



January 25, 2008

To: Office of the High Commissioner for Human Rights
From: The Interamerican Association for Environmental Defense, and Earthjustice
Re: Universal Periodic Review for Peru

Introduction

1. In accordance with the Information Note for NGOs regarding the Universal Periodic Review mechanism (October 8, 2007), Earthjustice and AIDA (the Interamerican Association for Environmental Defense) respectfully submit to the Human Rights Council information regarding the lack of compliance by the State of Peru with its commitments under the 1948 Universal Declaration of Human Rights, among other international human rights obligations. Via this submission, AIDA and Earthjustice seek to promote improved protection of human rights in Peru, in situations where acute environmental contamination causes severe human health harms and thus violates the human rights to life, liberty, and to a standard of living adequate for the health and well-being of all persons, along with the right to a healthy environment. We hope that the OHCHR will include this information in its periodic review of Peru, and will encourage Peru both to immediately address these human rights violations, as well as to fully cooperate with the Inter-American Commission on Human Rights (IACHR) and that institution's requests to promote human rights protection in Peru.
2. Specifically, we wish to draw the attention of the OHCHR to the extreme human rights violations that are being suffered by the more than 30,000 residents of La Oroya, Peru, because of excessive toxic contamination generated by a multi-metal smelter operating within the city boundaries. Thousands of the victims of this contamination are children and women of childbearing age, who in addition to having a more vulnerable socioeconomic status, suffer greater physical harms, and – in the case of many children – permanent physical impairment, from their daily exposure to the toxic contamination. The lack of adequate sanitary services (running water, street cleaning, and sewage) in large parts of the city, inappropriate public education campaigns about the risk and how to minimize exposure, and the failure of the state to provide adequate medical care for the population, augment the risk of harms to health and life. Children under six years of age and developing fetuses are at greatest risk. In addition, people that work for the protection of the environment and human rights, have suffered harassment and threats to their integrity.
3. The toxic contamination found in La Oroya may be unparalleled in the western hemisphere. The situation constitutes a crisis and warrants immediate action to reduce the contamination and protect public health. The smelter smokestacks continuously emit enormous quantities of sulfur dioxide gas, lead, arsenic, cadmium, and other particulates into the air, while other activities at the industrial complex generate significant “fugitive emissions” (process emissions that are not captured, and thus not easily measured). Because the city is

surrounded by mountains that trap the air, the toxic particulates settle on the streets, clothes, homes, schoolyards, and food of the La Oroya population. Airborne contamination also enters homes and other buildings. A 2003 study of building interiors showed that 100% of the dwellings tested exceeded maximum recommended lead content levels,¹ indicating that residents of La Oroya are exposed to significant contamination within their homes. Meanwhile, for nearly a century, effluents have been dumped untreated into the river that flows through the city, leaving the waters and sediments of a river that supplies one of Peru's most important agricultural valleys unsuitable for human consumption. As a result of simply inhaling, eating, and touching their mouths, the children and other residents of La Oroya receive an excessive daily dose of toxic chemicals known to generate considerable, irreparable, and long-term human health harms.

Air pollution in La Oroya caused by the smelter

4. Air pollution in La Oroya, caused by the smelter's emissions of lead, arsenic, cadmium, sulfur dioxide, and other harmful substances, greatly exceeds international standards established by the World Health Organization (WHO) and Peruvian law for these contaminants. Atmospheric lead levels in La Oroya between January and August 2004 were four to five times the WHO-recommended levels,² while levels of arsenic were measured at six to eight times the levels found in highly contaminated European cities.³ Company monitoring reports from 2004 indicated that cadmium levels, as well, were 20 times the level recommended by the WHO.⁴ Rather than improving, these heavy-metal contamination levels worsened through the beginning of 2007.⁵ The company and state have promised that significant reductions of heavy-metal concentrations in the air would occur by January of 2007 because of control technology that was to be installed at the smelter, but the State has yet to release reliable data showing whether those changes brought any significant improvement to air quality.

5. Sulfur dioxide levels in 2003 were two to four times greater than levels the WHO considers harmful,⁶ and according to the latest data-review⁶ increased significantly from 2003 through May of 2007. Sulfur dioxide concentrations often reach peak concentrations that are known to generate significant human health impacts. Whereas the WHO establishes a maximum short-term (10-minute) concentration of 500 ug/m³ for sulfur dioxide, there were three instances in 2006 where a 60-minute average of sulfur dioxide exceeding 18,000 ug/m³ were reported in La Oroya.⁷ Peru is permitting the company to wait until 2009 to reduce sulfur dioxide contamination, but the immediate implementation of measures to reduce health

¹ United States Environmental Protection Agency ("EPA") and the Department of Housing and Urban Development ("HUD") determined that the maximum amount of heavy metals should be 40mg/ft².

