

Case of the Community of La Oroya, Peru

In 2004, the Centers for Disease Control and Prevention and the National Center for Environmental Health of the United States did a study of the city of La Oroya and determined that all children examined had elevated levels of lead in their blood and recommended immediately reducing exposure to lead and other contaminants.¹ In 2006 and 2007, La Oroya was included in a list produced by the Blacksmith Institute of the most polluted places in the world.²

La Oroya, located 175 km east of Lima, Peru is home to a metallurgical complex (CMLO) whose operation for more than 90 years has generated high levels of contamination, particularly by lead, arsenic, cadmium, and sulfur dioxide. This complex, currently in liquidation, is owned by Doe Run Peru, a subsidiary of the US-based Doe Run Company of the Renco Group, currently administered by a liquidating company.

The contaminants present throughout La Oroya have gravely affected the health of the people exposed to them, causing, among other effects, the irreversible deterioration of the respiratory system, different types of cancer, and adverse effects in the reproductive system and in the development of children, particularly those younger than six years old. Since 1999, the Peruvian government has shown that nearly all children (more than 99%) living near the complex suffer from lead poisoning, without having fully implemented the measures necessary to counter this situation.

National and international legal actions have been filed demanding the Peruvian government take responsibility for not adequately supervising the operations of the complex, and subsequently harming the life and health of the residents of La Oroya. These rulings have not been properly implemented, and the government insists on denying its responsibility for the pollution of the city and the consequent damage to the health of its population.

Enforcement before the Peruvian Courts

Due to the serious situation in la Oroya, on December 6, 2002 residents of the city filed an enforcement action against the Peruvian government – the Ministry of Health and the Department of Environmental Health (DIGESA) – with the goal of protecting their rights of health and a healthy environment. The case reached the Constitutional Court and on May 12, 2006 the Court declared the action founded and ordered the defendants to take the following actions within 30 days:

- Implement an emergency system to attend to the health of the population;
- Expedite a diagnostic baseline to implement action plans to improve air quality in the city;
- Declare a state of emergency in the city;

¹ "Development of an integrated intervention plan to reduce exposure to lead and other contaminants in the mining center of La Oroya, Peru." Centers for Disease Control and Prevention National Center for Environmental Health/ Agency for Toxic Substances and Disease Registry Division of Emergency and Environmental Health Services. (2005)

² Top Most Polluted Places 2006, 2007, http://www.worstpolluted.org/projects_reports/display/41

- Take actions to establish programs of epidemiological and environmental surveillance in La Oroya.

To date, the Peruvian government has not fully met these obligations.

International legal actions to protect human rights

Inter-American Commission on Human Rights (IACHR)

Precautionary measures:

Due to the serious situation and risk to the health of the population of La Oroya posed by the operation of the complex, on November 21, 2005, with the process before the Peruvian courts pending, a coalition of organizations petitioned for precautionary measures before the IACHR. AIDA, Earthjustice, and the Centro de Derechos Humanos y Ambiente (CEDHA), later joined by the Asociación Pro Derechos Humanos (APRODEH), filed for the measures on behalf of a group of residents from La Oroya, including several children, in order to push the government to take urgent action to protect their life and personal integrity. Among other things, they asked that the Peruvian government provide diagnostic and medical care for those affected, effectively control emissions, and protect people who have worked in defense of the health of the people and environment of La Oroya.

On August 31, 2007, the IACHR granted precautionary measures on behalf of 65 residents of La Oroya and requested that the government take necessary measures to implement specialized medical diagnosis for the beneficiaries, provide specialized medical treatment for those whose diagnosis shows they are in a situation of danger and irreparable harm to their life and personal integrity.

On May 3, 2016³, the IACHR extended the scope of the precautionary measures to 14 more people of La Oroya, given that their lives are at risk due to their current health state, which is related to the pollution they are exposed to because of their proximity to the smelter. The IACHR requested the State of Peru to adopt the necessary measures to preserve their life and personal integrity, carrying out the necessary medical assessments to determine the levels of lead, cadmium and arsenic in blood, in order to provide adequate medical attention, in accordance with international standards on this subject; and to provide information on the actions adopted to investigate the alleged facts that resulted on the adoption of a precautionary measure in order to avoid repetition

To date the precautionary measures, remain in effect and, while certain advances have been made to implement the original measures granted in 2007, they have not been fully adequate, as there has been a demonstrated failure in diagnosis and monitoring of the health situation of beneficiaries. As per the recent extension, the State hasn't started to implement any of the Commission's measures.

³ Inter-American Commission on Human Rights. Precautionary Measure 271-05. Resolution 29/16- May, 3, 2016. <http://www.oas.org/es/cidh/decisiones/pdf/2016/MC271-5-Es.pdf>

Petition:

In December 2006, AIDA and the before mentioned partner organizations presented a petition before the IACHR to determine the international responsibility of the State for damages to the *rights to health, dignity, integrity, life and the rights of children, among others*, due to the lack of control of pollution in La Oroya and omissions in providing medical care to those affected. Moreover, given the handling of and lack of information regarding the pollution, we allege that the State violated the right to information by not producing and disseminating key information for the health and life of the people. Finally, due to noncompliance with the sentence of the Constitutional Court, we also allege violation of the right to access to justice.

