

INTER-AMERICAN COURT OF HUMAN RIGHTS

AMICUS CURIAE

REF.: CASE OF LA OROYA COMMUNITY V. PERU

Amicus curiae brief that reaffirms the positive obligations of the State in accordance with the right to a healthy environment and relates the impact that industrial pollution has caused in the community of La Oroya and in similar situations in Latin America

Presented by

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I. Introduction

1. In 2006, the U.S.-based environmental impact nonprofit Blacksmith Institute designated La Oroya, Peru as one of “the world’s most polluted places.”¹ While the situation in Peru remains dire, it is by no means unique. Throughout the Americas, States have failed to protect their populations from severe environmental pollution. Industrial contamination, whether by State enterprises or by private entities licensed by the State, is rampant across the hemisphere, as is impunity for those who pollute. In this brief, we present several instances of industrial contamination and State neglect that illustrate the gravity of the problem in the Americas. These are only a few of the myriad examples of catastrophic pollution throughout the hemisphere, but they highlight the need for urgent action by the Inter-American Court of Human Rights.

2. While supranational bodies in the field of human rights have condemned many of these environmental tragedies and have explicitly recognized the right to a healthy environment, they have yet to clearly define the contours of State obligations in instances of industrial pollution. We, therefore, urge this Court to clarify the responsibility of States to guarantee a right to a healthy environment in the context of industrial pollution. This is vital to ensure not only the wellbeing of residents of la Oroya, but also the many communities facing similar abuse and State inaction throughout the hemisphere.

II. The Positive Obligations of the State Under the Right to a Healthy Environment

3. The right to a healthy environment has been recognized globally, as has its applicability in cases of pollution by private actors. This recognition comes not only from international bodies, but also from municipal law in Latin America. Under the right to a healthy environment, States have negative obligations to refrain from polluting² but also positive obligations under article 1 (1) of the American Convention on Human Rights (“Convention”) to safeguard the right to a healthy environment from violations by third parties.³

¹ Biello, D, ‘World’s Top 10 Most Polluted Places,’ *Scientific American* (1 August 2012), <https://www.scientificamerican.com/article/body-worlds-top-10-most-polluted-places>.

² IACtHR, Case of the Massacres of El Mozote and surrounding areas v. El Salvador. Merits, Reparations and Costs. Judgment of October 25, 2012. Series C No. 252, para. 143.

³ IACtHR. The Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity – interpretation and scope of Articles 4(1) and 5(1) of the American Convention on Human Rights). Advisory Opinion OC-23/17 of November 15, 2017. Series A No. 23, para. 117; United Nations, *Guiding Principles of Business and Human Rights: Implementing the United Nations “Protect, Respect*

4. These positive obligations are of both substantive and procedural nature. Under its substantive obligations, the State must prevent industrial pollution by private actors under customary international law.⁴ This means that it must (1) regulate⁵ and (2) develop supervision, monitoring and accountability mechanisms.⁶ When there is industrial pollution emanating from private actors, the State must also establish contingency plans to respond to environmental emergencies.⁷ It also has a duty to mitigate the consequences of industrial pollution, which can include providing long-term medical care for affected people. For this purpose, the State should rely on the best available scientific data in order to guarantee the right to a healthy environment.⁸

5. The State also has procedural obligations. First, it must ensure access to information concerning the possible environmental impact of a proposed or existing industrial project.⁹ Therefore, there is a necessary duty to collect and disseminate information prior and during the industrial activity in order to make it accessible to the public.¹⁰

and Remedy” Framework. Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, UN Doc. A/HRC/17/31, 21 March 2011, Principle 4.

⁴ IACtHR. The Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity – interpretation and scope of Articles 4(1) and 5(1) of the American Convention on Human Rights). Advisory Opinion OC-23/17 of November 15, 2017. Series A No. 23, para. 117; United Nations, *Guiding Principles of Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework. Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, UN Doc. A/HRC/17/31, 21 March 2011, Principle 4.*

⁵ See UN Convention on the Law of the Sea, entered into force 16 November 1994, (establishes the obligation as relates to pollution of marine environment); see also Convention for the Protection and Development of the Marine Environment in the Wider Caribbean Region (Cartagena Convention), entered into force 11 October 1986, art. 12.1; see also United Nations, *Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, A/HRC/37/59, 24 January 2018, principle 11.*

⁶ IACtHR. The Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity – interpretation and scope of Articles 4(1) and 5(1) of the American Convention on Human Rights). Advisory Opinion OC-23/17 of November 15, 2017. Series A No. 23, paras. 152-154.

⁷ IACtHR. The Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity – interpretation and scope of Articles 4(1) and 5(1) of the American Convention on Human Rights). Advisory Opinion OC-23/17 of November 15, 2017. Series A No. 23, para. 171.

