4.

⁹⁰ Note that Maple has also failed to follow Environmental Health and Safety Guidelines. In particular, page 8 states: "Open burning of solid wastes, whether hazardous or non-hazardous, is not considered good practice and should be avoided..." Maple's burning of the leaves and twigs that were contaminated with oil is a direct example of such failure.

By using old outdated pipelines and failing to ensure their maintenance, Maple has violated paragraph 6, which requires that “The client will design, construct, and operate and decommission the structural elements of components of the project in accordance with good international industry practice...especially where...their failure could result in injury to the community.”

Furthermore, Maple failed to “assess the potential risks and impacts from project activities and *inform affected communities* of significant potential hazards in a culturally appropriate manner” as is required in paragraph 12. The IFC requires the client to “*assist and collaborate with the community*...in their preparations to respond effectively to emergency situations...[T]he client will play an active role in preparing for and responding to emergencies associated with the project. The client will document its emergency preparedness and response activities...and *will disclose appropriate information* in the Action Plan or other relevant document to affected communities...” Para. 12; see also G25-G26. Maple took none of these steps and disaster resulted.

Paragraph 9 has been violated because Maple has failed to “avoid or minimize adverse impacts due to project activities on soil, water, and other natural resources in use by the affected communities.” As described above and with the spills in Nuevo Sucre in particular, impacts from Maple’s operations on soil, water and other natural resources have been severe. Guidance notes that:

Food security and nutritional status within communities may be positively or negatively impacted by projects at both a household and community level...These impacts can be observed both acutely and chronically by changes in the levels of stunting, wasting and underweight children under age five. Similar assessments can be made in other age groups including working adults, women of reproductive ages, and adolescents. G19.

Guidance also states that “Examples of adverse impacts that should be addressed ... include ... *demonstrated decreases in agricultural, livestock, forest, hunting and fishing yields* resulting from project-related disturbance and/or pollution.” G9. As visibly illustrated in the case of malnourished 12-year-old Liz Charo and the statements of many community residents about food scarcity, food security is an issue in both Shipibo villages where Maple’s operations have contaminated water, affected seed production, stunted agricultural plant growth, driven off wildlife, and poisoned fish.

v. IFC Performance Standard 5

Maple has violated PS 5 by failing to properly compensate the communities for use of their land. Although Maple is currently making payments to the communities for use of their land, in both communities these payments began well after Maple’s operations there began. Furthermore, negotiated settlements that were part of Maple’s compensation have not been complied with, showing that they were not negotiated in good faith. For example, Maple has

failed to deliver on promised economic development programs and assistance with community demands for clean water.

Paragraph 20 states that if “land acquisition for the project causes loss of income or livelihood, regardless of whether or not the affected people are physically displaced, the client will...[p]romptly compensate...at full replacement cost.” The people of Nuevo Sucre and Canaán are still waiting for prompt compensation.

Failure to have adequate project design, appropriate consultation and a grievance mechanism are other examples of the violation of PS 5.

vi. IFC Performance Standard 6

Performance Standard 6 states that in “areas of natural habitat, the client will not significantly convert or degrade such habitat, unless...: There are no technically and financially feasible alternatives; The overall benefits of the project outweigh the costs, including those to the environment and biodiversity; [and] Any conversion or degradation is appropriately mitigated.” Para. 7. Maple violated this provision by failing to reinject all produced waters and by failing to properly treat and dispose of waste. The oil spills have also degraded and converted habitat that has caused species loss and sickness in the area and environmental contamination that has hurt crop yields.

vii. IFC Performance Standard 7

Maple and the IFC ignored the requirement that Maple create an Indigenous Peoples Development Plan. See para. 8. This level of disrespect for the Performance Standards and for the communities is also seen in Maple’s treatment of Shipibo workers, involving name calling and other discriminatory practices discussed above.

Maple also failed to follow the required steps in paragraph 9 regarding information disclosure, consultation and informed participation:

In projects with adverse impacts...the consultation process will *ensure free, prior, and informed consultation and facilitate their informed participation on matters that affect them directly*...The process of community engagement will be culturally appropriate and...will... [f]acilitate the Indigenous People’s expression of their views, concerns, and proposals *in the language of their choice*, without external manipulation, interference, or coercion, and without intimidation...[and will] [e]nsure that the grievance mechanism...is culturally appropriate and accessible. Para. 9.

