



## **Petition to the Interamerican Commission on Human Rights Requesting Emergency Precautionary Measures for La Oroya, Peru.**

### **English Executive Summary**

#### **Petitioners:**

*Romina Picolotti, Center for Human Rights and the Environment (CEDHA), Argentina, Astrid Puentes, Mexico; and Martin Wagner, Earthjustice, United States*

*on behalf of a select group of La Oroya citizens (whose names are omitted to protect identities), and others who would benefit from these precautionary measures.*

#### **Summary**

An immediate and persistent threat to the right to health, life and personal integrity of the residents of La Oroya, Peru forms the basis for this petition to the Interamerican Commission on Human Rights (IACHR) for precautionary measures. La Oroya residents are constantly exposed to lead, arsenic, cadmium and sulfur dioxide pollution caused by multi-metal smelting activities. The levels of contamination vastly exceed recommended international standards. Recent studies have proven the extent of this contamination and the serious risk to life and health this contamination poses in La Oroya, particularly to vulnerable groups, such as children, women and elderly persons. The permissive attitude of the Peruvian government with regard to this public health crisis precludes an immediate domestic solution. To date, the state has not taken sufficient action to resolve the problems in La Oroya. Precautionary measures are necessary to prevent irreparable damage to the health, life, and personal integrity of residents of the La Oroya region.

#### **I Background**

La Oroya is located at an altitude of 3,700 meters in the Peruvian Andes, 175 km from Lima, along the central highway and the Mantaro River. The city is surrounded by mountain peaks, making the area prone to temperature inversions that in turn trap the atmospheric contamination over the city. Sixty-five percent of the population of Yauli Province, in which La Oroya is one of ten municipalities, lives below the poverty line, and basic services within the

community are scarce.<sup>1</sup> Many of the more than 30,000 inhabitants of La Oroya depend on the local metal smelter as their primary source of income.

### **I.1. The Metal Smelter**

In 1922, the U.S. company Cerro de Pasco Copper Corporation built a metal smelter in La Oroya. The smelter was nationalized in 1974, and operated by CENTROMIN Peru until 1997. At that time, the metallurgical complex was re-privatized and sold to Doe Run Peru (DRP), a subsidiary of the U.S. Doe Run Corporation. The smelter produces copper, lead, and zinc, as well as silver and gold.

### **I.2. Air Pollution in La Oroya Caused by the Smelter**

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,<sup>2</sup> while levels of arsenic were measured at six to eight times the levels found in highly contaminated European cities.<sup>3</sup> Company monitoring reports from 2004 indicated that cadmium levels, as well, were 20 times the level recommended by the WHO.<sup>4</sup> Sulfur dioxide levels in 2003 were two to four times greater than levels the WHO considers harmful,<sup>5</sup> and consistently reach peak concentrations that are known to generate significant human health impacts.

### **I.3. Indoor Contamination**

Because heavy metal contamination from the smelter is airborne, it settles in homes and other buildings, increasing the potential for human exposure. A 2003 study of building interiors showed that 100% of the dwellings tested exceeded maximum recommended lead content levels,<sup>6</sup> indicating that residents of La Oroya are exposed to significant contamination within their homes.

### **I.4. Health Effects from the Contamination**

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. It is likely that the population is also experiencing significant health impacts due to exposure to arsenic, cadmium and sulfur dioxide. Four blood lead level (BLL) studies

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<sup>1</sup> 2005 Operative Plan for the Control of Blood lead Levels in Infants and Pregnant Women in La Oroya Antigua. MINSA-DIGESA-DRP. La Oroya, February 2005. p. 6.

<sup>2</sup> "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.

<sup>3</sup> 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.

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

<sup>5</sup> 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.

