

LESSONS LEARNED ON THE OMBUDSMAN'S OFFICE FOR CAMISEA PROJECT

A bridge for the understanding



PONTIFICIA **UNIVERSIDAD CATÓLICA** DEL PERÚ



**CENTRO DE
ANÁLISIS Y
RESOLUCIÓN
DE CONFLICTOS**



LESSONS LEARNED ON THE OMBUDSMAN'S OFFICE FOR CAMISEA PROJECT

Prepared by the Center for Conflict Analysis and
Resolution of Pontificia Universidad Católica del
Perú

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Lessons learned prepared by:

Coordinated team

Marlene Anchante Rulle (manchan@pucp.edu.pe)

Members team

César Guzmán-Barrón Sobrevilla (cguzman@pucp.edu.pe)

Mirian Morales Córdova (mmoralesc@pucp.edu.pe)

Fabián Pérez Nuñez (faperez@pucp.edu.pe)

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Graphic Designer

Paola Torres

Center for Conflict Analysis and Resolution

Pontificia Universidad Católica del Perú

Av. Paz Soldán 225, Second floor. San Isidro

Lima Perú

University Campus

Av. Universitaria 1801. San Miguel

Lima Perú

Phone: + 511 6267421

Fax: + 511 6267411

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Executive Summary

A series of considerations resulting from unprecedented experiences accumulated by the Ombudsman's Office for Camisea Project (Defensoria para el Proyecto Camisea, DPC) –a six-year old experience ran by Pontificia Universidad Católica del Perú– has been gathered in this document. Up to date, DPC has seen 949 cases in their three areas of intervention: coast, mountains and jungle.

These considerations, product of the experience accumulated by DPC, are developed based on five main themes. First, the considerations regarding the nature and implementation of the DPC evidenced the importance of having an Ombudsman's Office operating, prior to the project construction phase, as an autonomous and independent entity, with the ongoing task of building confidence and reflecting on its impartiality. Similarly, having an on-site permanent presence with empathy, respect and cultural sensitivity is the key aspect for building the confidence of the intervening parties. Among other considerations, it is understood that it is critical for the operation of an Ombudsman's Office to guarantee the economic resources, but especially to maintain confidence in the institution. This leads in turn to the need of having a State that has a clear knowledge on what its spaces are and what the spaces belonging to the DPC are as well, which implies a political will.

In the second main theme on negotiations and mediations, part of the considerations evidence that negotiations are spaces primarily for intercultural dialogue, in which also a critical issue refers to the appraisal of compensations and easement indemnities. It is also recognized that while the mediations conducted by the DPC helped reduce the imbalance of power between the parties in the negotiations, these were not enough to reverse the situation. Other considerations had to do with the legitimacy of the representatives in the negotiations, recognizing that it is a matter of skills, and not merely a legal matter; meanwhile, in the case of consultants, their legitimacy is based primarily on the authority criteria. Additionally, the consideration that counselors must understand their role as assistants for achieving fair agreements and not as protagonists of the negotiation is added up. Finally, the importance that records, agreements and contracts are entered into considering the form and the content so that its compliance is enforceable subsequently was evidenced.

The third main theme referred to the interventions in crisis faced by DPC. Among the most important considerations are that an Ombudsman's Office should be prepared to deal with critical situations, i.e. the gas spill occurred in the Camisea Project. Given these facts, the farming and indigenous communities implicated in the spills constantly request to be present in the different technical assessments conducted by companies and governmental institutions. To this effect, another consideration was brought up: the compensation as a result of a spill must not only pay for environmental and property damages, but also for emotional damages. Furthermore, a new consideration was undertaken which deems that the State's compliance with agreements (reached during the spill situation and not fulfilled) should be seen as an

opportunity to build democracy and citizenship, thus avoiding the loss of opportunities which widens the gap between State and civil society.

On the other hand, the fourth main theme related to disputes prevention considers the usefulness of assessing disputes as a starting point to carry out prevention actions and disputes management. Also, neutrality and accountability were considered as essential conditions for assessing a dispute, which should not fail to include women's perspective.

Finally, in the last main theme linked to the facilitation of local development management, the role of an Ombudsman's Office that deals with issues on project development was considered. It showed that there is a need to strengthen the vision of working towards sustainable development, and that a trust does not necessarily guarantee the implementation of the development projects agreed in a negotiation. Furthermore, the great need for technical assistance for putting into action the ideas for development projects generated within the framework of negotiations where CPD participated was also considered.

Finally, we appreciate the support and the opening of the Inter-American Development Bank in the preparation of this document. The views presented in this paper are those of the authors.

Introduction

Center for Conflict Analysis and Resolution of Pontificia Universidad Católica del Perú writes down their reflections from their six-year experience in the leading of the Ombudsman's Office for Camisea Project (Defensoria para el Proyecto Camisea, DPC). Upon completion of the undertaking, to elaborate the lessons learned became a moral commitment to the University. The new experience gained in recent years by the DPC represents an opportunity that has to be formally documented, making it clear that this is not an assessment, but a set of considerations resulting from the experience lived.

We consider that this document will be very useful for the preparation of other natural resource mega projects in Peru or elsewhere in the region, as well as for the governmental institutions that today face the urgent need of preventing and managing social conflicts.

The team has been coordinated by Marlene Anchante Rulle, Psychologist and Deputy Director of the Center for Conflict Analysis and Resolution of Pontificia Universidad Católica del Perú, which is composed by Cesar Guzman-Barron Sobrevilla, Mirian Morales Cordova and Fabian Perez Nunez. All of them are part of the team that led the DPC, with experience gained in the practice, consulting, teaching and research of the prevention and management of socio-environmental conflicts.

The working approach lays on a comprehensive, interdisciplinary, constructive and positive perspective of learning – that is, to highlight advances and achievements, and to propose improvements over what did not work accordingly. The “After Action Review” tool for learning and knowledge was applied, which has enabled the DPC team to systematically and collectively reflect on the experience of the Camisea Ombudsman project. In this manner, the implicit knowledge (the knowledge that is in the minds of people as product of their experience) of the team became explicit knowledge.

The results herein presented contain core ideas of the lessons learned, being it the product of a synthesis effort made by the members of the team after stimulating discussions and sharing ideas. These are unfinished considerations, much thinking and insight upon the experience remains to be done.

The document contains the background information, main outcomes of the cases dealt with, and lessons learned in each of the following main themes: a) nature and implementation of the Ombudsman's Office, b) negotiations and mediations, c) crisis intervention, d) conflict prevention and d) facilitating the management of local development, ending with the corresponding conclusions and recommendations for the implementation of these lessons.

This systematization –which embodies one of the contributions of the Pontificia Universidad Católica del Perú for the country– is expected to positively contribute with the insight process on the Camisea Project and the interest shared by many Peruvians in a promising development for our country.

1. Background: Brief Description of the Context that Caused the Experience of the Ombudsman for Camisea Project

1.1. Creation

During the development of Camisea Gas Project in Peru, a great resistance appeared on the part of the organizations of the civil society and the general population. The constant fear was related to the negative impact that said project may cause within the population involved. Thus and within the commitments assumed by the Peruvian Government for avoiding Camisea to cause environmental and social damages, the Program of Institutional Strengthening and Environmental and Social Support started to be implemented with the Bank. As part of the Program, the Peruvian government assumed 40 commitments of obligatory fulfillment, one of which was to implement the Ombudsman's Office for Camisea, in charge of preventing and managing conflicts among the parties involved in the Project.

In this context, by means of Executive Decree 030-2002-EM dated September 26, 2002, the Ombudsman's Office for Camisea Project was created which is defined as an autonomous, independent and impartial organization designated to develop the functions of conflicts prevention among people, organizations and entities linked to the development of the activities of Camisea Project, and to mediate, conciliate or make easier the search of settlements in case of disagreements or conflicts related to the social and/or environmental aspects derived from the implementation and development of Camisea Project.

By means of Ministerial Resolution 446-2002-EM/DM dated September 27, 2002, the Organization and Functions Regulations of DPC were approved. In that same year, the Ministry of Energy and Mining invited several institutions to participate in a selection process of the entity that will manage DPC. Pontificia Universidad Catolica del Peru was invited, among others.

By means of Executive Resolution 052-2002-EM, dated November 26, 2002, Pontificia Universidad Catolica del Peru was appointed to manage the duties of DPC.

1.2. Purposes and Functions

The purposes of DPC according to its Organization and Functions Regulations, approved by Ministerial Resolution 446-2002-EM/DM dated September 27, 2002, modified by Ministerial Resolution 245-2003-EM/DM dated July 7, 2003, were the following:

1. To avoid the creation of conflictive situations, by submitting or making their dispute settlement procedures so that the populations, organizations and representative institutions of the civil society may have a mutual space for dialogue and understanding with the authorities and companies participating in the influence area of Camisea Project.
2. To promote the environment conservation linked to the Camisea Project development.
3. To favor the balance among the socioeconomic development, the sustainable use of natural resources, the environment conservation and the sustainability of Camisea Project.
4. To identify the issues related to the environment and society which are directly linked to Camisea Project.
5. To promote the benefits that the Camisea Project implementation and execution will entail.

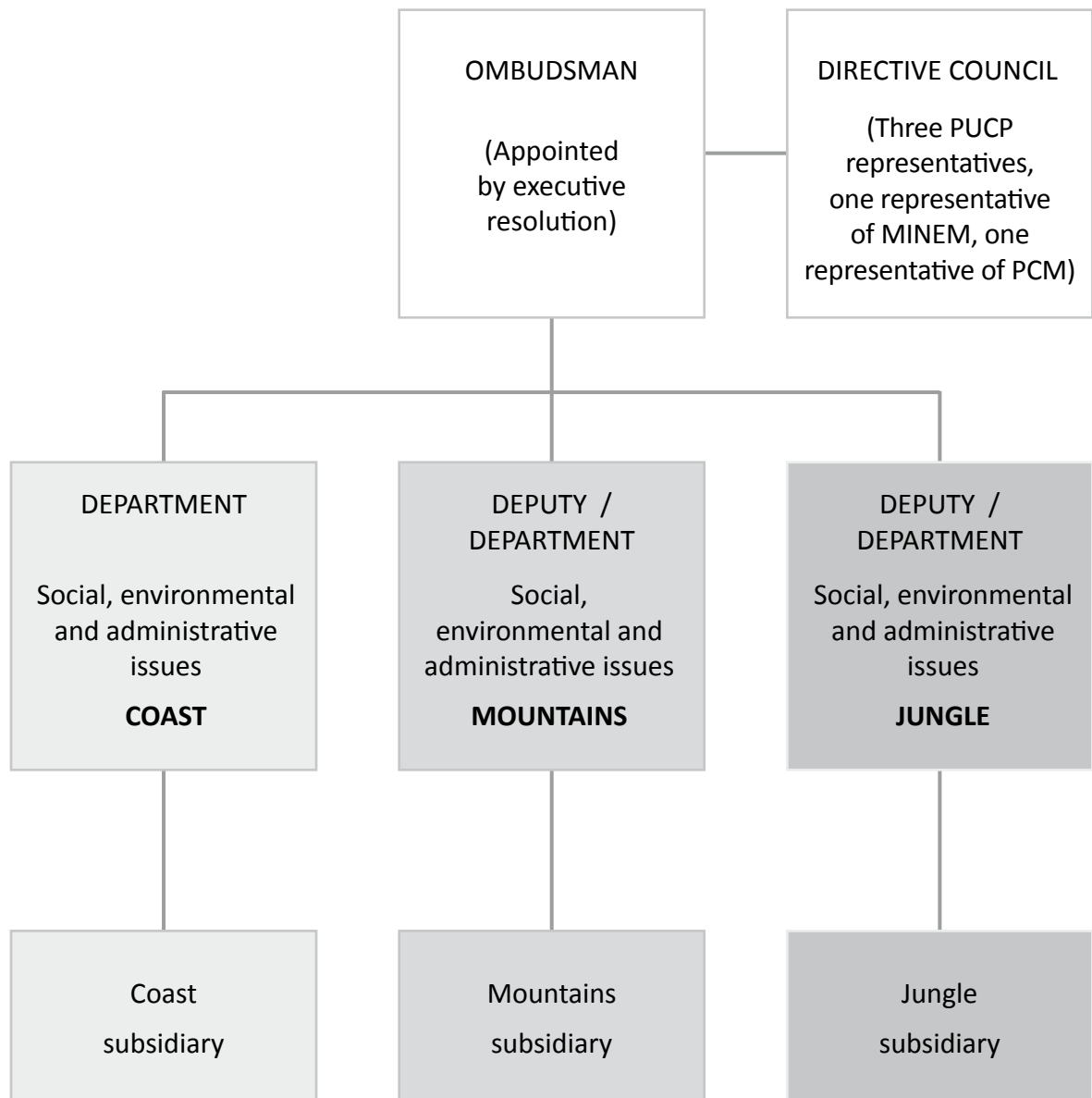
1.3. Internal Organization

In accordance with the provisions set forth by article 3 of the Organization and Functions Regulations of DPC, the organization chart was as follows:

- a) Directive Council.
- b) Office of the Ombudsman for Camisea Project.
- c) Social Issues Department.
- d) Environmental Issues Department.
- e) Administrative Issues Department.