² "Concentration of Lead in Particulate Material, January to August 2004". Provided by Doe Run Peru for the Peruvian Ministry of Energy and Mines. Also see recommended levels in Supreme Decree No. 074-2001-PCM. March 24, 2001 El Peruano.

³ Annual average (January-November, 2003) calculated based on annual monthly reports for the Syndicate (La Oroya Antigua) and Hotel Inca (La Oroya Nueva) stations. Provided by DRP to the Peruvian state in their trimester reports: Analytical Reports of Air Quality.

⁴ "Concentration of Cadmium in Particulate Material." January – August, 2004. Provided by DRP to the Peruvian Ministry of Energy and Mines.

⁵ Asociación Civil Labor. "Second Report on Changes in La Oroya Air Quality" May, 2007.

⁶ General Directorate of Environmental Health (DIGESA). Sub Program IM-07. PROLIM. *Inventory of Atmospheric Emissions for the City of La Oroya*. Preliminary Report. March, 2005. pg. 2.

⁷ Asociación Civil Labor. "Changes in La Oroya Air Quality." 2007.

harms from these peak concentrations were ordered by a Peruvian court in June, 2006. Nevertheless, even this program to reduce peak levels that can cause death in sensitive individuals is not yet operating effectively.

Threat to health and life as a result of the contamination

6. The severe contamination threatens the health and integrity of all La Oroya residents, though children and pregnant women face the greatest risk. The health effects from this type of contamination cannot always be observed immediately, but are often irreversible. Heavy metals accumulate in the body and cause damage over long periods of time. Well-documented health impacts of the contaminants present in La Oroya include irreversible deterioration of the respiratory system, different types of cancer, and damage to reproductive systems and other vital organs.
7. Prolonged exposure to contamination is causing a public health crisis in La Oroya. As confirmed by several studies, the population of La Oroya suffers severe health impacts as a result of exposure to lead. Considering the levels of exposure, it is almost certain that the population is also experiencing significant health impacts due to exposure to arsenic, cadmium and sulfur dioxide.
8. Four blood lead level (BLL) studies completed by the Peruvian government, NGOs, and DRP in 1999,⁸ 2000,⁹ 2001,¹⁰ and 2005¹¹ demonstrate the gravity of the public health problem in La Oroya. **Every study produced the same result: blood lead levels in La Oroya are well above safe levels, especially for children and pregnant women.** Of the children examined in the 2005 study, 82% had levels 2 to 4 times the WHO recommended levels and 7% of children had levels 4 to 7 times WHO recommended levels.¹² The United States Centers for Disease Control (CDC) recommends that children with levels in this range should be evaluated and treated within 48 hours of diagnosis, and, if possible, removed from the contamination permanently to ensure that the treatment is effective.¹³ **Overall, only one child of the 788 children under 6 years of age examined in the 2005 study had blood lead levels considered acceptable by international standards.**¹⁴

The responsibility of the Peruvian State for the Human Rights violations in La Oroya

9. The Peruvian State has consistently failed to exercise its authority to impose strict emissions limits or other measures that would effectively control the contamination and safeguard the health and life of the population residing in the vicinity of the smelter. This, even though

⁸ DIGESA. "Study of Blood Lead Levels in a Selected Population of La Oroya." 1999.

⁹ UNES. "Evaluation of Blood Lead Levels and Factors of Exposure in Pregnant Women and Children Under Three Years Old in La Oroya." 2000. (UNES is composed of three NGOs: Cooperación, CENCA, and Filomena Tomayra Pasci.)

¹⁰ Doe Run Peru. "Study of Blood Lead Levels in the Population of La Oroya 2000-2001."

¹¹ DIGESA. "Census and Epidemiological Study of Blood Lead Levels in a Selected Population of La Oroya Antigua 2005." The Ministry of Health, the Ministry of Education, the Municipality of Yauli-La Oroya, and DRP conducted the most recent study.

¹² *Id.*

¹³ Centers for Disease Control and Prevention (CDC). "Managing Elevated Blood Lead Levels Among Young Children: Recommendations from the Advisory Committee on Childhood Lead Poisoning Prevention." March 2002. p. 41.

Available at: http://www.cdc.gov/neh/lead/CaseManagement/caseManage_chap3.htm#PageTop.

¹⁴ See *Supra* note 11.

the Peruvian judicial system (the Constitutional Tribunal) has recognized the urgency of the threat to health and life, and has ordered the government to protect especially vulnerable populations.