<sup>6</sup> 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/ft<sup>2</sup>.

completed by the Peruvian government, NGOs, and DRP in 1999,<sup>7</sup> 2000,<sup>8</sup> 2001,<sup>9</sup> and 2005<sup>10</sup> 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.**

Despite more than five years having passed since the government first obtained evidence of the crisis,<sup>11</sup> the most recent study by the Peruvian government and DRP in March 2005 shows that the community remains in crisis. This study, testing only children less than six years of age in La Oroya Antigua, showed that **99.9% of the 788 children examined had blood lead levels that exceeded the maximum recommended level.**<sup>12</sup> Of these children, 82% had levels 2 to 4 times the WHO recommended levels and 7% of children had levels 4 to 7 times WHO recommended levels.<sup>13</sup> 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.<sup>14</sup> The nearly 1% of children in the 2005 study with blood lead levels 7 times greater than the WHO-recommended levels should have been hospitalized immediately, according to CDC guidelines.<sup>15</sup> **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.**<sup>16</sup>

## **II The Contamination Levels in La Oroya Constitute a Serious Public Health Problem**

The contamination endangers the health 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.

### **II.1. Health Impacts of Lead**

Lead is an extremely toxic element. If absorbed, it impacts nearly every organ and system in the human body. It can reduce reaction time, debilitate limbs, and impact memory. A child's exposure to lead at an early age or while in the womb can affect learning capacity and

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<sup>7</sup> DIGESA. "Study of Blood Lead Levels in a Selected Population of La Oroya." 1999.

<sup>8</sup> 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.)

<sup>9</sup> Doe Run Peru. "Study of Blood Lead Levels in the Population of La Oroya 2000-2001."

<sup>10</sup> 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.

<sup>11</sup> See *Supra* note 7.

<sup>12</sup> See *Supra* note 10.

<sup>13</sup> *Id.*

<sup>14</sup> 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](http://www.cdc.gov/neh/lead/CaseManagement/caseManage_chap3.htm#PageTop).

<sup>15</sup> *Id.*

<sup>16</sup> See *Supra* note 10.

behavior. There is also a reasonable probability that lead and its derivatives are cancer-causing in humans. In a city with the contamination levels of La Oroya, inhaling polluted air is likely the primary source of exposure, although exposure also occurs via ingestion of contaminated items and hand-to-mouth contact. Regardless of how it is absorbed, people who live or work in a highly lead-contaminated area are in tremendous danger of accumulating the substance in their bodies.

### **II.1.1. Health Effects of Lead Specific to Children**

The health effects of lead in children depend primarily on the level and duration of exposure, but range from cognitive problems to death. Children are more likely to suffer adverse neurological effects and development disorders, and even at low exposure lead can impact their mental and physical development,<sup>17</sup> resulting in reduced Intelligent Quotient (IQ) levels and deficiencies in cognitive and academic abilities. A child exposed to high levels of lead can also develop evident physical symptoms such as anemia, severe stomach pain, muscle weakness, and brain damage. Lead exposure is most toxic in infants and unborn children who are exposed through their mothers, and can result in premature birth, low birth weight, lower mental capacity, learning disabilities, and reduced physical growth.<sup>18</sup> Death can result at BLLs greater than 80  $\mu\text{g}/\text{dL}$ .<sup>19</sup>

Studies show that absorption of lead via the gastrointestinal tract is greatest in children, as many play in dirty areas and have a tendency to put contaminated items in their mouths. Poor nutrition also augments the risk of lead absorption by the body. The socioeconomic conditions in La Oroya (infrequent access to showers, poor nutrition, and lack of medical care) exacerbate the problem.

The CDC insists that the health of children with high BLL's should be monitored, and that these children should receive exposure-counseling and medical treatment to reduce BLLs.<sup>20</sup> For medical treatment to be effective, it must be accompanied by environmental remediation, because some medical treatment can increase BLLs if administered in the presence of environmental lead contamination. Providing medical treatment and monitoring, therefore, is not enough. Such treatment must be accompanied by a drastic reduction in air contamination levels.