In the practice, DPC assumed this organization form, delegating the responsibility to a representative by department, appointed to a territory area (coast, mountains and jungle) in order to comply with all the functions of the DPC. Based on this criterion, the following organization chart was developed.

Organization Chart Ombudsman For Camisea Project (Ministerial Resolution 446-2002-Em-Dm)



1.3.1 Directive Council of DPC

The Directive Council of DPC was integrated by five (5) members:

- Three (3) representatives of the legal entity appointed to manage DPC.
- One (1) representative of the Cabinet.
- One (1) representative of the Ministry of Energy and Mining.

The Directive Council was in charge of attending special issues referred to the appointment of the deputy ombudsmen, as well as being informed and recommending the working plans and annual budgets of DPC.

The agreements were adopted unanimously, without being necessary that the Ombudsman uses his right to vote.

The development of sessions, as well as the agreements adopted within the Directive Council of DPC, were registered in a Minutes Book duly authenticated, which was formally closed due to the discontinuance of the Directive Council's functions.

1.3.2 Ombudsman and Deputy Ombudsmen

- **Ombudsman**

The Ombudsman for Camisea Project performed neutrally executive, management and institution representation functions, aiming to watch over the respect and balance of the interests of populations, organizations and representative institutions of the civil society regarding the intervention of authorities and companies participating in the influence area of Camisea Project, in accordance with article 6 of Functions and Organization Regulations.

Within the six-year old period that DPC has been running, two Ombudsmen were appointed: Carlos Fosca Pastor (2002-2006) and Cesar Guzman Barron-Sobrevilla (2006-2009).

- **Deputy Ombudsmen**

The Ombudsman's Office for Camisea Project had three (3) Deputy Ombudsmen specialized in environmental, administrative and social issues pursuant to article 11 of Regulation; in this regard, the Deputy Ombudsmen were appointed by the Directive Council upon proposal of the Ombudsman.

The Deputy Ombudsmen were in charge of supporting the Ombudsman for the best fulfillment of his works, and according to the functions established for DPC.

1.3.3 Decentralized Offices

Along these six years, DPC has worked in a decentralized manner in order to provide the appropriate attention to conflicts and to practice an efficient work of conflicts prevention throughout the Camisea Project. For this reason, DPC implemented decentralized offices in Ayacucho, Cusco (Quillabamba) and Pisco.

1.4. DPC Validity and Closure

Once Pontificia Universidad Católica del Perú was appointed to be in charge of managing DPC, it entered into an Inter-Institutional Cooperation Agreement with the Ministry of Energy and Mining, upon which the obligations and jurisdictions corresponding to each party, as well as the economic and administrative issues applicable to DPC operation were established.

It is important to highlight that as a consequence of the signature of the Agreement and as established in the last paragraph of Clause 2 between the Ministry and the University, a legal relationship of outsourcing of DPC management was made official; therefore, the University managed this entity according to its own organizational and financial rules.

The original agreement signed on June 23, 2003, by and between the Ministry of Energy and Mining and the President of PUCP, was subject to annual addendums which allowed continuing with the task of managing DPC for six years. Simultaneously, the Ombudsman's Office existence was being extended on a yearly basis through Executive Decrees during three government administrations, such as that of Alejandro Toledo, PhD; Valentin Paniagua, PhD; and Ala Garcia, PhD.

The DPC closure was subject to a termination agreement of the inter-institutional cooperation agreement between the Ministry of Energy and Mining and Pontificia Universidad Católica del Perú, signed on May 20, 2009. This agreement, as evidenced in the background of it, was due to a budgetary reduction since MINEM stated not to have the economic resources to transfer what it agreed in the last renewal addendum signed on December 31, 2008.

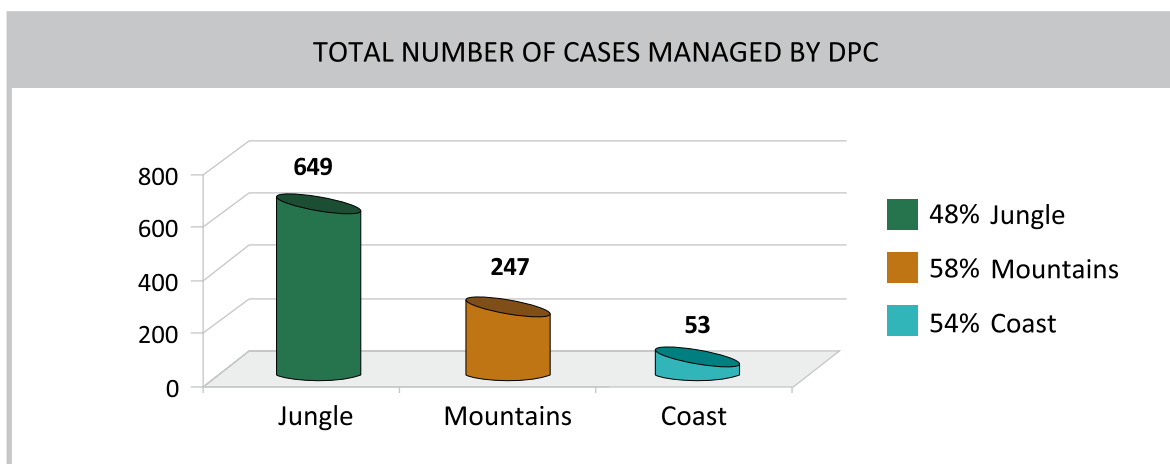
The purpose of the agreement was to terminate the Agreement, stating that the DPC activities were going to be discontinued permanently on May 31, 2009, and that from June 1 to 30, 2009, the closure period of DPC management must be carried out. In clause 2 of the agreement, it was stated that the DPC activities that may involve continued performances that must be extended over May 31, should be suspended as from June 1, 2009 or earlier.

This forced DPC to suspend the processes of mediation and capacities strengthening which were in full execution process, and had short time to communicate the end of DPC activities to all communities, fishermen trades and different groups of interest. In this sense, a considerable effort was made to set off for a strategy for more difficult and complex mediation processes.

2. Main Results of the Cases Managed

2.1. Background

Throughout its six-year validity, the DPC managed 949 cases in three areas of intervention: coast, mountains and jungle.



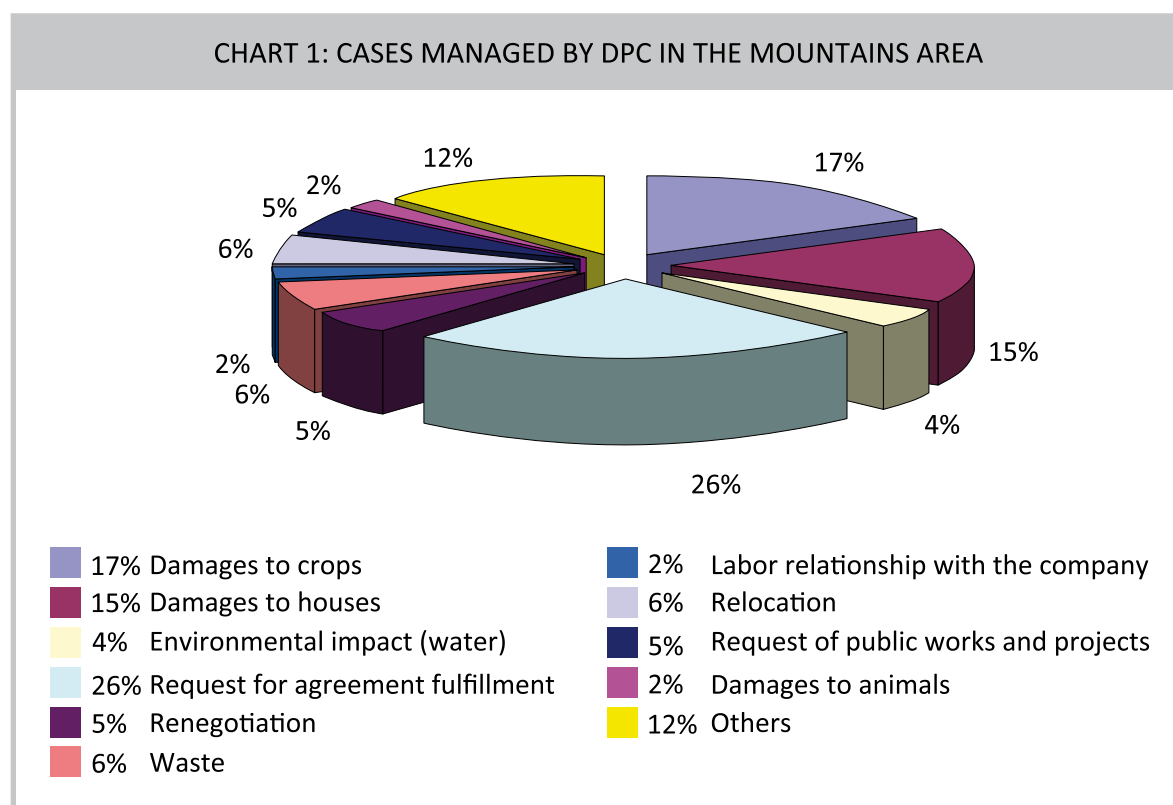
The most frequently managed cases varied according to the region. Thus, in the case of the mountains area, 58% of the cases had to do with claims demanding the compliance with agreements signed between companies and those affected, and claims for damages to crops and housing due to the Camisea Project's construction activities. In the coastal area, 54% of the cases seen were related to environmental impacts (especially water), request of public works – such as schools and infrastructure for fishing activities, and also the breach of funding agreements. Finally, in the jungle area, 48% of the cases accounted for damages to crops and houses, and the breach of agreements.

The details on the number and type of cases managed by DPC in each one of the areas of intervention are given below:

2.2. Number and Type of Cases Managed

2.2.1 Cases Managed in the Mountains Area

In the mountains area, 247 cases, from Ayacucho and Huancavelica, were managed, remaining 51 of them pending when the DPC suspended its activities.



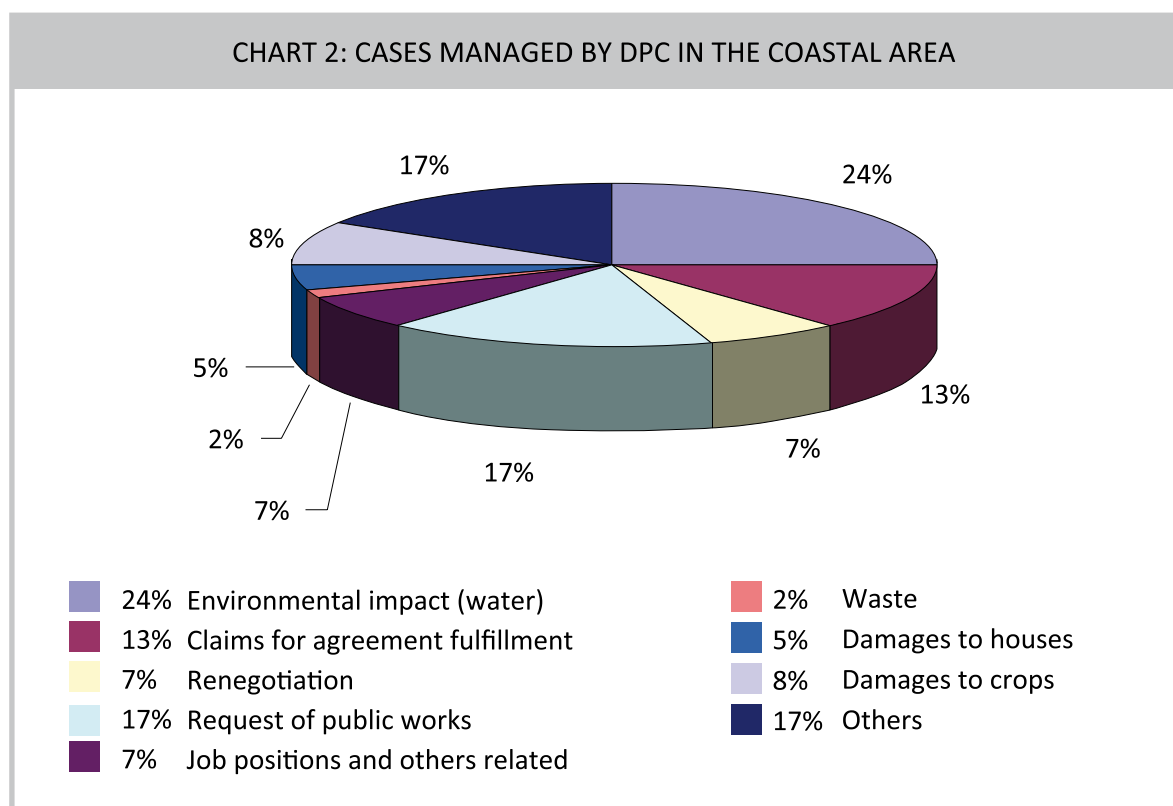
As shown in Chart 1, 26% of all cases managed in the mountains area were motivated by constant claims demanding the fulfillment of agreements signed between companies and those affected. Claims for crop damages due to construction activities of the Camisea Project represented 17%. On the other hand, 15% of the caseload was associated to damages to the houses of the inhabitants caused, among others, by the vibration generated by the passage of heavy machinery, landslides, soil erosion.