PS 7 requires that “the client to engage in a process of free, prior and informed consultation and informed participation. In...high risk scenarios [such as impacts on traditional or customary lands]...the client’s engagement process will include a *good faith negotiation*...and

documentation of the successful outcome of such negotiation. Taking into account the Indigenous Peoples' understanding of the changes brought about by a project helps identify both positive and negative project impacts. Similarly, the effectiveness of impact avoidance and mitigation and compensation measures is enhanced if the *points of view of affected Indigenous Peoples are taken into consideration and form part of the decision-making process.*" G3 (emphasis added). As discussed above, such consultation did not take place as required and promises made during consultations have not been met.

Paragraph 13 was violated as well because of the adverse impacts of oil production on traditional and customary lands without any of the measures required to avoid or minimize those impacts. For example, traditional medicines are no longer available and have not been replaced with commensurate western health services, traditional foods are diminished or are no longer available, and sources of water for traditional patterns of fishing, bathing and drinking are contaminated.

These are just some examples among many violations of PS 7 on Indigenous Peoples.

viii. IFC Performance Standard 8

Because there was inadequate Social and Environmental Assessment and no corresponding management system, there was no proper identification of project impacts on cultural heritage. See paras. 2-3. Failure to consult regarding cultural heritage is another violation. Para. 6.

ix. IFC Policy on Information Disclosure

As detailed throughout this complaint, Maple and the IFC have failed to disclose required information to the communities of Canaán and Nuevo Sucre and to the public in general. This is despite the IFC Information Disclosure Policy "presumption in favor of disclosure". Para. 9.

As described in detail above, Maple and the IFC have failed to disclose social and environmental project information as required in paragraph 13.

B. Other Violations

Maple failed to take "mitigation measures and actions" to ensure that the "project operates in compliance with applicable laws and regulations". As a result, Maple and the IFC are responsible for the foreseeable resulting violations of applicable laws and regulations. PS 1, para. 14; see also PS1, paras. 15-16. The IFC is responsible for the following violations of laws and regulations because it is made up of member governments which, as state actors, are obligated to refrain from the international law violations below that pertain to States.⁹¹

⁹¹ See *Official Records of the General Assembly, Sixty-fourth session, Supplement No.10 (A/64/10)*, paras. 50 and 51; see also Suzuki & Nanwani, *Responsibility Of International Organizations: The Accountability Mechanisms of Multilateral Development Banks*, 27 MICH. J. INT'L L. 177, 179 ("It is now clear that the legal personality of international organizations entails a responsibility for their conduct.").

i. Prohibition of Forced Labor

Maple, with the IFC's support and complicity, has violated customary international law proscribing forced labor. The Slavery Convention of 1926 bans slavery, defined as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised."⁹² Shortly after the Slavery Convention entered into force, International Labor Organization Convention No. 29 ("ILO 29")⁹³ expanded this prohibition to include forced or compulsory labor. Convention Concerning Forced or Compulsory Labour (No. 29) art. 2(1), June 28, 1930, 39 U.N.T.S. 55. (prohibiting "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."). U.S. courts have recognized forced labor as a practice "so widely condemned that it has achieved the status of a *jus cogens* violation." *Doe v. Unocal Corp.*, 395 F.3d 932, 945 (9th Cir. 2002).

Maple's reliance on forced labor immediately after the April 2009 spill in Nuevo Sucre, described above, aided, abetted, and otherwise caused the Government of Peru to violate ILO 29.

ii. Right to Consultation

International law requires that States obtain the consent of indigenous and tribal peoples to large scale development or investment projects that have a significant impact on rights of use or enjoyment of land or territories:

"the indigenous peoples concerned . . . [shall be consulted] to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources."

U.N. Declaration on the Rights of Indigenous Peoples art. 32, September 13, 2007, A/RES/61/295.⁹⁴

International Labor Organization Convention No. 169⁹⁵ also requires that the peoples impacted by projects be consulted "in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures." Indigenous and Tribal Peoples Convention (No. 169) art. 6(2), September 5, 1991, 28 I.L.M. 1382.