### **II.2. Health Impacts of Sulfur Dioxide**

Sulfur dioxide damages the circulatory and respiratory system,<sup>21</sup> and can cause death among sensitive populations,<sup>22</sup> especially when combined with particulate matter contamination as in La Oroya. Children, the elderly and people with asthma, bronchitis and other respiratory diseases are especially susceptible to the effects of sulfur dioxide. Health impacts worsen with increased exposure time, and the respiratory impacts of the contamination are cumulative.<sup>23</sup>

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<sup>17</sup> ATSDR. "Toxicological Profile of Lead" (Final Report) Accessed NTIS No. PB99-66704. Atlanta, GA. July 1999. p. 8. Available at: <http://www.atsdr.cdc.gov/toxprofiles/tp13.pdf>.

<sup>18</sup> *Id.*

<sup>19</sup> EPA. "How Lead Affects Health". Available at <http://www.epa.nsw.gov.au/leadsafe/health.htm>. April 27, 2005.

<sup>20</sup> See *Supra* note 15

<sup>21</sup> ATSDR, "Tox FAQs for Sulfur Dioxide" June 1999. Available at: <http://www.atsdr.cdc.gov/toxprofiles/tp116.pdf>.

<sup>22</sup> ATSDR. "Toxicological Profile for Sulfur Dioxide" December 1998. p. 43. Available at <http://www.atsdr.cdc.gov/toxprofiles/tp116.pdf>.

<sup>23</sup> California Air Resources Board. "Sulfur Dioxide." Available at: <http://www.arb.ca.gov/research/aaqs/caaqs/so2-1/so2-1.htm>. April 27, 2005.

In La Oroya, not only are sulfur dioxide levels generally elevated, but there are also frequent bursts of extremely high concentrations. These bursts can cause greater chronic respiratory illness, increased hospital admissions for asthma and other ailments,<sup>24</sup> and an increased number of premature deaths.

Although people living within 20 kilometers of the pollution source suffer the greatest health impacts, sulfur dioxide pollution is far ranging. When sulfur dioxide mixes with atmospheric water vapor to form acid rain, the contamination can stretch hundreds of miles, harming plant life, crops, and soil productivity.<sup>25</sup>

### **II.3. Health Impacts of Cadmium**

Human exposure to cadmium can occur through air pollution and accidental ingestion. The inhalation of cadmium is associated with deteriorating lung function and lung diseases, as well as damage to the kidneys, impaired heart function and a weakened immune system.<sup>26</sup> Various epidemiological studies of workers exposed to cadmium show a greater risk of lung and prostate cancer associated with cadmium exposure. Though there are no conclusive studies proving this risk, the United States Environmental Protection Agency (EPA) classifies inhaled cadmium as a probable human carcinogen.

### **II.4. Health Impacts of Arsenic**

Arsenic is considered a toxic and carcinogenic pollutant worldwide.<sup>27</sup> Excessive arsenic exposure is associated with lung, skin, bladder, and liver cancers; gastrointestinal impacts such as nausea, diarrhea, and stomach pains; skin lesions; and blood and nervous system disorders.<sup>28</sup>

### **II.5. Health Impacts of Exposure to Multiple Contaminants**

Only limited information exists about the specific effects of simultaneous exposure to multiple contaminants, but it is known that contaminants can act together to cause greater harm than exposure to a single contaminant may cause. For example, studies indicate that exposure to lead and cadmium together increases levels of mortality.<sup>29</sup> This phenomenon is particularly worrisome in La Oroya where only a fraction of the contaminants present are monitored. Other contaminants, including zinc, copper, and particulate matter of less than 2.5 microns, have never been monitored in the community. The potential health threat from these substances is not fully known.

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<sup>24</sup> *Id.* p. 27.

<sup>25</sup> K. Wark, CF Warner, Harper, and Row. "Air Pollution: Its Origin and Control". 2<sup>nd</sup> Ed. New York. 1981.

<sup>26</sup> Agency for Toxic Substances and Disease Registry (ATSDR). "Toxicological Profile for Cadmium". July, 1999. Available at: <http://www.atsdr.cdc.gov/toxprofiles/tp5.html>.