Other concerns presented in a lower percentage were: waste management made by the companies representing 6% of the caseload; the renegotiation of the agreements since those affected considered that their damages were not fairly appraised, with 5%; relocation represented 6%; the claims of the inhabitants requesting public works of sanitation, schools, as well as development projects, with 5%. Similarly, 4% of the cases referred to the environmental impacts generated by the pipelines or construction. These impacts were caused to water ponds, water springs and to the flora. And 2% of the caseload was referred to the request of job positions for the residents of the area, as well as the failure to pay the wages and social benefits of workers.

Finally, other cases represented 12% of the caseload. This percentage covered different requests such as compensation claims, animals' death, among others.

2.2.2 Cases Managed in the Coastal Area

In the coastal area 53 cases were managed, remaining only three pending at the moment of suspension of activities.



As seen in Chart 2, 24% of the cases in the coastal area were related to concerns on the environmental impacts, with emphasis on water, such as contamination by dredging or waste materials in the water.

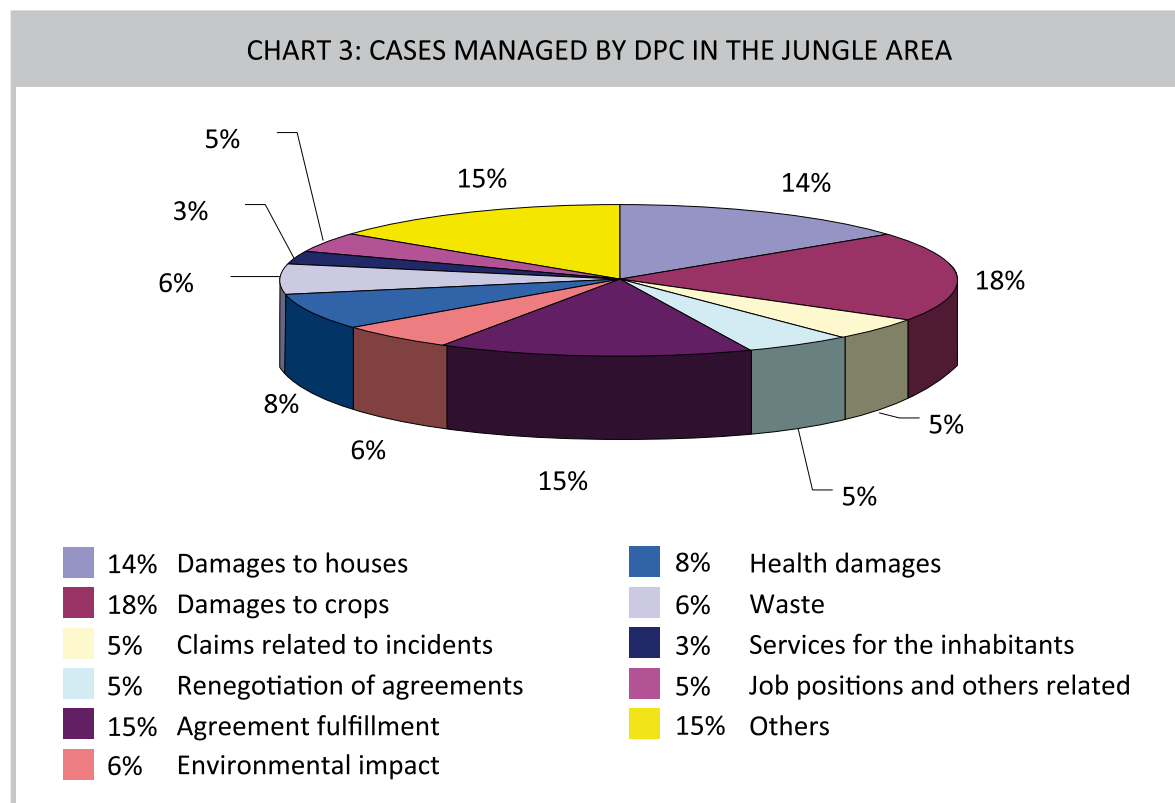
The request of public works – such as schools and infrastructure for fishing – represented 17% of the caseload. 13% had to do with the breach of agreements, while 8% were claims related to crop damages, and 7% referred to job positions or related issues such as the non-payment of salaries and benefits. Another 7% were related to their dissatisfaction with the agreements reached in the negotiations, and so they request the “renegotiation” of these.

On the other hand, house damages had a 5% incidence, while 2% of the caseload was related to the management of the companies’ waste.

Finally, 17% of the cases were classified as other cases due to its variety, among this group are: the request for entering into agreements, replacement of piping, consideration in compensatory processes, among others.

2.2.3 Cases Managed in the Jungle Area

In the jungle area, 649 cases were managed. In the Upper Urubamba, 413 cases were managed until its completion, while in the Lower Urubamba, 236 cases were treated, and only six remained pending.

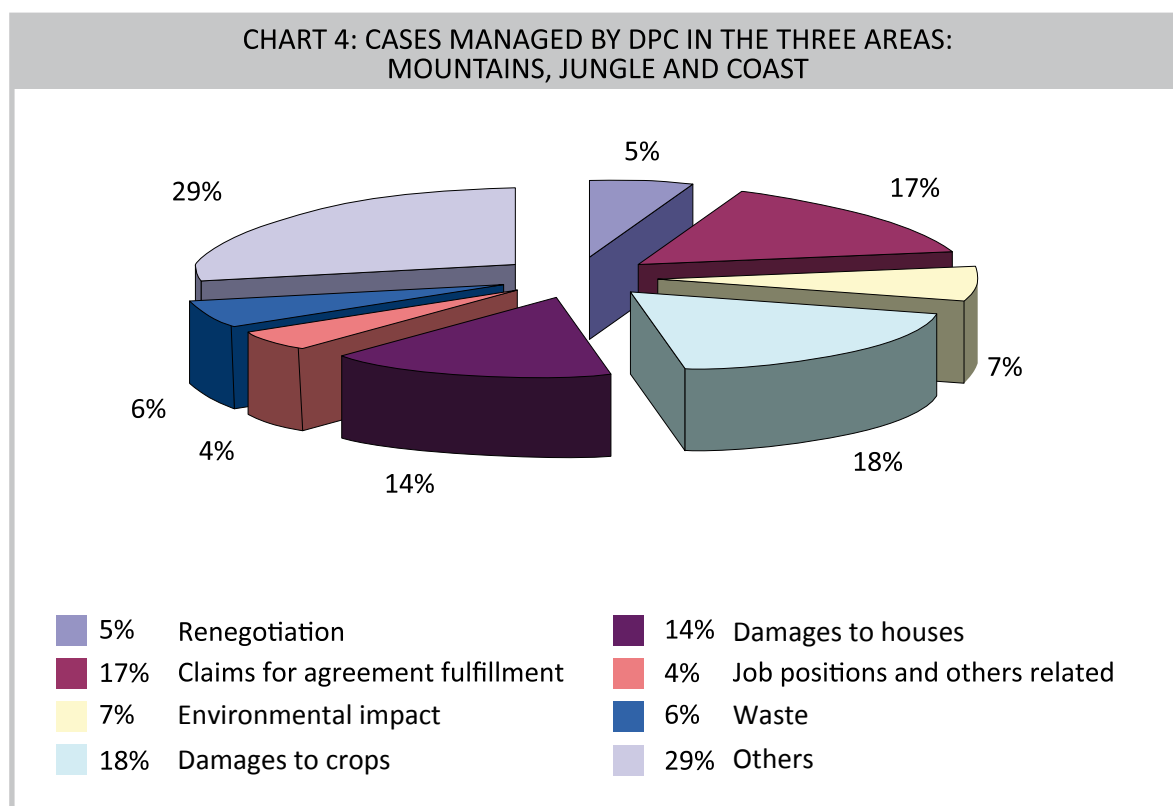


As shown in Chart 3, 18% of the caseload was related to crop damages, while 15% were referred to house damages. Another 15% was related to claims demanding the fulfillment of agreements, while 8% were about health damage resulting from dust emanating from machinery, and 6% were claims related to environmental impacts, such as logging and contamination of water wells used for human consumption. Also, 6% were associated with inadequate waste management, and 5% referred to claims for job position, as well as claims for payment of social benefits.

Another 5% were claims relating to incidents of gas spills, and in the same percentage were claims demanding the renegotiation of the covenants and agreements signed between the companies and those affected, while 3% were referred to requests of services for the inhabitants in general, such as transportation, medicines, among other services. Finally, 15% were other diverse requests related to: verification requests, development projects and public works, among others.

2.2.4 Total Number of Cases Managed in the Coast, Mountains and Jungle Areas

During the term of the DPC validity, a total of 949 cases were managed in the coastal, mountains and jungle areas.



As shown in Chart 4, the total of cases managed in the three areas were divided as follows:

18% of the caseload was due to crop and plantation damages, 17% were claims requesting the fulfillment of the agreements reached with the companies, 14% arose from damages to the houses, 7% had to do with concerns on environmental impacts, 6% were related to the companies' waste management, 5% were linked to the inhabitant's dissatisfaction with the agreements reached, which were later associated with requests for renegotiation, and 4% of the claims were for job positions and the non-payment of wages. Finally, 29% of cases categorized as other gathered the concerns related to relocation, unjust payment to third parties and claims for the animals' death, among others.

3. Lessons Learned

3.1. Nature and Implementation of the Ombudsman's Office

3.1.1. An Ombudsman's Office Should Operate Before the Construction Phase of the Project

The creation of the Ombudsman's Office for the Camisea Project, the approval of its regulations and the outsourcing of the same happened between September and November 2002. Afterwards, the PUCP held meetings during seven months with MINEM for amending the Regulation because, as it was proposed, it did not guarantee the self-governing and independent performance of the University in the task of leading the Ombudsman's Office. Meanwhile, the outsourcing conditions were negotiated and formalized by the Inter-Institutional Cooperation Agreement signed on June 23, 2003.

When the Ombudsman's Office began operating, the Camisea Project was already under construction having 60% of the pipeline's installation advanced and having signed almost all easement contracts. It is in this period that, at least, 50% of all disputes were managed by the Ombudsman's Office, during its six years of validity.

If the Ombudsman's Office would have operated before the construction phase, it would have probably prevented the conflicts originated in this period. Thus, the Ombudsman's Office could have acted as facilitator or mediator in the negotiating process conducted between the farming and native communities and fishermen associations and the joint-venture companies regarding the easement contract terms, as well as the terms of local development agreements signed by the companies as part of their corporate social responsibility program, and/or its relevant regulations.

Therefore, in a megaproject, such as Camisea, it is essential that the Ombudsman's Office begins operating on time for effectively performing its role in preventing conflicts, reducing externalities in the case of businesses, as well as the social and environmental negative impacts on farming and native communities, and fishing associations.

3.1.2. The Importance of Being Autonomous and Independent

This is the cornerstone for an Ombudsman's Office to be fully operational and achieve its objectives. All its parties involved should perceive it as such; otherwise, it would not be feasible to have an entity – as the ombudsman's office – if it is not perceived as an autonomous and independent third party. In the exercise of the Ombudsman's Office tasks, this perception of independence and autonomy had to be constantly strengthened and shielded from any foreign agents, situations, interpersonal and intergroup relations that may have generated doubts on the degree of independence in the performance. Even though the Executive Decree that created the ombudsman's office made explicit that it was an independent, autonomous and neutral entity, what really helped consolidate the perception of the entity was outsourcing the management of the Ombudsman's Office.

The outsourcing experience was essential to materialize and show the independence and autonomy of the Ombudsman's Office. First of all because of its independent administration, as the Office functioned under the administrative regulations of the University, which was not only formally recognized by the law that created it, but also by the interagency agreement that gave birth to it. Having an independent administration allowed the DPC being discrete, fast in its processes and overcoming the restrictions of the governmental institutions. Then, having

an independent financing source, having professionals that were not public servants and being an institution independent from the current State administration contributed to DPC's genuine autonomy to perform its functions.