⁹² Slavery Convention art. 1(1), September 25, 1926, 60 L.N.T.S. 253.

⁹³ Ratified by Peru on February 1, 1960.

⁹⁴ See also U.N., *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, submitted in accordance with Commission resolution 2001/65 (Fifty ninth session)*, U.N. Doc. E/CN.4/2003/90, January 21, 2003, para. 66 (providing that "[f]ree, prior and informed consent is essential for the [protection of] human rights of indigenous peoples in relation to major development projects"); *Saramaka People v. Suriname*, Inter-American Court of Human Rights, Judgment of November 28, 2007 (noting the internationally-recognized right to "free, prior and informed consent"); International Court of Justice, *Western Sahara: Advisory Opinion of 16 October 1975*, *ICJ Reports* 1975 (same); M. Janis, *The International Court of Justice: Advisory Opinion on the Western Sahara*, 17 *Harv. Int'l L.J.* 609, 61 (1976) (same).

⁹⁵ Ratified by Peru on February 2, 1994.

As discussed above, Maple did not consult with the communities when it began operations. Although Maple began holding meetings with Canaán in 2005 and Nuevo Sucre in 2007, these interactions do not meet the minimal standards that are required for free, prior, and informed consent. Consequently, Maple aided, abetted, and otherwise caused the Government of Peru to contravene the norms mandating meaningful consultation and free, prior, and informed consent.

iii. Right to be Free from Cruel, Inhuman, and Degrading Treatment or Punishment

Based on the conduct described above, Maple has caused the Government of Peru to violate and continue violating the customary international law prohibition on cruel, inhuman and degrading treatment or punishment. *See* International Covenant on Civil and Political Rights (“ICCPR”)⁹⁶ art. 7, March 23, 1976, 999 U.N.T.S. 171; U.N. Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (“CAT”)⁹⁷ art. 16, December 10, 1984, 1465 U.N.T.S. 85; Restatement (Third) of the Foreign Relations Law of the United States § 702(d) (1987) (listing “torture or other cruel, inhuman or degrading treatment or punishment” as a violation of the customary international law of human rights). Although the conventions themselves do not provide guidance regarding what constitutes cruel, inhuman, and degrading treatment or punishment, the United Nations Human Rights Committee has clarified that the prohibition “relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim.” ICCPR General Comment No. 20, October 3, 1992, para. 5.

Maple aided, abetted, and otherwise caused the Government of Peru to interfere with community members’ rights to be free from cruel, inhuman, and degrading treatment or punishment by constructively detaining residents of Nuevo Sucre in that community following the April 2009 spill, as detailed above; knowingly and repeatedly exposing the community members to toxic substances; and failing to clean up the poisonous spills, showing utter disregard for the “dignity and the physical and mental integrity of the individual[s]” living in Nuevo Sucre and Canaán. ICCPR General Comment No. 20, October 3, 1992, para. 2.

iv. Right to a Healthy Environment

Maple’s conduct in Canaán and Nuevo Sucre, as described above, has prevented the Government of Peru from guaranteeing community members’ right to a healthy environment. The right to a safe and healthy environment has been recognized by numerous international and regional bodies. *See* U.N. Commission on Human Rights Resolution 2005/57 and Resolution 2005/60; U.N. Declaration on the Rights of Indigenous Peoples, art. 29 (2007); *Mayagna (Sumo) Awas Tingni Community v. Nicaragua* (Merits), Series C no. 79, Inter-Am. Ct. H.R. (August 31, 2001) (recognizing private property and procedural rights as giving rise to environmental rights); American Convention on Human Rights in the Area of Economic, Social and Cultural Rights art. 11 (1988); Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (U.N. Economic Commission for Europe, 1998); *Tatar v. Romania*, 67021/01 Eur. Ct. H.R. (Jan. 27,

⁹⁶ Ratified by Peru on April 28, 1978.

⁹⁷ Ratified by Peru on July 7, 1988.