<sup>27</sup> WHO. "Arsenic in Drinking Water." Available at <http://www.who.int/medicentre/factsheets/fs210/en/index.html>; ATSDR. Toxicological Profile for Arsenic. p. 6. US Department of Health and Human Services. September 2000. Available at <http://www.atsdr.cdc.gov/toxprofiles/tp2.pdf>.

<sup>28</sup> ATSDR. "Arsenic ToxFAQs" December 2003. Available at [http://www.atsdr.cdc.gov/es/toxfaqs/es\\_tfacts2.html](http://www.atsdr.cdc.gov/es/toxfaqs/es_tfacts2.html); ATSDR. "Toxicological Profile for Arsenic" September 2000. p. 115. Available at <http://www.atsdr.cdc.gov/toxprofiles/tp2.pdf>.

<sup>29</sup> ATSDR. Toxicological Profile for Lead. Atlanta. June 1990. ATSDR. Glossary of Terms. Available at <http://www.atsdr.cdc.gov/glossary.html>.

### **III The Contamination in La Oroya Threatens the Human Rights of the Victims and Other Residents of the Region**

The claimants in this case are La Oroya residents ranging from one to 72 years of age, many of whom have lived their entire life in La Oroya, and who suffer serious health effects from the high levels of contamination in the city. Among this group, contamination-related health impacts are evident. The majority of claimants suffer from frequent respiratory problems such as asthma, bronchitis, and constant coughing, all of which are common effects of sulfur dioxide exposure. The primary cause of death in the district of La Oroya is respiratory infection.<sup>30</sup> Other claimants suffer from pneumocosis, saturnism, bronchial pneumonia, arterial hypertension, pharyngitis, tonsillitis, headaches and other health problems. The effects on the children in this group are particularly alarming. Many have difficulty concentrating in school, problems with dizziness, sleep disturbances, headaches, stomach cramps, lack of appetite, irritability and skin problems. Blood samples from March 2005 show that nearly all 26 victims requesting precautionary measures have BLLs that can cause adverse health impacts.<sup>31</sup> No victim has received adequate medical attention or has been properly informed about how to reduce exposure to the toxic contamination. The chronicled histories of the claimants illustrate the frequency of such symptoms. In addition, many La Oroya residents who are suffering even worse health impacts have not joined this petition because of fear, or lack of knowledge about the impacts to health.

Although it is not possible to determine the extent of harm caused by exposure to non-lead contaminants in the city such as arsenic, cadmium, and sulfur dioxide, it is known that La Oroya residents live permanently exposed to excessive levels of contaminants that represent a serious threat to their health. The lack of studies regarding individual contaminant impacts other than that of lead is not a valid excuse for failing to reduce contamination levels. Every day that the Peruvian government delays action to reduce pollution exposure in La Oroya for this or any other reason significantly increases the risk to the health and lives of these victims and other La Oroya residents.

### **IV The Omissions of the Peruvian Government in the Face of the Crisis in La Oroya**

The Peruvian government has known about the public health crisis in La Oroya since 1999 and has even helped undertake studies evidencing the crisis. Nevertheless, it has ignored the situation and postponed solutions, thus exposing the residents of La Oroya to irreparable harm. The Peruvian government has failed to require DRP to comply with its own Environmental Mitigation and Management Plan (PAMA), and has failed to provide adequate medical care in La Oroya. (The only facilities in the city lack proper diagnostic equipment and medicines to deal with common health problems. Furthermore, access to these facilities is limited to people who are officially employed and thus part of Peru's social security program, or to those who can independently afford to pay for medical treatment.) This lack of action has violated both national and international norms.

In April 2005, the Peruvian government indicated that it would take some steps to treat children less than six years of age living in La Oroya Antigua. Specifically, the state promised to arrange schooling and daycare in a non-contaminated location for children who live near the

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<sup>30</sup> See *Supra* note 1.