⁸ IACtHR. The Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity – interpretation and scope of Articles 4(1) and 5(1) of the American Convention on Human Rights). Advisory Opinion OC-23/17 of November 15, 2017. Series A No. 23, para. 172.

⁹ IACtHR. The Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity – interpretation and scope of Articles 4(1) and 5(1) of the American Convention on Human Rights). Advisory Opinion OC-23/17 of November 15, 2017. Series A No. 23, para. 221.

¹⁰ Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazu Agreement), 9 April 2018; Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), entered into force 30 October 2001, art. 5; The African Convention on the Conservation of Nature and Natural Resources, OAU Doc CAB/LEG/24.1 (2003), art.

Moreover, it must enable public participation of the potentially affected parties in the environmental decision-making process under article 23 (1) (a) of the Convention by providing appropriate mechanisms such as hearings, notifications, consultations, participation in elaborating and enforcing laws and mechanisms for judicial review.¹¹ Furthermore, the State must make sure that individuals and communities have access to justice under Article 25 of the Convention, read in conjunction with the due process requirements of Article 8 (1).¹² The holders of the right to a healthy environment must be able to challenge the granting of concessions and also to seek redress following environmental pollution.¹³

III. Background

A. La Oroya

6. For the past century, residents of La Oroya have suffered from catastrophic environmental pollution. Operations of a metallurgical complex began in 1922. The State of Peru ran the complex from 1974 until 1997 when the U.S. mining company “Doe Run Company” acquired the metallurgical complex. The facility processes lead, copper, zinc, silver, gold, and other harmful contaminants like sulfur, cadmium, and arsenic.¹⁴

7. The situation in La Oroya is so grave that this year the UN Special Rapporteur on Human Rights and the Environment stated that La Oroya is a “sacrifice zone.”¹⁵

XVI(1)(a); European Court of Human Rights, *Case of Guerra and Others v. Italy* [GS], No. 14967/89, Judgment of 19 February 1998, para. 60; European Court of Human Rights, *Giacomelli v. Italy*, No. 59909/00, Judgment of 2 November 2006, para 83; African Commission for Human Rights, *SERAC & the Centre for Economic and Social Rights (CESR) v. Nigeria*, Communication No. 155/96, 2001, para 53; United Nations, *Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, A/HRC/37/59, 24 January 2018 Principle 7.

¹¹ IACtHR. The Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity – interpretation and scope of Articles 4(1) and 5(1) of the American Convention on Human Rights). Advisory Opinion OC-23/17 of November 15, 2017. Series A No. 23, paras. 227 & 232.

¹² IACtHR. The Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity – interpretation and scope of Articles 4(1) and 5(1) of the American Convention on Human Rights). Advisory Opinion OC-23/17 of November 15, 2017. Series A No. 23, para. 237.

¹³ IACtHR. The Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity – interpretation and scope of Articles 4(1) and 5(1) of the American Convention on Human Rights). Advisory Opinion OC-23/17 of November 15, 2017. Series A No. 23, para. 237.

¹⁴ IACHR, Report No. 330/20, Case 12.718. Community of La Oroya, Peru, Nov. 19, 2020, para. 4.

¹⁵ United Nations, *Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, A/HRC/49/53, 12 January 2022, para. 40.

Originally a term used to describe territories destroyed by nuclear testing,¹⁶ today a sacrifice zone represents a “place where residents suffer devastating physical and mental health consequences and human rights violations as a result of living in pollution hotspots and heavily contaminated areas.”¹⁷

B. Pollution from Smelter Operations

8. Non-ferrous smelters like the complex in La Oroya are a well-documented source of hazardous emissions containing a mix of metals that contaminate soil, dust and water. Emissions of lead, arsenic, cadmium, copper, zinc and other metals from these facilities are responsible for soil contamination at harmful levels.¹⁸ A recent review of soil contamination from 49 sites in China found that smelters “release considerably higher amounts of heavy metals than other anthropogenic sources” at concentrations that pose significant health risks to local residents.¹⁹

9. Multiple studies in Peru and throughout Latin America have demonstrated a higher concentration of children with elevated blood lead levels in communities close to smelters.²⁰ A study conducted among 602 children living near a silver-zinc-lead smelter in Torreon, Mexico concluded that metal exposures as measured in blood lead levels were associated with reduced cognitive performance.²¹ In La Oroya, Peru, elevated lead and cadmium levels among pregnant women are transferred to newborns through umbilical cord blood and breast milk.²² The World Health Organization (“WHO”) has concluded that “[e]xposure of pregnant women to high levels of lead can cause miscarriage, stillbirth, premature birth and low birth weight.”²³

¹⁶ Lerner, S, *Sacrifice Zones: The Front Lines of Toxic Chemical Exposure in the United States*, MIT Press, Cambridge, 2010, p. 2-3.