Additionally, having the Ombudsman's Office guided by a University helped strengthen the image of autonomy and independence thanks to the University's nature which provides academic, regulatory and administrative autonomy as set forth in the University Act (Article 1 of Law No. 23,733), and hence independent from corporate and governmental interests. Also, the permanence through the time of the PUCP – with more than 90 years of existence as a nonprofit private university and its multidisciplinary strength were a decisive added value for the autonomy of the Ombudsman's Office in the development of its activities.

3.1.3. Building Trust: An Ongoing Task

The experience clearly showed that building trust with all the parties involved – more than being necessary as a starting point – was an ongoing task during the six years of the Ombudsman's operations. A first element to consider in building trust was familiarity, which has to do with the knowledge one has about the other. To this end, it was essential to answer the question: What is the Ombudsman's Office for the Camisea Project? The answer had to incorporate the concepts of autonomy and independence which were essential given the strong suspicion that the groups of interest had against the project, the companies and the State. Likewise, it was also necessary to clearly delimit DPC's tasks from the tasks of the State and the Ombudsman's Office (office which was often confused with the DPC at the beginning). The very name "Ombudsman's Office for the Camisea Project" generated confusion since it was interpreted as an institution to defend the Camisea Project. A new Ombudsman's Office should take this into account for its initial communication strategy.

But familiarity meant in practice, the development of a progressive mutual understanding between the DPC and the social partners, which gradually strengthened trust. To act with honesty and truthfulness was essential in this trust strengthening process. These attributes are not built in a short-time basis; therefore, the institution responsible for conducting the DPC must have them and be publicly recognized by it. After trust is built, it is necessary to make efforts to maintain it. Therefore, it was also critical to show competence in: a) technical knowledge, b) skills in the course of mediation c) interpersonal skills (know-how to approach the other).

Similarly, consistence is related to the abovementioned, found in the personal and institutional levels. The actions and words of the team should always be consistent. This implies the need to be very careful in the selection of staff. Loyalty and openness in the relationship with the parties involved is also essential. This is why those working for an Ombudsman's Office should not be allowed being hired by companies related to the Project for a period of no less than three years in order to avoid putting the institutional trust in risk.

Risk, which is another key element of trust, means that trusting leaves the possibility of disappointments open or people taking advantage from it. In this sense, the DPC ran some risks in the process of building trust that affected both institutional and interpersonal trust. It is therefore essential to be constantly aware of the situations or events that may negatively affect the process of building trust.

3.1.4. Permanent Presence in the Field with Empathy, Respect and Inter-Cultural Sensitivity as Key Aspects for Building Trust with the Parties Involved

On the other hand, the daily behaviors showing consistency in the autonomy of the Ombudsman's Office contributed tremendously to build trust with the farming and native communities as well as with the fishermen's associations. In that sense, simple behaviors such as sleeping in the native communities instead of sleeping in Las Malvinas camp, participating in the events organized by the community, acting in accordance with the cultural forms of greeting and social relationships, among others, were positively valued by the parties involved. Also, other facts that contributed to this end were: the conduction of field visits on an ongoing basis by the Ombudsman's Office and having decentralized offices where the reception and kind treatment to villagers or fishermen were prioritized.

Additionally, being attentive to the concerns of the communities and associations, and giving clear and timely responses, showing ability to successfully assemble the other parties in a conflict or showing prior knowledge of the area were very important for building confidence.

The trust with the communities and fishermen also increases when acting with honesty and loyalty. Thus, to become agents of reality, acting with assertiveness and transparency was fundamental in private meetings. Similarly important was to have been the bridge between the concerns of communities/fishermen and the governmental/private entities. This was greatly favored by having local partners who speak the local language and who know about their culture.

Also, identifying and highlighting the points of contact with the parties involved on non-conflict issues (such as their productive, social, recreational activities, etc.), appealing to past experiences, collaborating with their projects and training them, following-up their cases, contacting experts for consultations and channeling environmental concerns also contributed to build trust.

3.1.5. Impartiality: The Importance of Implementing Spaces for Reflection

The Ombudsman's Office for the Camisea Project was created as an organization that, in addition to being autonomous and independent, should be impartial when conducting its conflict prevention functions as well as when mediating, reconciling or facilitating the search for solutions in cases of disputes or conflicts.

The respect for the principle of impartiality was part of the public speech of acceptance that in practice was not easy to exercise. This created the need of implementing spaces for reflection on the meaning of "impartiality" for companies, communities and other groups of interest, as well as for the Ombudsman's Office itself.

For the companies, impartiality from the outset was associated with the idea of "being on the side of truth and fairness" and "maintaining a position equidistant from all players." This approach – initially shared by the Ombudsman's Office – was transformed over the time because it was a restricted and a utopian view.

For an Ombudsman's Office of a megaproject such as Camisea, it is not viable to pretend to play a role that emphasizes equidistant relations with the parties involved because there are marked differences in power that put some in advantage with respect to others. Also, the expectation of some parties involved regarding the DPC being on the "truth and fairness" side is impossible to materialize in the practice because each party involved has its own notion of truth and fairness.

In the DPC's spaces for reflection, impartiality was defined as the resistance to pressures that try to influence the DPC's autonomy and independence in its conduction and performance,

while making clear that the position of the DPC before the Camisea Project is “to promote equal opportunities for those facing human development.”

3.1.6. The Persuasive Ability of the DPC Should be Strengthened

From the design and implementation of the Ombudsman's Office, it was clear that the Ombudsman for the Camisea Project would not perform the duties of a judge, arbitrator or replace any authority. Consequently, no awards or judgments would be pronounced by him, nor order arrests or impose fines. His power would be his ability to persuade¹ in the modification proposals of behaviors drafted in his recommendations, on the development of preventive protection strategies, on the mediation that would be conducted to find solutions and on his public denunciation capacity in extreme cases.

The persuasive ability of the Ombudsman's Office was not as good in the implementation phase of the agreements as it was in the mediation process. Particularly, when the State was breaching an agreement, it was much more difficult to persuade the State to comply with the agreement. The perception of the State being on the side of the Camisea consortium companies made the job even more difficult. Therefore, the Ombudsman's Office decided to mark its position independent from the State so to protect its image of impartiality. The DPC worked mainly in cases involving companies and farming and native communities and fishermen's associations. The independent position of the DPC from the State was fundamental for persuading communities and companies.

The DPC sought to reinforce its persuasive capacity by sending reports to high-level State officials and convening meetings – on DPC's own initiative – to work with the Presidency of the Cabinet. The persuasive capacity could be further enhanced if the minutes of the mediations managed by the DPC were deemed to be enforceable, not in all cases, but at the discretion of the Ombudsman and with the consent of the parties.

3.1.7. The State Should Be Very Clear About Differentiating Which its Spaces and Responsibilities Are from those of the Ombudsman's Office. This Implies The Political Will

During the Ombudsman's Office first five years of operation, there was a value shared between the PUCP and the MINEM about the importance of preserving the DPC's autonomy. There was a coordination relationship in which the MINEM respected the functional and economic independence of the PUCP in the conduction of the DPC.

In 2007, the Dirección General de Asuntos Sociales para Asuntos Mineros (Social Affairs for Mining Affairs Bureau) was created. However, in 2008, when this bureau was replaced by the Oficina General de Gestión Social (General Office for Social Management), the functions of the DPC and that of the General Office were duplicated, not only in terms of the regulations, but in the practice as well, particularly in the area of Ayacucho. In 2009, the MINEM showed its interest in having the DPC to help in the compliance of the objectives of the Office of Social Management “as working arm”, but the autonomous operation principle lost its value.

The DPC was closed in 2009, a moment when there was a great concern on the country's energy policy, as well as a greater visibility of socio-environmental conflicts and it disappears as one of the IDB's condition for granting credits.

1 Persuasion is understood as the capacity to convince with reasonable arguments so to reach a consented agreement.

3.1.8. DPC's Acting in a Decentralized Manner Was a Good Decision

As we know, the Camisea Project involves the extraction of natural gas and its liquids from the Amazon jungle (Cusco), and its transportation through more than 700 km through the Andes (Ayacucho and Huancavelica) to the department of Ica on the coast of Peru. Therefore, the DPC deemed necessary to establish decentralized offices to serve the diverse populations located along the pipeline. As a result of the daily tasks, the DPC's acting in such a decentralized manner was considered wise as it contributed to, at least, three aspects: build trust, chances for intervention and strategic planning. To this end, the decentralized offices must be adequately implemented and with the technological resources that enable efficiency and effectiveness in the conduction of the work.

Additionally, having decentralized offices staffed with people (correspondents) from the area helped greatly, but the short supply of local professionals specializing in conflict prevention and management was notorious. The staff had to be trained and it was crucial to have the academic offer of the PUCP.

In general, the conditions specified in the Organization and Functions Regulations for appointing an ombudsman, deputies and correspondents are the most appropriate; but it should be a condition having the expertise and the skills to prevent and manage conflicts. Likewise, to have professionals who were aligned with the values of the PUCP and objectives of the DPC was also very valuable for the exercise of the DPC's functions, being especially relevant their honesty, truthfulness and their positive attitude towards social inclusion.

Finally, even though having local professionals was very important, it should also be noted that the companies have their headquarters in Lima; therefore, the deputies must be present in the local areas of intervention and in Lima.

3.1.9. Securing the Financial Resources is Crucial for the Operation, But Especially for Maintaining Institutional Trust

According to the provisions of Article 8 of the Executive Decree 030-2002-EM – which created the Ombudsman's Office for the Camisea Project – the Ministry of Energy and Mines was responsible for providing the financial resources necessary for the operation thereof. Pursuant to the provisions set forth in the Inter-Institutional Cooperation Agreement signed between the MINEM and PUCP, the appointment and execution of the resources transferred should have been made according to the organizational and financial standards of the University.

Even though the MINEM did transfer the economic resources, this occurred with delays throughout the time the DPC was operating. The complex social situations in which the Ombudsman's Office intervened and the high degree of mistrust that the population has with respect to the State forced the PUCP to give resources in advance out of its own financial resources so as to ensure not only the operation of the DPC, but particularly the maintenance of the institutional trust which was earned with hard efforts and which could have been affected very negatively due to a sudden absence of financial resources.

It is therefore appropriate that the entities undertaking these functions negotiate in ways that ensure the financial resources during the term of the Ombudsman's Office so as to ensure the continuity of its operations and avoid taking on the social burden that may affect not only the corporate image of the person who runs the DPC, but – above all – to weaken the trust of the population, which is essential and necessary for being a third mediator.

3.1.10. Helping Ensure that the Populations Adjacent to the Project Effectively Obtain the Same Benefits Must be an Objective of the DPC

According to the regulations that regulated the DPC, one of its objectives was to promote the benefits that the implementation and execution of the Camisea Project would entail. In the practice, to meet this objective was not feasible since – precisely in the areas of greatest conflict – one of the causes of conflict was linked to the perception of the population of not getting any benefits from the Project, neither from the benefits that should have been generated as a result of the gas field royalties nor from other benefits negotiated by the companies under their social responsibility plan.

This objective that is related to the promotion of benefits of the Camisea Project is not consistent with the autonomy and independence of the DPC's performance. Moreover, it weakens the trust gained by the DPC, as it implies a position in favor of the investment promotion, which corresponds to the interests of one of parties.

Alternatively, the efforts of the DPC should be addressed to help ensure that the surrounding populations of the Project do effectively obtain the benefits associated to it. This is compatible and really supports and contributes to the DPC's main objective which relates to the prevention and management of social and environmental conflicts raised by the development and implementation of the activities of the Camisea Project.

3.1.11. It is Necessary to Strengthen Communication and Coordination with the State

In accordance with the Organization and Functions Regulations of the DPC, the Presidency of the Cabinet (PCM), the MINEM and other governmental entities had to be informed on the results of the work performed and even make recommendations aimed to prevent and manage conflicts from the Camisea Project. All reports submitted by the DPC to the PCM and MINEM included recommendations to strengthen the State's role within its areas of competence. Also, the DPC made recommendations related to specific cases. Similarly, the DPC – in search of a greater coordination – sent conflict warnings to the entities.

On the other hand, in the last two years of operation of the DPC, despite DPC's repeated communications, the PCM did not appoint any representative before the Directive Council of the DPC, which was a space formally created to assist in the coordination between the State and Ombudsman's Office.

Despite all this, there was no feedback from the communications between the DPC and the abovementioned governmental institutions which was evidenced by the absence of replies to the reports issued by the Ombudsman's Office. Probably, if the State would have carried forward the recommendations and suggestions made by the DPC, the escalation of conflicts would have been prevented, such as in the case of the covenants breached by the State derived from the fifth spill in the Kepashiato area.

Therefore, it is necessary to strengthen the communication and coordination processes between the Ombudsman's Office and the various governmental entities that have competence in the Camisea Project.