<sup>31</sup> See *Supra* note 10

smelter, and to provide environmental education,<sup>32</sup> evaluations for children with extremely high BLLs, and medical treatment for five children.<sup>33</sup>

While important, these proposed measures are insufficient to protect the health of La Oroya residents for a number of reasons. First, these measures only apply to the children of La Oroya Antigua that were part of the study, ignoring children who live in other parts of the city and also need medical intervention. Second, the measures only cover children less than 6 years of age, thus excluding other children as well as women of childbearing age who could become expectant mothers. Third, the proposed measures only focus on lead poisoning problems, ignoring the impacts of sulfur dioxide, cadmium, arsenic, and other heavy metal contaminants. And, finally, the measures do not include steps to reduce the contamination emitted by the smelter. The latter is especially important because without a corresponding reduction in heavy metal contamination, treatment for the selected group of children will be ineffective, as they will only be exposed again upon return to the city.

On July 14, 2005, the Peruvian government passed the “National Plan for Social Participation and Multisectoral Commitment to Strengthen Environmental Management and Reduce Mortality Related to Lead Contamination and Other Heavy Metals, 2005-2014.”<sup>34</sup> This plan sets out many important long-term policy and public health goals and strategies, which, if implemented, will improve the management of toxic contaminants in Peru. Nevertheless, the plan does nothing to immediately address the public health crisis in La Oroya, and thus fails to appropriately resolve the problem.

#### **IV.1. The Peruvian Government’s Obligations Under Air Quality Laws**

##### **IV.1.1. Lack of Definition of Air Quality Standards**

After nearly two years of deliberation, the Peruvian government approved National Environmental Air Quality Standards (ECAs) in 2001. At that time, regional air quality working groups were charged with defining the baselines, evaluating epidemiological information, and designing action plans to ensure that air quality regions meet the standards. Companies for whom the Peruvian government had a PAMA in place, such as DRP, however, were exempted from complying with these air quality standards. To date, strategies to achieve these air quality goals have seen little noticeable progress in the La Oroya region. This lack of progress, combined with DRP’s PAMA exemption, means that there is no way to enforce air quality standards against the company through the Peruvian government.

##### **IV.1.2. Failure to Declare a State of Emergency**

The Peruvian National Ambient Air Quality Standards Law requires the Ministry of Health to declare a state of emergency when air pollution significantly exceeds recommended levels.<sup>35</sup> Even though declaring a state of emergency would enable the government to take a series of immediate steps to help protect public health, the authorities have not done so. Lacking

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<sup>32</sup> Ministry of Health, Resolution No. 535-2005/MINSA. The Intersectoral Commission for the Prevention and Mitigation of Lead Poisoning and Other Heavy Metals.

<sup>33</sup> Ministry of Health. Report No. 211-2005/DG/DIGEST. Carlos Rodriguez Ibanez, General Director of the Specialized Institute of Rehabilitation. March 28, 2005.

<sup>34</sup> See *Supra* note 25 p. 34.

<sup>35</sup> Counsel of Ministers. Supreme Decree No. 074-2001-PCM. Art. 23. Published June 24, 2001. El Peruano.

the political will to confront these problems, the Peruvian government has violated the human rights of the La Oroya population.

#### **IV.2. The Peruvian Government's Obligations Under Mining Law**

The 1993 Environmental Protection Law for Mining Activities requires all existing metallurgic operations to implement protective and remedial environmental measures; specifically, it requires the implementation of a PAMA. Normally, the time period for completing PAMA activities is 10 years. In the case of La Oroya, DRP should complete its PAMA by January 13, 2007.<sup>36</sup>

##### **IV.2.1. Initial PAMA Obligations for the Metal Smelter at La Oroya**

In 1993, prior to privatizing the smelter, Ministry of Energy and Mines (MEM) approved a PAMA for the metallurgic complex.<sup>37</sup> The PAMA included plans to install two sulfuric acid plants, build water treatment plants, build new state-of-the-art waste facilities, re-vegetate areas affected by the emissions, and add a new water and drainage system. To date, however, DRP has not fulfilled these PAMA obligations. As of December 2003, MEM noted that Doe Run has complied with only 23% of its PAMA.<sup>38</sup> In fact, according to DRP's Vice President, the company only expects to comply with 50% of PAMA obligations by December 2006.<sup>39</sup>