10. Due to the failure of the state of Peru to effectively control the contamination in La Oroya and protect human rights, the case was brought before the Inter-American Commission on Human Rights.¹⁵ In August of 2007 the IACHR concluded that the situation was urgent because of the risk of irreparable harm and human rights violations. Thus, the Commission asked Peru to implement immediate precautionary measures to protect the human rights to life and health of victims in La Oroya. These precautionary measures have yet to be implemented, even though the contamination levels have not improved to levels that are safe for human health.
11. The Peruvian state has been aware of the severity of this problem since the Peruvian Ministry of Health study in 1999¹⁶ first found that more than 99.1 % of the children in La Oroya were contaminated with extremely high levels of lead. Moreover, Peruvian and international civil society and government organizations have been advocating for the State to intervene and attend to the threats to health, life, and the environment in La Oroya for more than a decade. For example, in 2005, two reports from the US Centers for Disease Control and the St. Louis University Medical School¹⁷ highlighted the extreme nature of the problem and called on the Peruvian government to address the problem. The St. Louis study reported that Blood Lead Levels (BLLs) remained unacceptably high in 96% of the children, with the average value being 36.1 ug/dL or almost four times the acceptable level in the youngest age group. The US Centers for Disease Control (CDC) stated that “the most immediate priority is to reduce exposure to lead and other contaminants” and that this should be done by a process to “reduce air lead emissions, both stack and fugitive, to levels that protect children from having Blood Lead Levels > 10 ug/dL.”¹⁸
12. In both 2006 and 2007, a Blacksmith Institute panel of internationally renowned experts identified La Oroya as being among the world’s top ten most contaminated places, and the La Oroya situation has received constant media attention within and outside of Peru. Even with the tremendous international support for the victims in La Oroya and appeals for the government of Peru to act, the Peruvian state continues to ignore its responsibility for ensuring that the lives, health, and environment of these citizens are protected. Whereas many plans and promises have been made and developed on paper, the Peruvian State has yet to take effective action to truly protect the thousands of victims in La Oroya from the smelter pollution.

¹⁵ Annex 2, Petition to the IACHR submitted by AIDA, Earthjustice, CEDHA and Carlos Chirinos, December, 2006.

¹⁶ DIGESA. “Study of Blood Lead Levels in a Selected Population of La Oroya.” 1999.

¹⁷ University of Saint Louis, Missouri, United States, “*Environmental Contamination in the Homes of La Oroya and Concepcion and its Effects in the Health of Community Residents*”, December, 2005. (Annex 1, Executive Summary)

¹⁸ Centers for Disease Control and Prevention, National Center for Environmental Health/ Agency for Toxic Substances and Disease Registry. “*Development of an Integrated Intervention Plan to Reduce Exposure to Lead and Other Contaminants in the Mining Center of La Oroya, Peru*”. May, 2005.

Harassment of Environmental and Human Rights Defenders

13. In addition to the severe contamination in La Oroya, local people that advocate for the protection of the environment and human rights, including the beneficiaries of the precautionary measures requested by the IACHR, have suffered harassment and threats to their person. Nevertheless, both regional and local authorities consistently defend the company that is responsible for the contamination. Affected individuals have denounced this situation to local and national authorities, including the Ombudsman's Office (Defensoría del Pueblo), but little has been done to ensure the safety of the human rights defenders.

Conclusion

14. Many of the inhabitants of La Oroya and especially the children, suffer from levels of lead contamination that warrant immediate medical care. With every passing year of government inaction, hundreds of infants are born into an environment that poses a significant risk of permanent neurological damage, learning disabilities, and behavioral problems, as well as impaired physical development, motor control, and hearing. Severe contamination by sulfur dioxide gas, cadmium, and arsenic is directly linked to grave health problems such as cancer and irreversible and chronic respiratory problems, symptoms that are exhibited by a large percentage of the population. This situation constitutes a clear violation of the Human Rights guaranteed by the United Nations in the Universal Declaration of Human Rights, as well as other international human rights treaties ratified by Peru, and thus should be considered in the evaluation of Peru's performance for the Universal Periodic Review.
15. Constant delays, turnover among government employees, lack of technical capacity at the government level or enforcement powers within those institutions that would like to see the issue addressed, along with an overarching lack of political will to resolve this problem, have contributed to the Peruvian State's failure to protect the human rights violated as a result of the contamination from the La Oroya smelter.
16. In light of the above, AIDA and Earthjustice respectfully urge the Human Rights Council to exercise its authority to help move the Peruvian State to safeguard the human rights of the citizens of La Oroya, Peru. We also hope the Council will encourage Peru to fully implement the IACHR decision, and to seek international assistance, if needed, to effectively address the situation in La Oroya without further delay.

Respectfully Submitted,



Astrid Puentes Riaño
Legal Director, AIDA
apuentes@aida-americas.org



Anna Cederstav, Ph.D.
Earthjustice International Program and AIDA
acederstav@earthjustice.org