3.2. Negotiations and Mediations

3.2.1. Negotiations are Above All Spaces for Intercultural Dialogues

The Camisea Project involved negotiations which were conducted among rural and native communities, fishermen associations and companies of Camisea Consortium, related to land access, in this case they negotiated, for instance, purchases of land or easement and also for pipeline. Likewise, compensations and indemnities were negotiated due to the environmental, social and economic impact produced during the Project construction or operation.

In these negotiations, human groups with different visions of world had a dialogue. The rural, native communities and fishermen associations, as well as the companies and governmental institutions showed different logic or cultural, economic or political rationalities, which were not always understood or taken into account during the negotiations. In this sense, there were disagreements in the social and personal aspects among the visions of the world that each group takes to business spaces.

The different logics were demonstrated, for example, in connection to the business proposals. The logic which directed the companies did not always agree with the expectations from communities and associations. For instance, to implement production projects (also named “development projects”) as way to materialize the compensations was not easily accepted by the communities and associations, who demanded to receive the money in cash instead of projects. While in the companies speeches, it was emphasized the importance of planning the future development and value Camisea Project as an opportunity for it. The communities and associations negotiated on a short-term basis, being more worried about their present and near future.

In this context, there was a great interest of companies in identifying the project ideas and to promote (even financing) technical escort that allow generating an economic profitability for communities and associations and, in the other hand, it was identified in these groups, an interest in investing the money, a result of their compensations, to attend immediate shortages, to have educational opportunities and to improve the productive activities; which not necessary involved the logic to generate or improve economic profitability levels. This preference evidenced the shortages predominating in communities and associations when taking decisions. Moreover, to request money as compensation could even evidence the interest of communities in being free to choose the final destinations of their compensations.

On the other hand, the disagreements among the different rationalities were also evidenced when entering into the business agreements. For example, for the governmental companies and institutions “to sign business agreements” implicitly included that said agreements were impossible to revise or renegotiate. The main reason used for requesting to renegotiate agreements was related to the injustice and iniquity perception of agreements (for example: about the amounts received by compensations and indemnities). The differences in the amounts offered or paid to the different associations of the same area, or among different annexes of the same community, were quoted as examples of “iniquity and injustice” by the communities and associations. While for the companies, the amount differences were attributed to different impact degrees or as a result of different haggling in negotiations.

Additionally to the abovementioned, the negotiations processes were capable to observe that the companies of Camisea Consortium and the governmental institutions used universal categories such as ideas of national interest, laws applicable to the State and to all citizens without exception, the priority concept, among others; while all communities and associations started from categories based on the difference such as the idea of the territory with its traditions and special features instead of the idea of “occidental” property.

These and many other facts evidenced that negotiations were above all spaces of intercultural dialogue and, in this sense, they caused mutual learning among participants. As a consequence, it is fundamental to take into account for future negotiations that negotiations by companies (including advisors) as well as governmental institutions and everyone who acts as mediator are people with highly intercultural sensitiveness, that is to say, they are not only capable to recognize their differences, but of questioning about their own suppositions and modify them as the case may be.

Furthermore, dialogue is not only understood as a communication tool, but also as a learning experience, where it is fundamental both the knowledge and the understanding. The knowledge to determine what kind of information they have and which is additionally required to examine a situation and to talk about it. And understanding to analyze the situations in depth, comprehending and respecting the different point of views, in order to generate more options in the dialogue processes that allow making better decisions.

Finally, the intercultural dialogue produced in the business spaces among the different participants shall be contributed with policies recognized by the others that allow articulating the interests of the State and populations of the influence area of the Project, and to avoid extreme irreconcilable positions.

3.2.2. Valorization of Compensations and Indemnities of Easement Right: A Critical Issue Within the Negotiation Process

The Camisea Project transports natural gas and its liquids from the Amazon jungle (Cusco) for more than 700 km crossing the departments of Ayacucho and Huancavelica, until the department of Ica in the Peruvian sea coast. To transport gas, it was necessary to install a pipeline which required obtaining some use and easement licenses by companies with communities. In Ayacucho and Huancavelica, the easements were related to the pipeline, for its installation, for building access roads or for conserving or repairing the pipeline. That is how a group of negotiations were conducted which were spaces to talk in order to agree on the easements in question. In one of the negotiations, almost four years were needed to close an easement occupation agreement, between the Chiquintirca rural community (department of Ayacucho) and the company TGP.

In this negotiation (and in others similar), the constitution of easement right forced the companies to compensate the damage caused and to pay a compensation for the good taxed used. These obligations caused controversies associated to economic valorizations that required to be carried out. First, there was a controversy linked to the different perceptions that the participants had regarding the amount to be compensated, which was related to the land issue. Within the negotiation processes, it was evidenced the importance of the use value of lands given by the communities, contrarily to companies which reference was the exchange value.

In this context, the critical matter in negotiations was: what should be the cost to be paid regarding indemnities and compensations derived from the easement right? The negotiation processes were constituted in the space fixed by economic values for land easements. In these spaces, not only the interpersonal and social relationships were executed, but also the commercial practices and habits of two parties were evidenced. That is why in all the easements negotiations, the economic values of lands were fixed by haggling. The communities started generally from the economic proposals that the companies negotiated and from these ones the haggling was produced until defining an amount.

It is important to note that even when the companies and communities made efforts to justify the economic amounts from any objective criteria, the economic values in all cases responded to a push and pull.

In these attempts to reference objective criteria, it was evidenced that part of the controversies amount had to do with the lack of methodology that establishes parameters that take into account not only the economic and commercial dimension, but also the environmental and socio-cultural dimensions. From the companies' perspective, the economic amount considered mainly the use value and common activity conducted in the lands. Also, the legal side was seen here, materialized in the concepts of consequential damage and loss of profit.

On the other hand, the communities assumed the companies' view, but they also used as criteria to fix their economic counterproposals, the symbolic sum of their lands and the context or sense where their easement agreements were signed. For instance, regarding the context, the communities evaluated the degree of necessity for lands showed by companies, the facts that the lands were going to be used for a Project understood as big and rich, the "national interest" of Camisea Project, among others.

In the specific case of Chiquintirca Community given that it was not effective in the negotiation to use arguments linked to the symbolic or context value, they tried to create methodologies and valorization proposals advised by local independent professionals. This evidenced their interest in using technical codes similar to the ones of companies aiming to "better supporting" their proposals and obtaining the expected results. However, in most cases both valorization proposals (that of the companies and communities) were significantly far from each other, which caused that the economic valorizations are not defined based on the analyses and technical proposals, but on the amounts haggling.

The attempts to value based on the technical criteria evidenced the distrust among the parties involved which aggravated more the situation, leading to questioning the valorization results that were supposed to be the result of consensus: This resulted in formulas which prioritized third parties' valorizations not validated by both parties. These controversial elements affected negatively the negotiation processes, since they were needlessly extended, and resulted in the weakening of energy, efforts and resources that caused the trust deterioration among parties; and in some situational moments, it caused threats and pressure, as well as delays that risked the fulfillment of terms agreed by companies that were fundamental to develop the Project for the State.

On the other hand, the current applicable rules (Executive Decree No. 081-2007-EM) to economically value the compensations for easement rights leaves the negotiations of the economic value of compensations and indemnities at the parties' discretion and only in case of disagreement, it establishes the valorization criteria. In this sense, it is established the duties of lands approved by the Ministry of Agriculture. And for indemnities due to damages caused during easement, the common activity of the owner or landowner is established as reference.

The experience of the Ombudsman's Office for the Camisea Project evidenced the necessity to establish economic valorization criteria in the rules not only for cases of forced easement, but mainly for conventional easement, as within this context, most of the negotiations are produced. For conventional easement, it is also essential to use criteria of forced easement. For the forced easement, the regulations take into account the use value of lands as well as the production. Then, in case of production value, the indemnity liability is recognized due to consequential damage (for example, agricultural production lost by community members when transferring their lands) and due to loss of profits (as in the coming years no profit will be produced from the Project).

However, it is not enough as the experience shows how the companies and communities use other criteria linked to the symbolic value and context or situation where the negotiations of compensations and indemnities for easement right are produced. This would allow generating conditions in line with reality and feasible and sustainable agreements in time within the negotiation framework.

3.2.3. Mediation Contributes to Reduce the Power Imbalance in Negotiations, But It Is Not Enough

The experience during the negotiation processes evidenced the power imbalance existing among rural, native communities and fishermen associations against the companies of Camisea Consortium. The sources of this imbalance were due to different issues. One of them was linked to the companies' capacity to access information and understand it, in contrast to communities and associations. The relationship that may exist between a greater knowledge and a greater power exercise was evidenced. That is how the imbalance of technical information access and understanding linked to Camisea Project and their impacts, did not allow the communities and fishermen associations grounding appropriately their requests in the negotiation processes. This difficulty was also observed when the advisors of communities or associations participated; such as the processes related to compensations due to fishing activity impacts, river traffic impacts, housing affectation due to heavy vehicles transportation, among others.

The power imbalance was also a result of gaps and deficiencies in the regulations applicable to the matters object of negotiation. Here we can find, for example, the difficulties related to the lack of regulation for directing the valorization of compensations and indemnities in case the of property easement (lands) for Camisea Project facilities. So in the case of conventional easement, there are not valorization criteria in the applicable regulation and in the case of forced easement said criteria are absolutely insufficient. Therefore, they contribute to the asymmetry in the relationships between companies and communities when negotiating the easement right.

A second issue was related to the practice of the coercive power based on fear, which was developed, for example, by using business arguments related to "easement imposition" in case of not reaching an agreement, or if Camisea Project represents a national interest, as a pressure measure. Additionally to it, it must be considered what the companies and governmental institution stated by associating to the Camisea Project the notions of progress, development and modernity, that were used in the negotiation field, and that somehow were also acting as a reproduction of the power structure.

On the other hand, the power concentration that the people chosen as representatives have is so considerable that in some cases the asymmetries were strengthened. This kind of representation did not always contribute to make the interests of the group represented feasible, but quite the opposite. Power concentration in a representative group makes it easy to identify who will negotiate, but it also causes conditions for doing favors, which may not be included in the common interests of communities and associations.

Finally, the power asymmetry was also related to the few options for choosing that the communities and associations had in the negotiation processes. The limitation of choosing options indicated was a result of the lack of basic services and infrastructure where the communities and associations live. This situation evidenced the imbalance, search and acceptance of business proposals focusing more on necessities satisfaction. This kind of answers that prioritized the immediacy, on the one hand, did not always respond to sustainable agreements' logic, and on the other hand, it did not contribute to extend options for people searching their well-being and quality of life.

Before this imbalance situation, the DPC tried, as part of its functions, to ensure the respect and balance of the population's interest, as well as insisting in the strengthening of capacities. Despite mediation helped extend the negotiation options, this effort resulted insufficient due to the sources complexity of this imbalance. Similarly, it is important to revise the State's role in negotiations. And the importance of strengthening the capacities of the less empowered parties involved shall be evaluated. This should be conducted by revising the regulations related to the

forced easement application, promoting more participative legislative formulas by highlighting the informative phase as well as prioritizing the attention to basic necessities of population of the influence area of Camisea Project. To all this, it is added the urgent necessity of a State leading the discussion regarding development, marked by the respect of differences and at the same time to generate opportunities for all.

3.2.4. Business Training Must Be Understood as an Instrument to Achieve Common Goals By Groups

The DPC thought that the more informed and well-prepared to negotiate communities and associations were, the more empowered they were. At the first moment, the Ombudsman's Office conducted workshops on negotiation and communication techniques and tools addressed to communities, mainly to community authorities that had to represent them and negotiate with the companies. Although the community authorities were very keen on the workshops, these were not designed and programmed according to the negotiations on progress or negotiations that were going to be initiated. So, an increase of the learning that allows transferring the lessons learned in the workshops to the negotiation process was not produced.

It has to be noticed that even though the learning's objectives were not reached; a positive side effect of the workshops was that the communities' trust on the Ombudsman's Office was strengthened. The community authorities recognized and valued the Ombudsman's Office's interest in empowering them for the negotiation processes with the companies. Likewise, they cherished the informal moments during the workshops as opportunities to clarify doubts about their legal duties and rights.

At the second moment, the DPC reoriented its participation in order to obtain a better context of the training activities. This new strategy considered that the pre-negotiation phase was a key moment to identify the training necessity of the communities, and the negotiation phase was the best moment for communities to "learn by doing." According to this new strategy, the DPC participated, for example, in the dissemination process of the appraisal study for the compensation of communities located in Lower Urubamba during the years of operations of Pluspetrol Company.

This dissemination process of the appraisal study corresponded to the pre-negotiation phase in which the company stood on its position: what was going to be the compensation for? Which were the criteria to define it? What were the deadlines to grant the compensation? How much would be the amount?, among others. The DPC supported the native communities of Segakiato, Camisea, Cashiriari, Ticumpinia, Shivankoreni and Kuwai during the abovementioned dissemination, and it allowed identifying the difficulties the communities had to understand such information, and to know the initial reactions and concerns on the company's negotiation standing. Taking this into consideration, the Ombudsman's Office oriented the training in the communities.