##### **IV.2.2. Successive Delays for Implementation of DRP's PAMA Obligations**

Since 1997 when DRP started operating the smelter, the state has authorized three modifications to the PAMA, each of which has postponed action or eliminated obligations to protect the environment. The most serious problem with these PAMA modifications is that the Peruvian government never seriously evaluated the impact of these changes on public health. To the contrary, the government focused only on the economic impact that PAMA modifications would have on Doe Run's investment in Peru, as opposed to altering the PAMA with the aim of protecting the health and lives of La Oroya inhabitants.

Additionally, the lack of impartiality within MEM and the strong links of the ministry to the mining sector is troublesome. The MEM Director of Environmental Affairs, who approved DRP's October 1999 PAMA modification, has since become the Director of Environmental Affairs at DRP, and is thus responsible for implementing the very PAMA modifications that he himself approved.

#### **IV.3. Failure to Comply with a Peruvian Court Order**

In December of 2002, a group of La Oroya residents and victims filed suit against the Ministry of Health to force the Ministry to design and execute a Public Health Emergency Strategy to mitigate health impacts in La Oroya. Though this type of suit requires immediate response by the courts, it wasn't until two years later, in April of 2005, that a Lima Civil Court ordered the Ministry of Health and the General Directorate of Environmental Health (DIGESA)

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<sup>36</sup> MEM No 016-96-EM. May 1, 1993. Art. 2. and No. 059-96-EM. December 13 1993.

<sup>37</sup> *Id.*

<sup>38</sup> Quijandria Salmon, Jaime. MEM Presentation. April 2004. La Oroya PAMA.

<sup>39</sup> Castillo, Guido. "Doe Run will only complete 50% of their PAMA by 2006." Daily Mail. December 16, 2004. Lima, Perú.



to implement concrete measures to protect the La Oroya population.<sup>40</sup> The civil court ordered the authorities to design and implement a plan to address the State of Emergency, which included developing a strategy to protect vulnerable groups, and undertaking epidemiological and environmental monitoring programs. The court also declared that the Peruvian government had failed to comply with the General Health Law and with the National Air Quality Standards in La Oroya.

Rather than complying with the court order, the government appealed, thus further delaying action to protect the citizens of La Oroya. Considering the extended process of appeal in Peruvian courts, the government will not provide relief for La Oroya citizens in the immediate future.

The Peruvian government's failure to outline a concrete and effective plan to solve the public health crisis in La Oroya, the postponement of such action through the appeal of the court order, and the permissive stance taken toward PAMA modifications without consideration of human health, all demonstrate the state's dismissive, delayed, and negligent attitude. The need to adopt precautionary measures to prevent greater health problems and protect the lives of residents of La Oroya, therefore, is critical.

#### **V      Imminent Danger in Light of the Potential for Further Delays in PAMA Implementation**

Under the initial law that established the PAMA, any extension of deadlines to meet PAMA obligations was illegal. In December 2004, however, the Peruvian government went so far as to change the law, thus making it possible for authorities to approve an extension requested by Doe Run. This extension, which the government is currently considering, would give the company until the year 2011 to comply with key aspects of the PAMA. Such an action would expose La Oroya residents to an additional four years of unacceptable contamination levels. The consideration of this PAMA extension for DRP has no technical, social, or environmental justification but rather is based on the argument that compliance is too costly.

#### **VI      The Harassment of Individuals Denouncing the Public Health Crisis in La Oroya**

The health crisis in La Oroya and the state's failure to recognize the emergency has caused tremendous social unrest, with escalating violence against those who oppose the contamination. Several Non-Governmental Organizations (NGOs), including the Health Movement of La Oroya (MOSAO); churches; and other citizen groups are working to protect La Oroya by demanding reduced contamination. These individuals have been threatened and intimidated.<sup>41</sup> While such threats are not new, they have intensified in recent months.