2009) (concluding that the release of cyanide-contaminated tailings water near applicants' home posed a material risk to their health and well-being interfering with private and family life and the right to a healthy environment); *Lopez Ostra v. Spain*, 16798/90, 20 Eur. H.R. Rep. 277, 277 (1994) (holding that severe environmental pollution can prevent individuals from enjoying their homes, negatively impacting their private and family life); African Charter on Human and Peoples' Rights art. 24 (1981).

v. *Rights Under Domestic Laws*

Based on the conduct described above, Maple has committed and is continuing to commit personal injury and property damage torts and civil law violations under domestic laws of Peru, the United Kingdom and Ireland including, but not limited to, assault, battery, negligence, trespass, public and private nuisance, intentional infliction of emotional distress, fraud and misrepresentation, and wrongful death. Maple and the IFC's conduct has also violated Peruvian administrative environmental law.

vi. *Violations of the Rights of Indigenous Peoples*

Because Canaán and Nuevo Sucre are inhabited by members of the Shipibo indigenous group, ILO 169 requires that the Government of Peru take “[s]pecial measures [...] as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned.”⁹⁸ As described above, Maple has aided and abetted and otherwise caused the Government of Peru's violation of ILO 169 by contaminating the Shipibo's land, water, and bodies. As such, Maple has caused the Peruvian Government to harm, rather than safeguard, the Shipibo people, property, and environment.

ILO 169 also requires the Government of Peru not to discriminate against indigenous groups.⁹⁹ However, as the sections above detail, Maple has caused the Government of Peru to violate this provision of ILO 169 by discriminating against the Shipibo in Canaán and Nuevo Sucre.

As the IFC's own *ILO Convention 169 and the Private Sector Quick Note* makes clear, “a consensus is emerging that private sector companies should not act in a manner that would interfere with the State's discharge of its obligations under its international agreements.”¹⁰⁰ Maple's contributions to violations of ILO 169 in Canaán and Nuevo Sucre have caused just such interference.

For these same reasons, Maple has also caused the Government of Peru to contravene the U.N. Declaration on the Rights of Indigenous Peoples in numerous ways. The Declaration specifies that indigenous peoples have the rights—among others—to: be free from

⁹⁸ See ILO 169 art. 4.

⁹⁹ See ILO 169 arts. 3, 4, and 20; see also Convention on the Elimination of All Forms of Racial Discrimination art. 5.

¹⁰⁰ See ILO Convention 169 and the Private Sector at 3 (March 2007), available at [http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p_ILO169/\\$FILE/ILO_169.pdf](http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p_ILO169/$FILE/ILO_169.pdf) (last visited March 1, 2010).

discrimination; enjoy the protections of international and national labor law; have traditional medicines and maintain traditional health practices; enjoy high standards of physical and mental health; own, use, develop, and control the lands they have traditionally possessed; conserve and protect the environment and productive capacity of land; and be consulted to obtain their free, prior, and informed consent before approval of any project affecting indigenous lands. *See* U.N. Declaration on the Rights of Indigenous Peoples arts. 2, 17, 24, 26, 29, and 32, September 13, 2007, A/RES/61/295. Maple's conduct, detailed above, caused the Government of Peru to violate the Shipibo's rights in each of these protected areas.

vii. Additional Violations

Maple's violations of international laws, standards, and norms are not limited to those enumerated above. These are merely key examples among many.¹⁰¹

V. Attempts to Resolve the Dispute Thus Far

While the multi-year history of our interaction with Maple is recounted in detail above, the following section describes the more recent communications between the community, community partners, the IFC and Maple.

In July 2009, International Accountability Project's ("IAP") Emily Joiner met with community members from Nuevo Sucre and Canaán. She learned of the three oil spills in Nuevo Sucre and about community complaints regarding Maple in Canaán. Thereafter, the community of Canaán, through their local representative to FECONBU, notified Emily Joiner and IAP that there had been a fourth spill, this time in Canaán during the week of September 21, 2009.

On November 17, 2009, concerned groups Racimos de Ungurahui of Peru and U.S.-based IAP, Accountability Counsel and Amazon Watch submitted a letter to Lars Thunell about the four spills in the two communities.¹⁰² The letter requested that the IFC take immediate action to address the severe health, safety, and environmental problems being suffered by the indigenous communities.