The communities were mainly concerned about not having technical consultants to submit a counterproposal to the company, doubts about the best payment method, the time to be compensated and the beneficiaries of the compensation. Another concern was the lack of advisory to identify those projects worthy to invest the compensation funds.

Having this prior information, the workshop on negotiation and communication² was contextualized in order to achieve significant learning for native communities. The main training

2 In addition, other activities required to meet communities' needs, beyond training, were carried out.

idea was that the communities learn by doing, and be able to immediately use the learning in the compensation negotiation of Pluspetrol's operation years. Within the framework of these negotiations, a workshop on negotiation and communication was conducted with the native communities of Camisea, Shivankoreni, Segakiato and Kiriguete using the participative methodology and seeking the attendees' active participation in practical activities.

The workshops started using previous knowledge and experience of attendees in order to link them to the new information and to obtain a significant learning. Similarly, the contents were adapted to communities' needs and concerns, and the particular reality of the Lower Urubamba, where the training was held. Finally, the cases on the problems arising from the appraisal, role playing, group discussions, dynamics to foster the collaborative work, and sharing ideas among the attendees were considered.

Notwithstanding these efforts, it has to be remarked that the training process of communities located in the Lower Urubamba, that had to negotiate the compensations for Pluspetrol's operation years, was interrupted when the DPC's office closed. It did not allow consolidating the learning methodologies, and tools and indicators for assessing the learning suitable for these native communities.

Regarding the communities' training when negotiations were about to be initiated, the experience showed the importance of preparing training considering the communities' information, perceptions and attitudes towards the companies' proposals in order to properly adapt the learning to the negotiation process. It was also evidenced the importance and necessity to properly adapt the workshops on negotiation and communication in order to reach significant learning. Finally, the training was recognized as a valuable tool to build and strengthen the trust between the mediator and the parties.

3.2.5. Representatives' Legitimacy: A Legal and Capacities Issue

Legal formalities were an indispensable criterion for representatives during negotiations. Communities and associations were formally represented by their directive councils "duly registered in the Public Records." Similarly, companies' representatives were legally empowered to negotiate. Nevertheless, representation was questioned during negotiations.

The first questioning was that the other party's representative did not have the "power to decide," because they stated they "needed to make consultations and ask for top management's approval," or "basis approval" to evaluate proposals or counterproposals to make decisions and reach agreements. A second concern was the lack of capacity and poverty and victimization. So, companies perceived that communities and associations "did not have a clear development vision" and they required to be "helped because they were poor," that "they had a logic and rationality hard to understand," or that "they were not able to understand the high technology of extractive processes." While communities and associations did openly recognize they did not understand the technical terms used by the companies of the Camisea Consortium, and they were perceived as poor and socially excluded.

Furthermore, a critical issue for both parties was that they were constantly afraid that they would be condemned if they did not achieve positive results; and in the case of communities and associations, they were afraid to be perceived to have "a hidden agenda with the companies."

Although these may be considered negotiation strategies and tactics, they also show a legitimacy issue, that is to say, who can speak out and negotiate on behalf of others? As a consequence, during negotiations, representation legitimacy must not be understood only in form, but also in content, because the capacity of communities and associations to speak out for themselves may be questioned.

3.2.6. Consultants' Legitimacy is Mainly Based on the Authority Criterion

Consultants' representation legitimacy during negotiation process had nothing to do with legal formalities. From the communities' and associations' point of view, the presence of their consultants in the negotiations represented an attempt to seek a balance of power with the companies. In this sense, counting on consultants that treated companies' representatives as peers, contributing to defend their rights and achieving the best results, was valuable. From the companies' point of view, communities' consultants had to understand the technical studies, and in the case of legal consultants, they "had to" properly inform the communities about their duties and rights.

Therefore, the consultants' representation legitimacy was closely related to their expected performance during the negotiation processes. For both the company and the community, this expected performance, described in the previous paragraph, was based on the need to exercise "authority" and to be a liaison allowing that "the other party understands and accepts my truth." During the negotiations, as communities or associations, consultants, and companies' representatives communicated, they were adapting themselves; they had an agenda i.e. they expected the other party to react, and it happened mainly because the other party was more flexible and accepted the arguments as valid.

Thus, this experience showed that the legitimacy of the consultants' presence had three key issues: debate, authority and authenticity. The debate was: Who has the authority to decide what is authentic in a negotiation? And what is authentic? For instance, what is or not under negotiation? How an impact appraisal must be conducted? What is the methodology to be used? The company's methodology? The consultants'? A combination of both?, etc. The DPC observed that deep inside, during negotiations "authenticity" was not really in debate, but who had the authority to convince the other party "that was authentic". It was also observed that the "authority" belonged to those who used legal and technical codes, that is to say, the companies, the governmental institutions, communities' technical consultants and so the communities and associations were forced to believe they were not able to understand such codes.

3.2.7. Consultants Must Understand They are The Support For a Fair Agreement, Not The Leading Parties in the Negotiation

During negotiations, the communities' and associations' representatives often were supported by local consultants, who in some cases were NGO's members, independent professionals, mainly legal counselors and environmental specialists. People related to the local political arena also participated as consultants in some occasions. Similarly, the companies also counted on consultant teams who accompanied their employees during negotiations, and, not very frequent, external consultants were fully empowered to negotiate on behalf of the company. Some communities and associations felt powerless and it made them look for legal and technical advisory in the negotiation proposals.

The experience showed that in some negotiations, the consultants tried to decisively influence on the agreements which was not necessarily for the people's best interests. Consultants were on the spotlight, being detrimental to people's effective participation; the external consultant's classic dilemma came up: to defend the people's interests vs. the interests of the organization that sent the consultants?

During negotiations, the DPC urged the consultants to focus on providing legal and technical guidance, helping make accurate decisions and contributing to overcome problems. Likewise, the DPC had to actively make easier the relationship between both parties' consultants when drawing up the minutes and agreements. The constant challenge was to foster fair, feasible and sustainable agreements.

In order to achieve satisfactory agreements during negotiations, it is fundamental that consultants be ethical and responsible contributing to properly evaluate the opportunities and risks arising in the negotiations. It will contribute to an honest and truthful performance to seek transparent solutions for financing the consultancy during negotiations.

3.2.8. Minutes, Agreements and Contracts must be Signed in Form and Content to Ensure their Subsequent Fulfillment

In the context of negotiations conducted by communities, associations and companies of the Camisea Project, the agreements were drawn up in minutes, contracts and agreements. In this regard, easement rights contracts, agreements for companies including their social responsibilities or minutes where the State intervened³ were entered into. It has to be remarked that the agreements on easement rights related to the pipeline area were not drawn up in minutes, they were previously written by the company's lawyers. So, these documents contained clauses that were not under negotiation except for the clause referred to the price.

Although the agreements were based on the minutes signed by both parties involved (communities, company, the State), they were not fully fulfilled by them. It is explained because the minutes are not legally binding, and some minutes were part of the companies' social responsibility implicitly understood as "good will." When agreements were signed, the writing was not carefully enough to allow their fulfillment, so how, who, when and where the agreements must be fulfilled, were not well defined, and even the penalties upon failure to comply with deadlines were not included. So, in case of breach of agreement, there were no regulations allowing their execution.

The Ombudsman's Office experience evidenced that the minutes, agreements and contracts had two legal flaws related to their form and content; form because they did not include all details for easy execution; and content, because the breach of agreement was not included and there were no mechanisms for forcing the State or the company to fulfill them.

As a consequence of this situation, the minutes must be legally binding⁴ as it happens to minutes adopted under the Extrajudicial Conciliation Law, being a formal requirement to be registered in the MEM. Thus, signing minutes in the negotiation process will imply more reflection and commitment by the parties due to the obligation of signing minutes legally binding. In the event of signing agreements instead of minutes, the agreements must be legally binding upon request of the community and at the suggestion of the Ombudsman; therefore, the DPC organization and functions must include that the representative of the Ombudsman's Office is entitled to verify that the agreements adopted are legally binding and that the minutes are legal.

3 For instance, the minutes signed by the State after the fifth spill in Kepashiato, or the minutes signed by the State contained the claims of mayors of districts and agricultural communities in Ayacucho, containing the payments stipulated in the TUPAS (Single Amended Text of Administrative Proceedings) as well as the claims about renegotiating the agreements on easement rights and individual damage signed by the company, that caused the declaration of state of emergency in the districts of Vinchos, Acosvinchos, Acccuro and Chiara in Ayacucho by late 2008.

4 It means that what has been agreed is equal to a final and mutual judicial decision, i.e. it is legally binding for both parties. In the Extrajudicial Conciliation Law, the minutes are legally binding.

3.3. Crisis Interventions

3.3.1. An Ombudsman's Office must be Prepared to Deal with Critical Situations

The Ombudsman's Office for Camisea Project (DPC) had to carry out crisis interventions due to incidents or spills⁵ occurred with the pipeline between 2004 and 2006. The spills were unexpected situations that suddenly interrupted the daily activities of the involved populations in the Departments of Ayacucho and Cusco; therefore, the DPC understood that they were critical situations⁶ for the Camisea Project and that these populations required immediate support.

In these critical situations, the populations' distrust towards the companies and the State that feels powerless to face corporations, the population's frustration due to the lack of the State's participation, as well as the tension and the fear related to the damage caused to the people's health and goods, the concern due to spills in the future and the uncertainty about the future, aggravated. This all increased the conflictive relationships in spills or incidents in the area.

The experience showed that in these circumstances, the participation of the Ombudsman's Office was strongly necessary. Confidence and autonomy were the key because it allowed the Ombudsman's Office being able to lead efforts to furnish adequate and timely support providing all people involved, specially the communities, with its human and logistics resources, aiming at solving these critical situations. Thus, the Ombudsman's Office had two types of crisis interventions⁷: a relief response providing immediate support in the five spills⁸, and intervention aftermath of the crisis when people were able to participate in any mechanism for conflict management.

In summary, the DPC executed the following actions in its crisis interventions:

1. To make all efforts to arrive as soon as possible in the spill area and to contact all the affected people in order to provide them with emotional support and to listen to them respectfully. The emotional environment in which the DPC team and the affected people met was highly important to overcome the confusing situation and to seek efficient ways to manage the situation. In this sense, the key at the first moment of the DPC intervention was to highlight people's capacities and to strengthen their confidence.
2. To analyze the dimensions and characteristics of the problem. The DPC team held one-to-one and group interviews with the major goal of identifying important elements of the problem created by the spills, from the affected people's perspective. Special efforts were made in order to understand the affected population's fears and concerns from the reference they had i.e. their beliefs, values and attitudes, in order to obtain the best possible understanding on what had happened, and to give priority to the needs to be immediately met and to determine what needs could wait based on the aforementioned.
3. To look for the best ways to deal with crisis. Despite the critical situation, the affected population was always encouraged to generate their own alternatives and to be able to make suggestions to the DPC. Empathy, respect and authenticity were essential at this moment.

5 During the crisis occurred, the parties like the company and governmental institutions used the term "incidents," while communities, NGOs and local authorities used the term "spill."

6 Crisis is understood as a temporary, unstable, messy condition in which people feel overwhelming in their usual problem-solving capacity. Slaikeu (1984)

7 Crisis intervention means actions taken by people and social parties to provide people suffering a crisis with relief. <http://www.buentrato.cl/html/crisi.html>.

8 It was proven that the damage of spills varied from case to case. The environmental impacts of the spills were documented in the reports drawn up by OSINERMIN.

4. To implement concrete actions. The DPC activated its resources and articulated its networks⁹ in order to provide with concrete and timely support. As a result, it provided with legal counseling, opened and facilitated the dialogue among the affected people and communities, the TGP company and the governmental institutions such as the Presidency of Cabinet and the Ministry of Energy and Mining. Furthermore, the Ombudsman's Office helped affected populations contact institutions that could provide them with support.
5. To follow-up the processes agreed to manage the crisis and the agreements reached after the dialogues. The DPC executed a huge number of follow-up actions to safeguard the fulfillment of agreements especially during the fifth spill occurred in Kepashiato.

In order to deal with the critical situations such as spills in the best possible manner, it is fundamental that the Ombudsman's Office be prepared and organized to make decisions and provisions to immediately activate the administrative and logistics procedures in the event of an unexpected crisis in the future caused by spills. Furthermore, it is tremendously important that in these situations, both the companies and the State are consistent with the autonomy principle that must govern the Ombudsman's Office, giving it enough space to execute its functions because confidence and autonomy were the key elements for a timely and adequate intervention during the spills.