#### **VII      IACHR's Precautionary Measures Will Prevent Irreparable Damage to the Victims and Other Residents of La Oroya**

The request for precautionary measures is warranted by the danger to human life, the serious health harms generated by the contamination, the persecution of leaders who denounce the smelter contamination, and the negligent failure of the Peruvian government to protect the health and lives of La Oroya residents. The request to the IACHR for precautionary measures is urgent as the Peruvian government is considering the authorization of yet another extension for

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<sup>40</sup> Lima Civil Court. Resolution No. 14. April 1, 2005.

<sup>41</sup> Diario Primicia. "La Oroya exige respeto a sus decisiones". November 26, 2004; Communication N°01-04. Leaders Association of Doe Run Perú – La Oroya. No date.

PAMA compliance, and because of the appeal of the recent Peruvian Court Order, which will delay government action. Without IACHR intervention, pollution will not be abated and the grave health threats in La Oroya will continue to affect thousands of individuals, including many hundreds of newborn children.

### **VII.1. The Protection of the Human Rights of Those Affected by Environmental Contamination**

The use of precautionary measures to address human rights abuses caused by environmental contamination has precedent at the IACHR. In 2004 the Commission ordered precautionary measures for another Peruvian community affected by toxic mining wastes.<sup>42</sup> Additionally, the Organization for American States (OAS) has recognized the connection between severe contamination and human rights in three resolutions.<sup>43</sup>

The complexity of this violation requires complete and combined measures, as **no steps taken to protect the health of the victims will be effective without also requiring a significant reduction in the toxic emissions as well as remediation of the La Oroya area.** The Peruvian government has not acknowledged the complexity of the crisis. By failing to reduce DRP's pollution in addition to addressing citizens' medical needs, the Peruvian government has violated the victims' fundamental rights and has failed to comply with international obligations to protect its citizens.

### **VII.2. The Protection of the Right to Personal Integrity and Health**

Traditionally, the IACHR uses precautionary measures to protect the life and physical integrity of victims. It has also, however, utilized this mechanism to protect the right to health. The IACHR has required states to provide adequate medical attention to their citizens,<sup>44</sup> and has recognized the legal obligation of a state to guarantee a minimum standard of health among its citizens.<sup>45</sup> In addition, the IACHR has recognized the importance of protecting the rights of vulnerable populations, such as the citizens of La Oroya who must choose between their children's right to be healthy, and their means of subsistence through their employment with Doe Run. Forcing La Oroya residents to make this choice is unacceptable given that there are numerous measures that the government could implement to drastically improve public health without requiring the closure of the smelter.

### **VII.3. The Protection of the Right to Life**

The Interamerican System of Human Rights has chosen to protect the right to life, particularly in regards to the rights of children in vulnerable situations. The Court has said: *"the fundamental right to life includes, not only the right of every human being not to be deprived of his life arbitrarily, but also the right that he will not be prevented from having access to the*

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<sup>42</sup> Case of Oscar González Anchurayco y others of the Community of San Mateo de Huanchor, Perú, Informe No. 69/04, P504/03. par. 12.

<sup>43</sup> Resolutions AG/RES 1819 (XXXI-O/01); AG/RES 18996 (XXXII-O/02); AG/RES 1926 (XXXIII-O/03).

<sup>44</sup> Precautionary measures were used to protect the health of 27 AIDS victims in El Salvador. Annual Report of the Interamerican Commission on Human Rights. 1999; 52 AIDS victims in Bolivia. October 2002.

<sup>45</sup> Interamerican Commission on Human Rights. Report 28/96, Case 11297. Juan Hernandez v. Guatemala. *See also* the IACHR Annual Report 1980-81. p. 126 and 1989-90. p. 195. Details the right to basic necessities, including health, nutrition and education, and Article 5 of the American Convention on the right to personal security.

*conditions that guarantee a dignified existence.*”<sup>46</sup> The duty of the state to protect this right to quality of life is especially important with respect to defenseless and vulnerable groups such as children, especially because, as in the case of La Oroya, children are physically predisposed to more serious effects of environmental contamination.