¹⁰¹ For example, other violations include Maple's aiding and abetting and otherwise causing the Peruvian Government's violation of the Convention on the Rights of the Child. Article 27 mandates that "States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.... States Parties ... shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support ... particularly with regard to nutrition, clothing and housing." Signed and ratified by Peru in 1990. *See also* International Covenant on Economic, Social and Cultural Rights ("ICESCR") Article 11, which states that "[t]he States Parties ... recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions." Maple and the Peruvian Government have denied these rights to the Shipibo. Similarly, there is noncompliance with the Universal Declaration of Human Rights, which states that "[e]veryone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood...." UDHR, Art. 25. As discussed above, Maple has contributed to the Government of Peru's violation of these provisions.

¹⁰² *See* Document 27 (Nov. 17, 2009 Letter to Thunell).

On November 24, 2009, the IFC responded to the letter and stated that IFC was working “closely with our clients to assure they develop emergency plans aimed at handling incidents like the ones that you have noted.”¹⁰³ The IFC stated that “Maple reported to us that they contained, cleaned-up, assessed, reported, monitored, and mitigated the spills. The company also reported that local communities were informed about the events and that the emergency response was conducted in agreement with them.” As detailed above, this was far from the truth. In fact, Maple communicated no emergency response plan to the communities before the spills, and there was no actual emergency response conducted after any of the four spills. In Nuevo Sucre, residents were forced to stay in a highly contaminated area after the April spill *because of Maple’s confiscation all local boats*, and workers and citizens alike were exposed to and sickened by contamination. Environmental and health impacts were significant, and far from being “reported, monitored and mitigated”, they are still not meaningfully studied and are being felt today.

The IFC also stated in the November 24, 2009 letter that OSINERGMIN provided Maple with mitigation measures to be completed within a certain time period and that the company implemented those measures. The letter did not specify for which of the four spills these measures applied.

In response to the November 24th Letter, the same coalition of U.S. and Peruvian groups, after further consultation with the indigenous federation of FECONBU and the communities, wrote an email to the IFC notifying them that the communities remained dissatisfied with the response to the spills and requesting information.¹⁰⁴ The letter requested:

1. The company’s report to IFC regarding its emergency response following each of the spills and how this response was agreed upon with the local communities.
2. The company reports provided to OSINERGMIN regarding the instances.
3. A description of IFC’s mission to the area of the spills in mid-December (including lists of meetings, etc.).
4. Any report of findings generated by IFC following your mission to visit the affected areas.

On December 11, 2009, in response to that email, the IFC wrote:

“...Our specialists will be conducting their meetings and site visit next week, so we will revert to you with a more detailed upon completion of their work. Their schedule is quite tight, so unfortunately they are unavailable to meet anyone else during their limited time in Lima, but if you have any representatives based locally in Pucallpa, they may have

¹⁰³ See Document 28 (Nov. 24, 2009 Letter from IFC).

¹⁰⁴ See Document 29 (Dec. 10, 2009 Email to IFC by Kalafut).

time to meet and I would be happy to try to arrange that if you send me any contact details...”¹⁰⁵

The IFC did not provide the company’s emergency response plan or related information, reports to OSINERGMIN, or a list of meetings. Thereafter, IAP, on behalf of the coalition of groups wrote to the IFC requesting Maple’s reports to OSINERGMIN and the IFC. The request for disclosure was denied.¹⁰⁶

In mid-December, 2009, the IFC and Maple visited the communities of Canaán and Nuevo Sucre. As discussed above, during the meeting in Canaán, the community voiced discontent that Maple was not meeting its commitments under their numerous agreements and that only a small fraction of their promises had been kept.¹⁰⁷ The IFC did not ask questions and did not interrupt as Maple representatives purposefully dominated the conversation to prevent further complaints.

On February 12, 2009, at the request of the coalition of U.S. and Peruvian groups, a conference call was held between IAP and the IFC to follow up on outstanding issues. During that call, the IFC provided the following information about their mid-December, 2009 mission to Peru. The information provided by the IFC to IAP on that call is listed in the bullet points below, followed by the responses of the people of Nuevo Sucre and Canaán, in italics:

- Rosa I. Orellana, Environmental Specialist, IFC and Leila De, Social Specialist, IFC, visited the communities of Nuevo Sucre and Canaán.
- Their findings were that there were only two significant oil spills: the first in January of 21 barrels, the second on April 6 of 16 barrels. The other two spills that occurred were one barrel or less and not considered significant.
 - *This is in direct contradiction of direct community observation and experience. For example, during the third spill in Nuevo Sucre, the amount of oil spilled was so large that it was seen and smelled as far away as Contamana. While Maple may not have considered other spills significant, each of them was felt by the communities, as detailed above.*
- When they met with the communities, they visited the streams and saw no residue of hydro-carbons; the community was back to using the streams.
 - *As detailed above and as seen in Exhibit 22, there is still oil residue from the 2009 spills in Nuevo Sucre. The community is “back to using the streams” in Nuevo Sucre only because there is simply no other water source. The water in the streams is still contaminated, the fish are still sick and dying, and the people of Nuevo Sucre are still feeling the impacts of having to resort to use of contaminated water.*

¹⁰⁵ See Document 30 (Dec. 11, 2009 Email to coalition from IFC).

¹⁰⁶ See Document 31 (Email Correspondence with IFC re Maple Document Disclosure).

¹⁰⁷ See Document 25 (5) (video testimony of Manuel Amaringo Ruiz).

- The IFC stated that the community presented their concerns to IFC which included the lack of potable water at the time of the spills; that the spills had increased the level of illness of members of the community; and that there is pollution in the streams.
 - *This is true of both the communities of Nuevo Sucre and Canaán.*
- IFC informed Maple that they should have done a better job of presenting information on the findings after the oil spills to the communities – and presenting the technical information in way that community members could understand.
 - *Note that there was no information provided to either community after the spills whatsoever, let alone in an understandable format.*
- The IFC stated that Maple should have conducted water sampling – Maple did this for the first time in January 2009 – at 10 points along the stream(s) for 2-3 months and again in June for a couple months. However, Maple did not present the results of the water sampling to the community.
 - *Because there was no earlier water sampling done, there is no baseline data with which to compare current samples. An adequate environmental assessment prior to IFC's investment was therefore impossible without this information.*
 - *Maple managers came to the community of Nuevo Sucre in early February 2010 and reported results of sampling done over a year earlier. That information was not presented in an accessible manner and the community was told that the report said that there was no contamination after the second spill in Nuevo Sucre. Maple refused to answer when the community challenged this finding (because of personal experience to the contrary regarding contamination). Maple refused to respond when the community asked why the report had not been shared for over a year.*
- The IFC has told Maple that there should be more (than there already is) and better consultation with the community in an ongoing, sustained manner.
- There is a Maple person in Pulcallpa and company community liaison people who make regular visits to the communities.
 - *When Maple employees enter the village of Nuevo Sucre, the community observes that they do not greet or address community members, but rather, walk through on their way to work sites.*
- Issues of a raised water tank were brought up by the members of the community during the IFC's visit. The Manager of Maple was present during the visit and had previously spoken to the chief of the community about this issue but that chief has now left the community (on allegations of stealing money from the community).
 - *Even though the chief has now left the community, there is a leadership structure in place in Nuevo Sucre and Maple should be able to follow up with current leaders.*

- IFC recommended that the company find a way to provide water to the community in a more safe way – there had been a bore hole (well) that the community was using for water but it was not functioning for several months. The company evaluated the well in January, 2010 and found that it was no good because it was filled with sand. The company said it will drill a new well in the community and put in an elevated water tank. The community has agreed to provide the wood for the tank. The well will be 60 meters deep and will provide clean water, but the company will also do a pre-treatment on it to ensure it is safe. The well and water tank should be completed by the end of February but the IFC (Orellana) needs to follow-up with company on this.
 - *As of the date of this complaint, no construction has been started in Nuevo Sucre toward construction of a water tank or well.*
- The company is also assisting community members to write letters to the government requesting that electricity be brought to the community.
 - *The community of Canaán has electricity. The community of Nuevo Sucre is not aware of any efforts by Maple to bring electricity to the community.*
- In terms of fish-monitoring and long-term health impacts (other questions IAP asked), Maple is preparing an updated action plan which should be ready soon and will capture all the things they are planning to do (fish-monitoring will be a part of that but it was unclear to IAP from the call whether or how health monitoring will be included).
 - *As discussed above, such monitoring should have been initiated years ago and an action plan should have been created in consultation with the community and disclosed years ago as well.*
- The first spill was caused by the heavy rains, the second spill was caused by a driver going off the road and running into the pipeline (the roads are very bad) – the company is doing a technical assessment on how to prevent future spills.
 - *The Shipibo live in an area of regular, heavy rains. That heavy rains could cause a spill displays extreme disregard for proper design and maintenance of equipment and a knowing disregard for the people in the area of Maple's operations. A technical assessment of how to prevent spills should have been completed and disclosed years ago. Such an assessment might have prevented the driver running off the road (a predictable occurrence) from causing a pipeline to break.*
- There were several inspections by OSINERGMIN and the results of these inspections have not been presented to the communities. Those reports were only given to the company.
 - *The communities and their partners have requested the results of inspection reports and Maple's responsive reports and Maple has refused disclosure.*