3.3.2. The Importance of Citizen's Participation Immediately After a Critical Situation Occurs

Spills or incidents were critical situations that created a serious concern due to the population's physical health, and the possible degree of damage to the lands and environment. In this sense, the affected population's doubts on the impact on their lands, crops and animals came up. In addition, the distrust on the efficacy of environmental monitoring carried out by the company involved in the spill, and the uncertainty about the geographical extension of the damage caused by the spills were also an issue.

Additionally, the Ombudsman's Office identified during its visits to the spill area that the population was strongly concerned about water and soil samples taken in the spill area without the presence of any settler. The company stated it was due to security reasons. This participation obstacle was perceived as a problem of lack of information, transparency and management.

Within this context, the agricultural workers and native communities involved in the spills constantly demanded to be present when the companies: Osinergmin (before Osinerg) and Digesa, perform technical assessments. Nevertheless, these assessments were conducted with no communities' effective participation adducing security reasons. This caused that the population was suspicious about the results of such assessments thinking that the results were going to be in favor of the company. This distrust was increased even more since the results were not properly disclosed to the populations. The DPC warned the company and the State that the communities' participation was important.

The critical situations evidenced an increase in the distrust of the parties involved, increased even more when not allowing the communities to participate in the assessments. In this sense, it is indispensable to ensure people's and their representatives' participation, to receive feedback and to discuss the results of the impact assessments with people at short-term. So mechanisms for participatory follow-up and monitoring in critical situations as spills must be implemented,

9 The DPC was strengthened by the human resources of the Center for Dispute Analysis and Settlement of the Pontificia Universidad Catolica del Peru. Besides, it coordinated actions with the Ombudsman's Office in Cusco.

to this end, all the parties involved must be duly trained and ready to activate mechanisms for response. In order to achieve this goal, the Ombudsman's Office must develop mechanisms and communication networks enabling populations to be ready to take immediate actions.

3.3.3. Compensations for Spills Consequences must be Not Only for Environmental and Property Damage, but also for the Emotional Damage

After the spills, a round of negotiations on indemnities and compensations for the environmental damage arouse. The five spills that occurred between 2004 and 2006 affected water and soil resources; the fifth spill, occurred in the KP 126, in the small village of Kepashiato (located in La Convencion, Cusco), also affected traders and two families that lost their houses and crops.

In the fifth spill, the affected families negotiated with the TGP company indemnities for their houses, crops and goods. Similarly, the traders of the Abra de Cegakiato and the company negotiated indemnities for damage to their products and the time they were not able to perform their business activities. In both cases, negotiations were focused on property damage (consequential damage and loss of profits) as a consequence of the damage caused by the spill.

Additionally, due to this fifth spill, the negotiations among the authorities of Kepashiato and the representatives of the Manatarushiato community with representatives of the central government and the TGP company were also conducted. In these negotiations, the local authorities expressed their concerns on the environmental damage caused by the spill, and their doubts about the security in the pipeline facilities and the possibility of spills in the future. They also pushed for improving roads, basic health services, education and citizen's security; also, the authorities stated their concern due to the unheard demands that were still pending since the construction phase.

Regarding the people's concerns about the insecurity in the pipeline facilities and the demands for better health and education services and facilities, the central government took responsibility to meet these needs. During these negotiations, both the company and the central government explained to the communities that the company was not responsible for meeting these needs, but the State. So, the central government ordered a full pipe inspection in the Camisea Project in order to ensure security; and a multi-sector meeting about infrastructure, health and education services and facilities was held.

However, the emotional damage and stress experimented by populations in the spill area were not part of indemnities whatsoever. These populations did not count on specialized legal counseling to defend their rights. In this respect, it was showed there were neither experiences nor jurisprudence in similar cases in which extractive companies had paid indemnities for emotional damage established in the Civil Code.

The experience of the Ombudsman's Office for Camisea Project showed that it is needed to stipulate specific regulations on the affected populations' right to obtain indemnities for emotional damage caused by accidents in megaprojects such as Camisea and similar ones. These regulations must specify the criteria and conditions that should be complied with to categorize an accident as the fifth spill under the concept of moral damage.

3.3.4. The State's Fulfillment of Agreements is an Opportunity to Build Democracy and Citizenship

The fifth spill allowed authorities of Kepashiato and native community of Manatarushiato expressing the social demands, not directly related to the spill impacts, to the representatives of the central and regional government. These demands were actually the result from the

historical lack of the State's participation and social exclusion. They also meant that people were disappointed because they did not perceive the so-called benefits the Camisea Project was supposed to give them.

The negotiations that treated these social demands were drawn up in minutes¹⁰ in which the central and regional governmental institutions agreed on the following: to create and implement a police station, to turn the accident and emergency center into a health center and to improve its equipment, to improve infrastructure and educational services and to provide technical support to use the pipeline royalties in projects. Besides, in the same minutes, the TGP company was committed to: meet the pending demands per impacts in the construction phase, to build three fish farms, to install a radio station, and to present and implement an emergency communications plan.

The Ombudsman's Office recommended creating a follow-up commission composed of the Presidency of Cabinet, the Municipality of the District of Echarate, the Municipality of the Province of La Convencion, representatives of Kepashiato and the DPC, in order to guarantee the fulfillment of these agreements. Notwithstanding the creation of this commission and the repeated follow-up actions by the DPC, the central and regional government failed to accomplish them during the two years subsequent to their signature. After this period, some agreements were fulfilled, but when the DPC suspended its works, some agreements were not fulfilled yet.

As part of the follow-up actions conducted by the DPC, the lack of continuity in the some institutions that participated in the abovementioned agreements was evidenced. The institutions explained to the DPC by giving excuses such as "these agreements were entered into during the prior administration, not during mine", "these agreements are not formally registered here", among others. So, the DPC was forced to make bigger efforts and to invest more resources for the follow-up of these agreements because, additionally, the DPC had to "let central governmental institutions know" about the context, reasons, and scopes of the non-fulfilled agreements and the status of the current conflict situation caused by these non-fulfilled agreements.

Similarly, the follow-up actions conducted by the DPC also evidenced that although at the time of reaching agreements, representatives of the central government made multi-sector consultations (within the framework of the negotiations), the main objections for executing these agreements, along the two years, were related to the difficulties of institutions of the different sectors involved. Also, it was evidenced the lack of adequate coordination between the central and regional institutions.

Likewise, the DCP follow up evidenced that as time passed by, the local authorities and population increasingly distrusted governmental institutions with respect to their capacity to fulfill the agreements and to meet the pending social claims. This, in turn, created great tension in Kepashiato due to the threats of taking measures for the non-fulfilled agreements.

On the other hand, the nature of the agreements signed to meet social claims, as well as the way and the context in which they were requested, evidence the great expectations on the part of the population for short-term fulfillments; while for governmental institutions, said agreements had to be executed using the pipeline royalties which implied to manage deadlines that did not always match the short-time expectations of the population.

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The experience of the Ombudsman's Office for Camisea Project showed that the breach of agreements not only increases the distrust on governmental institutions, but also jeopardizes the credibility in mechanisms for negotiation and reaching agreements, thus, encouraging violent demonstrations.

As a consequence, it is fundamental that negotiations in critical situations should not be seen as lost opportunities by the populations and the State. In this regard, the State must understand these situations as a conjecture in the process for building democracy and citizenship. Due to the spill, there was a unique opportunity for communities to talk to the governmental institutions that arrived in the area to "solve the crisis." Taking these agreements seriously and giving continuity in order to accomplish the negotiations established by the government will enable to strengthen governance, that is to say, quality, efficiency and efficacy of institutions, especially those involved in the functioning of the democratic system and public administration; that was the case of the institutions that participated in the negotiations due to the fifth spill in the Camisea Project.

It will also foster the development, not only to meet needs of basic services and infrastructure (that during the fifth spill were the major social demands), but also to have institutions ensuring continuity and, as a consequence, bridging the gap between the State and the civil society.

3.4. Conflict Prevention

3.4.1. Conflict Assessment is Necessary to Take Preventive and Conflict Management Actions

Being one of the main objectives of the DPC to identify environmental and social issues directly linked to the Camisea Project¹¹, conflict assessment processes were conducted. The DPC started from the premise that the great complexity of socio-environmental conflicts required to be assessed, as a first step, before any intervention seeking transformation. Even better it would be if the assessment was conducted on a precautionary approach, meaning that early conflict assessments must be aimed at identifying potential conflicts (which might occur or the presence of potential sources or conditions of conflict) in scenarios where yet there are no explicit conflict or crisis.

Therefore, the DPC conducted conflicts assessments in various areas of intervention, in both the Lower and Upper Urubamba, and along the pipeline in Ayacucho and Huancavelica, and in the coastal area in Pisco, Canete and Chincha. In all of these areas, the DPC conducted processes to identify the interested parties (also known as the parties involved in the conflict), the key aspects or issues of the conflict, the feasibility of a possible consented process, and - as result - to be able to design a plan of action for the positive transformation of the conflict.

Conflict assessments enabled the DPC to identify the core topics or issues of concern of the different parties involved: farming and native communities, fishermen's associations, mayors, central government officers, business representatives, among others. This also allowed understanding the background to the conflict, that is to say, how the conflict had been developed, which was particularly helpful in designing the intervention strategies.

11 The Organization and Function Regulation of the DPC expressly sets forth in Article 2 that the DPC must perform such activities.

Similarly, this allowed the DPC knowing the different perceptions from each party involved point of view with respect to the Camisea Project, who supported their positions and interests inside and outside the negotiation environment, as well as the strengths and weaknesses in the relationships between the parties involved and the possible areas of agreement and disagreement. The DPC's experience revealed that all of this was very useful not only for the mediation work in the dialogue process, but also to discern the best way to empower communities and associations. In this regard, the conflict assessment helped identify issues of content and form for the strengthening of capacities conducted by the DPC.

As a result, it is very useful to invest time, efforts and resources, both material and in manpower, when trying to understand conflictive situations and relationships between the parties involved in a Project, before moving ahead with both preventive measures and conflict management.

3.4.2. Neutrality and Accountability: Necessary Conditions for Conflict Assessment

The neutral institutional nature of the Ombudsman's Office helped the DPC conduct conflict assessments. The fact that the conflict assessment processes were in charge of the DPC as a neutral¹² entity, allowed the DPC gaining the confidence of the parties involved in the assessed conflicts so as to disclose their interests (concerns, motivations, expectations, frustrations, etc.) and yet to reassure them that the confidentiality of the interested parties in the conflict would be safeguarded. Trust was essential in this process due to the exchange of information occurred in the conflict assessments. The experience of the DPC when conducting the conflict assessments revealed how its independent status allowed the DPC being able to inquire on the parties' point of view.

Apart from the value of neutrality for conducting conflict assessments, these assessments led the DPC to consider whether or not it was possible to talk about neutrality. In the case of conflict assessments, it was a particularly sensitive issue. Firstly, this is because - in more than one occasion - the game of power in the political field was evidenced, which not only reinforced the complexity of conflicts, but also challenged the role of the DPC as a neutral third party entity. And secondly, it evidenced the personal positions that the conflict assessment team members had which were beyond specific conflicts under assessment and the parties involved in it, regarding, for instance, the so-called third generation rights such as the right to a healthy environment, the right to a development that allows a dignified life or the right to peace. These affairs apparently escaped the conflict assessment process, but in the practice, they were permanently present.

Additionally to the principle of neutrality, the responsibility for conducting conflict assessments by the DCP was very important to the parties involved. The experience revealed that the principles of transparency, trust and credibility with which the DPC managed conflict assessments were core for both: to interact with the parties involved and to obtain information.

Therefore, it is a particularly relevant matter to know who will conduct the conflict assessments in the context of megaprojects such as Camisea. The perception of being a neutral third party was instrumental in conducting conflict assessments, which was added to the positive expectations of a professional and responsible action.

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3.4.3. Conflict Assessment Should Seek the Inclusion of Women's Point of View

Conflict assessments conducted by the DPC were made primarily through in-depth individual interviews to the authorities and decision makers at the levels of community, companies, government and representatives of the civil society in general. According to the field experience, men dominated all the groups mentioned. The absence of women in conflict assessments and negotiation processes did not allowed having their direct points of view regarding the causes of conflicts and the impacts that the Camisea Project brought.

Similarly, in a context where companies and governmental institutions offered development projects as ways to compensate the negative impacts of the Camisea Project, or as ways to promote the corporate social responsibility, again women were the notable absentees to negotiate on these issues which affect them directly, as it affects men.

The absence of women in the conflict assessments conducted by the DPC is the result of the criteria established to identify the sample and locate it in the setting used, in general. Therefore, it is necessary to reconsider from a gender perspective the methodology used, and to propose changes so as to improve conflict assessments, starting with the inclusion of women's points of view on the issues treated in conflict assessments and in the formal negotiation environments.

Reviewing the methodology would imply improving¹³ the objectives, sample, instruments and analysis of information. To this end, it is necessary to review the conflict assessment objectives from a gender perspective and propose changes, redefine the sample and sample forms, to verify the instrument for collecting information and to propose amendments, as well as including the gender as a perspective for the analysis of the information obtained.