#### **VII.4. The Protection of Threatened Victims**

The IACHR has also issued precautionary measures to protect the right of individuals to free expression and association. As previously described, some of the victims that are fighting against pollution are being harassed and threatened for their efforts. For this reason, we request that the Commission order the Peruvian government to create conditions in which these human rights and environmental defenders can continue with their work in a safe manner.

#### **VII.5. The Protection of Other Residents of La Oroya**

Although the IACHR has established the need to individually identify affected persons when seeking precautionary measures, exceptions exist when all members of a community face equal risks.<sup>47</sup> As this is true in La Oroya, we seek precautionary measures to apply to the victims named in the petition, and we also ask for these protections on behalf of all residents in the zone impacted by the smelter. Many individuals, for fear of persecution or lack of knowledge, did not participate in this request but, at a later time, may desire to benefit from the precautionary measures granted.

### **VIII Specific Precautionary Measures Requested**

The extreme level of contamination in La Oroya is a serious threat to the lives, personal integrity and health of all inhabitants and nearby communities. Every day that passes, the risk is heightened due to the cumulative impacts of the contaminants. There is also an imminent threat that the situation will grow worse still if the state grants an extension of DRP’s PAMA without imposing strict timelines and penalties for non-compliance.

On behalf of the victims and other residents of La Oroya, we request that the IACHR issue precautionary measures. Specifically, we request:

1. Adequate medical attention and treatment for individuals with blood lead levels greater than 10  $\mu\text{g}/\text{dL}$ ,<sup>48</sup> as well as for those who suffer from respiratory diseases and problems associated with the sulfur dioxide contamination.
2. Nutritional assistance for children under 10 years of age and expectant mothers, to prevent excessive absorption of lead.
3. Reduction of blood lead levels to 10 $\mu\text{g}/\text{dL}$  or less for children, and for other affected individuals in accordance with international standards.
4. Immediate implementation of objective and independent environmental and public health education programs to inform the population about the contamination in La Oroya,

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<sup>46</sup> Interamerican Court on Human Rights, *Case of the “Street Children” v. Guatemala. (Villagrán-Morales et al.)*.- *Morales et al.*). Judgment of November 19, 1999. Para. 144.

<sup>47</sup> Case of the Community of Paz de San Jose de Apartadó. Precautionary Measures. Resolution of the Interamerican Court of Human Rights. Resolution 3. October 9, 2000.

<sup>48</sup> In line with CDC guidelines for Chelation Therapy for Childhood lead Poisoning. Available at <http://www.hsph.harvard.edu/Organization/DDIL/chelation.htm>.

exposure routes, potential health effects in the medium and long-term, symptoms, methods for treatment and diagnosis, and preventive measures to minimize exposure and health impacts.

5. A guarantee that any modification to the PAMA will protect the right to health of La Oroya residents, will not permit further delay in the implementation of the urgent measures needed, will be undertaken with full transparency and public participation, will comply with applicable law, will insure that implementation will be rigorously monitored for compliance with time tables and specific obligations, and will guarantee appropriate sanctions for non-compliance.
6. Effective control of all smelter emissions from both point and fugitive sources, and reductions in the arsenic-content of smelter feed until control technologies have been implemented that permit the use of high arsenic-content feed without impacts to public health.
7. An assessment of contamination levels in the houses, workplaces, and schools of the victims, as well as the streets, parks, markets, and other public facilities. Based on the results of this assessment, the state should take measures to effectively decontaminate impacted houses and provide for free and effective decontamination of houses, streets, and other public places.
8. The protection of the identity of the victims bringing this claim, and the guarantee of conditions in which they can safely continue their efforts to defend human rights in La Oroya.

It is important to clarify that in no case will the medical and nutritional assistance measures alone guarantee the right to health and life of the victims unless the IACHR also orders accompanying measures to guarantee pollution prevention and environmental remediation.

Respectfully submitted,

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