On August 5, 2009 the IACHR adopted Admissibility Report 76/09 and concluded that action and omissions of the Peruvian government against environmental pollution from the smelter in La Oroya, the failure of the Constitution Court sentence, and the alleged lack and/or manipulation of information on environmental pollution and its effects on the health of residents, as well as the alleged acts of harassment against people who attempt to spread information on it, could, if proven, be considered human rights violations.

In March 2010 a public hearing was held before the IACHR, in the context of the parties providing relevant information about the case and precautionary measures. During the hearing, they presented evidence of non-compliance and the weakness of actions to address the gravity of the situation in la Oroya.

The case is currently waiting for the Commission to issue a Report on the Merits and determine whether or not the Peruvian government has violated the human rights of those affected.

Context of noncompliance and insufficient environmental impact monitoring by the Peruvian government

As explained below, in the case of Metallurgical Complex of La Oroya, the Peruvian government has been very lenient with the necessary environmental requirements and the deadline imposed upon the company for compliance.

Program for Environmental Adaptation and Management (PAMA):

For companies doing business in Peru before 1993, it was required to implement a PAMA to ensure compliance with laws and to avoid their projects creating serious environmental impacts. In the PAMA, measurements for time and verifications are determined, including those necessary for reducing impacts. The PAMA for the La Oroya complex was approved in 1997⁴ and has been amended five times since.⁵ The last extension was granted in

⁴ Approved through RD 017-97EM/DGM, January 13, 1997.

⁵ Resoluciones Directorales del Ministerio de Energía y Minas R.D. 178-99-EM/DGM, 19 de octubre de 1999; R.D. 133-2001-EM-DGAA. 10 de abril de 2001; R.D. 028-2002-EM-DGAA. 25 de enero de 2002, Ministerio de Energía y Minas, Resolución Ministerial No. 257-2006-MEM/DM, de Mayo 29, 2006. Congreso de la República, Ley No.

September 2009, extending deadlines for the company controlling environmental contamination that affects the population and did not establish timetables or objectives to verify the results of improving public health. Throughout the complex's operation that have been breaches of PAMA reported by the company, with no consequences imposed by the governments, even when they warned the Ministry of Energy and Mines, on several occasions, about the shortcomings of PAMA and the serious risk facing residents of La Oroya.⁶

Corrective Environmental Management Instrument (IGAC):

After the expiration of PAMA's terms, and without an environmental management tool to permit its operation, the Corrective Environmental Management Instrument for the La Oroya Metallurgical Complex was approved on July 10, 2015.⁷ The IGAC aims to certify that the facilities and components of the Complex meet current environmental regulations, as well as relevant technical and security conditions. However, the Adjustment Plan approved for the Complex granted the company a period of 14 years to adapt to the standard of air quality of 80 ug/m³ of sulfur dioxide (SO₂)⁸ in a period of 24 hours. This means that over the next 14 years the Complex could operate with a standard of 365 ug/m³ and the residents of La Oroya would continue to be exposed to high levels of pollution. This also does not take into account that, to date, the states of alert that should be activated when the city exceeds standards have not been properly activated.

Other cases

Case against Doe Run in Missouri

Between 2007 and 2008, a lawsuit against Renco, Doe Run Resources, the parent company of Doe Run Peru, was filed in Missouri, United State, on behalf of hundreds of children of La Oroya, for personal and material damages derived from exposure to lead and environmental pollution. In 2011, the Renco Group requested the court suspend the case while it is processing the international arbitration between the company and the government of Peru. The applicants objected. To date, the case remains pending before Missouri courts.

International arbitration between Peru and Doe Run

On December 29, 2010, the Renco Group and its subsidiary, Doe Run Peru, started international arbitration against the Peruvian government, based on the Free Trade Agreement between the U.S. and Peru. The Renco Group alleges Peru violated the treaty and seeks compensation of \$800 million USD. The case has not yet been decided, but a

29410 del 25 de Septiembre de 2009, reglamentada por el Decreto Supremo No. 075-2009-EM del 28 de octubre de 2009.

⁶ Comunicación de AIDA dirigida a Kenneth Buckley, Presidente y Gerente General DRP, con copia al Ing. José Mogrovejo, funcionario del Ministerio de Energía y Minas. 1 de febrero de 1999.

⁷ Resoluciones Directorales del Ministerio de Energía y Minas R.D. 272-2015-MEM/DGMAM, 10 de julio de 2015.

⁸ Resoluciones Directorales del Ministerio de Energía y Minas R.D. 272-2015-MEM/DGMAM, 10 de julio de 2015, pág. 27.

ruling in favor of the Renco Group would set a serious precedent of impunity for transnational companies, to the detriment of the capacity of States to implement and enforce environmental and human rights standards. On July, 2016, the International Center for the Settlement of Investment Disputes ruled in favor of the Peruvian State in a decision where Renco's claims were dismissed for lack of jurisdiction⁹.

Last Updated August 2016

⁹ See

https://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=showDoc&docId=DC8592_En&caseId=C3004.