VI. Requested Next Steps

We, the communities of Canaán and Nuevo Sucre, request the CAO's assistance in facilitating an agreement with Maple covering both environmental and social issues.

i. Environmental Issues

As an initial issue, Maple must stop the practices that have led to five oil spills in 15 months and must stop the practices that are regularly contaminating our communities.

Environmental issues that must be covered in any agreement include the remediation of contaminated sites, including polluted soil and water. This may first require an independent assessment of the scope of the area that should be included for cleanup and remediation. A full environmental assessment of the current and planned future impacts of Maple's operations in and near Canaán and Nuevo Sucre is also overdue and required. Finally, Maple must develop emergency response plans and action plans, created in consultation with the communities, that address prevention of future emergencies and response in the event of emergency.

ii. Social Issues

Social issues that must be covered in an agreement include health care, livelihood issues, education and community development.

Health care and injuries: We believe that Maple's activities have resulted in contamination that has caused numerous health problems in our communities. We urgently require that Maple fund an independent epidemiological study of every resident in the two communities to gather community and individual health data. We propose that a fund be created to provide adequate health care for the communities of Canaán and Nuevo Sucre. The fund must be sufficient to provide for village-level medical care capable of diagnosis and treatment of illness and disease, including a Shipibo doctor or nurse and an ambulance speed boat in each village. The fund must provide therapies for individuals affected by toxic poisoning, and compensation for individuals suffering particular injuries from the contamination. The fund must also support maintenance and development of use of traditional medicine and knowledge of medicinal plants.

Necessities of life and livelihood: We believe that Maple's oil production has negatively affected our ability to sustain our traditional livelihoods and provide for our families. We propose a fund to establish food security and improve the quality of life in the communities by providing immediate access to clean water and basic sanitation; developing family-based plans to improve food and nutrition; develop projects to provide income from agricultural and livestock production on a sustainable basis; and to implement renewable electricity generation for the community of Nuevo Sucre. To ensure that these steps are taken, we request that Maple pay for community environmental and health monitors, including their training and salaries.

Education and culture: We believe that Maple's operations in our region have contributed to the disruption of our traditional ways of life, and that modern education is

necessary in order to ensure our continued survival. We propose a fund to: (1) promote the development of primary and secondary education, including improvement of school infrastructure and equipment, libraries, and educational materials; (2) sustain and expand the supply of technical careers; (3) provide scholarships for students to attend primary school, secondary school and university; and (4) for the development of Shipibo art and culture, including Shipibo artisanal craft-making.

Governance, management, and communications: We believe that effectively using the above funds will require investment in systems of management and finance, as well as communications. We propose a fund to provide resources for good management, decision-making and financial controls over these funds, including strong community participation in management and spending decisions; and for modern communication services, including telephones and access to the internet in both communities.

Compensation to Workers: Maple has repeatedly abused Shipibo workers in our communities by paying them for less than the amount agreed, failing to pay for overtime, and exposing the workers to harmful conditions. Maple must compensate community members for time worked and unpaid and for exposure to harmful working conditions.

We request that an agreement reflect these demands and that the CAO monitor and report on Maple's implementation of the commitments to ensure Maple's timely compliance.

Finally, we request the CAO's reporting on the IFC's non-compliance with their policies and procedures.

We, as members of the Shipibo communities of Nuevo Sucre and Canaán de Cachiyacu, sign this complaint to the CAO in the name of all of the members of our communities.

[See Spanish-language version for signature pages]