3.5. Make Local Development Management Easier

3.5.1 The Role of the Ombudsman's Office in Development Projects

The Ombudsman's Office for Camisea Project at the beginning was not created to be a body to execute actions in development projects. However, the amendment to the Inter-Institutions Cooperation Agreement entered into by the Ministry of Energy and Mining and the Pontificia Universidad Católica on February 7, 2008, conferred upon the DPC functions of advisory and promotion for development projects targeted to populations within the Camisea Project's influence area, monitoring projects carried out by operating companies within the social responsibility framework and several contributions to overcome the extreme poverty conditions of the populations located in the Camisea Project's influence area.

Due to these new responsibilities, the DPC internally began to assess its roles in the project advisory, promotion and monitoring, wondering: What was the relationship between this new function and those stipulated by the government itself in the Organization and Functions Regulations of DPC? What actions the DPC has to take to accomplish this new role? After the analysis, the DPC found out there were serious difficulties related to the lack or insufficiency of technical knowledge to prepare a project profile (technical dimension), personal relationships among the parties concerned (social dimension) and obstacles to efficiently manage the projects in their different phases (management dimension).

13 Enhancing means to appropriately and duly include gender perspective.

In this context, it was concluded that the organizations as the DPC, due to its nature of being a neutral institution in charge of safeguarding prevention and management of social and environmental conflicts, and having found in the parties involved the abovementioned obstacles, must join its efforts and resources (human and economic) to harmonize the technical, social and management dimensions in order to successfully achieve the goals. In the same manner, it was deemed relevant to work in the design and execution of a participation program of DPC with regards to projects.

The work of DPC in the light of the concrete experiences it was related to evidence that the Ombudsman's Office needed to collaborate in the development projects ensuring that these projects are identified as the result of a participatory analysis on the needs, and the proposal of projects considering available resources. Likewise, it had to foster to bridge the gap between the different parties involved and their common interests, to facilitate the strengthening of capacities in this field, to unite communities so that they obtain the technical support to prepare project profiles and to execute them, and to provide the parties with recommendations to overcome obstacles.

3.5.2 Strengthen the Vision to Work Aimed to a Sustainable Development

Within the context of negotiations that implied economic indemnities to communities and workers' organizations, one of the main concerns was how sustainable the projects, executed using the indemnities, were going to be. For instance, the agricultural community of Chiquintirca (located in Ayacucho) received indemnities for the easement and the impacts caused during the pipeline construction phase. The Community Directive Council decided to purchase a hotel near the city of Huamanga in order to obtain profits by rendering lodge services to the representatives of the Consortium companies. Because of the poor hotel facilities and location, and low quality of services, the experience failed. Due to this situation, the community expectations that the hotel produces economic benefits were frustrated.

Before buying the hotel, the DPC decided to conduct workshops on sustainable development and project addressed to the representatives of almost all small villages near Chiquintirca. The goal was to provide them with knowledge and tools to invest in feasible projects. The community agreed with the DPC and thought that raising awareness was necessary in the community in order to gain profits through sustainable projects. Although all representatives of the small villages near Chiquintirca attended the workshops, the Community Directive council did not adducing unexpected obligations.

The Chiquintrica Community exercising the autonomy principle decided to make unfeasible and unsustainable decisions and acquired the hotel. The DPC respected the decision.

Later, the Community Directive Council of Chiquintrica requested the DPC to rerun the workshops stating that "they had learned from the hotel failure" and that it was "their last chance" for not losing all the compensation because the last negotiation with the PLNG Company was going to be held.

This DPC's experience evidenced the value of freedom in the quest for building development. The Chiquintrica Community freely decided how they were going to use the indemnities. Trying to restraint this freedom to decide what they considered the best would have limited new possibilities from the lessons learned. Although buying the hotel was not a sustainable project, such experience (the hotel failure) was essential so that the community strengthened its capacities arising from the lessons learned.

The facts derived from the economic compensation received by the Community, allowed sharing experiences, analyzing situations and thinking about new development alternatives. This implies a learning process for the community that required third parties to respect the community's own learning process and the value of successes and failures in order to open new development opportunities.

3.5.3 A Trust Fund Does not Necessarily Guarantee that Development Projects Agreed During Negotiations be Implemented

Due to the fourth spill that occurred in the ravine of Chirumbia-Vilcabamba (located in La Convencion, Cusco) and as an initiative from the Ministry of Energy and Mining, the Management Committee of Lower Urubamba called two-monthly meetings attended by representatives of the native communities, companies of the Camisea Consortium and the governmental institutions in order to have a dialogue about the demands arisen from the fourth spill, among others.

In these meetings, it was agreed that the DPC, exercising its functions, be the mediator in the negotiations between the TGP Company and the native communities of Camana, Puerto Huallana, Kirigueta and Mayapo, and the native associations of COMARU and CECONAMA. It has to be highlighted that during the negotiations, the TGP Company did not accept at all that the payment corresponds to an indemnity adducing having no responsibility for damage in the fourth spill. The company and the communities asked a third party to draw up technical reports to determine the existence of impacts for obtaining an indemnity.

On the one hand, the TGP Company supported its decision based on the report submitted by ERM advisory firm, stating there were no environmental or social impacts caused by the fourth spill. On the other hand, the Management Committee of the Lower Urubamba, supported by Nampitsi NGO, submitted a report stating that the impacts amounted to 300,000 dollars.

As a result of the negotiations, the company accepted to pay the communities, but within its corporate social responsibility framework. In this sense, the company was going to pay definitely in projects and not in cash. So, the communities did not have the choice to decide how to use the money.

In order to guarantee that the company fulfills the agreement and that the money was going to be exclusively invested in development projects, the company proposed to have a trust fund in order to ensure, on the one side, that the TGP Company accomplishes the agreement; and, on the other side, that the communities were able to use it in the future by the implementation of projects.

In the final agreement signed on June 5, 2007 in Quillabamba, it was agreed that "the money given by the TGP company is exclusively for each community, the trust fund is going to be deposited in the financial entity chosen by the communities." Therefore, the DPC clarified the legal and technical doubts that the communities had about the trust fund, and accompanied the communities during the banking process.

The DPC following actions, such as the follow-up of the fulfillment of the agreement, showed that the communities did not necessarily execute social development projects, as stated in the trust agreement, but, in some cases, they obtained project profiles to meet immediate needs such as housing and the installation of a satellite communication system, among others. These profiles were submitted to the bank, and they obtained the money.

As a consequence, the experience evidenced that although the trust fund did work as an instrument to guarantee that the company transfers funds to the communities within a deadline, it did not work to guarantee that the money is used to implement projects contained in the trust agreement. As in not all cases the trust fund was used by the communities for all the contractual stipulations, they had more choices related to how to invest the payment of their indemnities and; therefore, they did decide how to use the money, and the company did not.

3.5.4 The Necessity of Technical Advisory to Concrete Development Projects

The DPC identified obstacles related to the technical dimension for identifying and executing development projects, remarking the lack of specific knowledge or professional “know-how” required for development projects design and execution. Besides, it identified obstacles faced by the native and agricultural communities, fishermen’s unions and local authorities to carry out feasible projects.

For example, PERU LNG Company paid indemnities to fishermen’s unions and fishermen in Canete and Chinchá due to the closing of the security area in Pampa Melchorita plant. The DPC provided advisory and conducted support activities to clarify the administrative procedures stipulated in the agreements signed.

Also, the DPC conducted workshops on sustainable development and projects to strengthen the capacities of the Chiquintirca Community for identifying project profiles to be implemented. On the other hand, the Municipality of the District of Echarate, using the pipeline royalties, tried to list projects that had been prioritized by the native communities of the Lower Urubamba. Nevertheless, it was unclear whether the projects had or not an organized urban plan as projects lacked from an environmental urban planning required executing the productive and infrastructure projects that were pending for the National System of Public Investment’s approval.

Within this context, the DPC, upon request of the Municipality of the District of Echarate, coordinated and collaborated in preparing the environmental urban development plans (PDUA, Spanish Acronym) for the native communities of Chocoriari (Timpupinia), Camisea, Timpia, Nueva Luz, Miaria, Nuevo Mundo and Kiriguetti. Regarding the social and productive projects, within the PDUA framework, for the Lower Urubamba, the DPC tried to overcome the obstacles identified and the necessities in the technical and management dimension, and provide technical advisory to prepare project profiles and technical advisory for consultants in charge of making observations. Finally, the environmental urban development plans were approved by municipal ordinance.

The DPC experience evidenced that the communities, unions, associations and local authorities needed to count on technical advisory to concrete their ideas on the projects they intended to carry out in their communities, unions or associations, according the perception they have on the development. But it also showed the challenges populations had to face by themselves to articulate the benefits and opportunities even facing the little access to information and knowledge.

As a consequence, it is hugely important that the State, the private companies and the civil society create ties and synergies to contribute so that the populations settled within the Camisea Project’s area of influence be able to concrete their development projects using economic resources that are being generated by the Camisea Project. To this end, it is also fundamental to respect the native and agricultural communities’ and fishermen’s unions’ freedom and their right to be agents acting according to what they believe to improve their life conditions.

Conclusions and recommendations

1. The current reality is marked by ongoing socio-environmental conflicts faced by mega-projects or large projects, such as Camisea, which involve populations living in the areas of investment; in the case of the Camisea project, specifically: indigenous and farming communities as well as fishermen's guilds and associations.
2. In this context, similar to that which led to the creation of the DPC, the presence of an organization like the DPC has created a new, neutral, and reliable space that has contributed to the understanding and relationship between stakeholders and populations located in the area influence of the project in harmony with the development of the local population.
3. From the lessons learned it was evidenced that an Ombudsman Office as contributes positively to:
 - Prevent and manage conflicts. - The Ombudsman's Office is an institution that promotes the development of activities that impede the generation of a conflict situation, or to assist in the solution of the conflict once it is declared.
 - Promote development. - Through its functions, the Ombudsman's Office seeks to promote a balance between socio-economic development, sustainable use of natural resources, environmental conservation, and project sustainability.
 - Build participatory and inclusive processes. - The Ombudsman's Office promotes the conduction of all activities in a participatory manner with the population, and particularly in an inclusive manner, so as to achieve full interaction between those involved.
 - Provide spaces of credibility. - The Ombudsman's Office has become an independent neutral third party whose sole and essential aim is to achieve understanding among all stakeholders and encourage their development.
 - Capacity building. - The Ombudsman's Office, at all times, fosters capacity building in environmental, social, productive, and organizational matters as well as for the organization of guilds and of the communities, ensuring that they are capable of empowering themselves and of guiding their own destiny.
 - Facilitate processes within a context of understanding. - The Ombudsman's Office guided its efforts to contribute in the building of an understanding and of a positive relationship between the stakeholders of the Camisea Project.
4. Therefore, in the case of mega projects related to mining, oil, gas, hydropower, as well as infrastructure activities related to the construction of roads or ports concessions, among others, it would be advisable to have the presence of a neutral, independent, entity that has the confidence of the stakeholders and a well-defined nature, characteristics, and functions and improved based on this document.
5. Having this in mind, if opting for an Ombudsman's office, it is recommended that the product of the lessons learned contained in this document, and particularly the following, be taken into account:
 - Increase the efficiency of the power of persuasion by giving such form and matter to the records of the agreements and covenants that turn them into enforceable writs.
 - That companies and the State recognize that negotiations are primarily spaces for intercultural dialogue. This implies that cultural differences are taken into account in the process of appraisal of compensations and easement compensations or others.

- That in order to adequately address crisis situations, such as spills, it is essential that an Ombudsman's Office be empowered to take decisions and to make forecasts, having administrative and logistical procedures that can be activated in case of unexpected crisis produced by an incident.
- That not only environmental and property damages, but also emotional damages be addressed in the case of compensation as a result of crisis situations.
- It is essential that the Ombudsman's Office strengthen the vision of working towards sustainable development while respecting the value of freedom in the pursuit and building of development by the communities and guilds, recognizing their ability to choose what they consider better, and within the adequate learning timeframe to create new and adequate development opportunities.
- That bonding and synergies be established by the State, private enterprise, and civil society so as contribute to the execution of the ideas for development projects though out by the population living along the project with the financial resources being auto generated. This action is essential to respect the right of the farming and indigenous communities, as well as fishermen's guilds, to decide according to what they deem (by themselves) will improve their living conditions.

Lima (sede principal)



Lima

Ayacucho

Quillabamba (Cusco)



Pisco





CENTRO DE
ANÁLISIS Y
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PONTIFICIA **UNIVERSIDAD CATÓLICA** DEL PERÚ

Centro de Análisis y Resolución de Conflictos
Av. Paz Soldán 225, 2do piso San Isidro
626 7421 - 626 7400 / fax: 626 7412
Página web: www.pucp.edu.pe/consensos