¹⁷ United Nations, *Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, A/HRC/49/53, 12 January 2022, para. 27.

¹⁸ Chavez-Garcia, JA et al. (2022), ‘Association between Lead Source Exposure and Blood Lead Levels in some Lead Manufacturing Countries: A Systematic Review and Meta-Analysis,’ *Journal of Trace Elements in Medicine and Biology*, 126948; Reuer, M K et al. (2012), ‘Lead, Arsenic, and Cadmium Contamination and its Impact on Children’s Health in La Oroya, Peru,’ *International Scholarly Research Notices*.

¹⁹ Jiang, Z et al. (2021), ‘Heavy Metals in Soils Around Non-Ferrous Smelteries in China: Status, Health Risks and Control Measures,’ *Environmental Pollution*, 282, 117038.

²⁰ Olympio, KPK et al. (2017) ‘What are the Blood Lead Levels of Children Living in Latin America and the Caribbean?,’ *Environment International*, 101, 46-58.

²¹ Kordas, K et al. (2004), ‘Blood Lead, Anemia, and Short Stature are Independently Associated with Cognitive Performance in Mexican School Children,’ *The Journal of Nutrition*, 134(2), 363-371.

²² Castro, J et al. (2013), ‘Lead and Cadmium in Maternal Blood and Placenta in Pregnant Women from a Mining-Smelting Zone of Peru and Transfer of these Metals to their Newborns,’ *Journal of Toxicology and Environmental Health Sciences*, 5(8), 156-165.

²³ World Health Organization, *Lead Poisoning*, 31 August 2022, <http://www.who.int/news-room/fact-sheets/detail/lead-poisoning-and-health>.

10. Children exposed to even low levels of lead from air emissions and resulting environmental contamination suffer from neurological deficits, reduced school performance, and antisocial and attention-related behavior problems. These outcomes are thought to be irreversible and studies have demonstrated that exposures during childhood impact lifetime earnings and socioeconomic status.²⁴ Additional outcomes linked to lead exposure in children include decreased growth, delayed puberty and decreased auditory function. Lead can have significant health effects without clinical signs of symptoms. There is no known effective treatment and no antidote for lead poisoning.

11. There is also overwhelming evidence that lead, cadmium and other metals have been shown to impact health over a lifetime as exemplified by the relationship between low-level lead exposure, hypertension and cardiovascular mortality.²⁵ Lead exposures are a causal risk factor for hypertension and are a causal risk factor for coronary heart disease as concluded by the U.S. Environmental Protection Agency in the Integrated Science Assessment for Lead.²⁶ A meta-analysis based on 37 studies found substantial evidence linking arsenic, lead, cadmium and copper exposures to cardiovascular and coronary heart disease.²⁷ It is estimated that low-level lead exposures account for more than 440,000 deaths per year in the U.S.²⁸

IV. Similar Environmental Rights Violations in Other Countries

12. The situation in La Oroya, though tragic, is not unique. Communities across the Americas continue to suffer from industrial pollution by private and State actors. Below is a small sample of a much larger problem throughout the hemisphere that the Inter-American Court can rectify through concrete guidance on a States' positive obligations regarding environmental contamination. This list is nowhere near

²⁴ Reuben, A et al. (2017), 'Association of Childhood Blood Lead Levels with Cognitive Function and Socioeconomic Status at Age 38 Years and with IQ Change and Socioeconomic Mobility between Childhood and Adulthood,' *Jama*, 317(12), 1244-1251.

²⁵ Lamas, GA et al. (2021), 'Lead and Cadmium as Cardiovascular Risk Factors: The Burden of Proof has Been Met,' *Journal of the American Heart Association*, 10(10), e018692; Navas-Acien A, *Lead and Cardiovascular Mortality: Evidence Supports Lead as an Independent Cardiovascular Risk Factor*, US Environmental Protection Agency, Washington, DC, 2021. NCEE Working Paper 2021-03.

²⁶ United States Environmental Protection Agency, *CASAC Review of the EPA's Integrated Science Assessment for Lead*, EPA-CASAC-13-004, US Environmental Protection Agency Clean Air Scientific Advisory Committee, Washington, DC, 2013.

²⁷ Chowdhury, R et al. (2018), 'Environmental Toxic Metal Contaminants and Risk of Cardiovascular Disease: Systematic Review and Meta-Analysis,' *British Medical Journal*, 362.

²⁸ Lanphear, BP et al. (2018), 'Low-Level Lead Exposure and Mortality in US Adults: a Population-Based Cohort Study,' *The Lancet Public Health*, 3(4), e177-e184.

exhaustive. Rather it is meant to illustrate the pervasive nature of private pollution across borders:

A. Peru

13. La Oroya is not the only sacrifice zone in Peru.²⁹ The town of Cerro de Pasco, built around an enormous, noxious open-pit mine, ranks among the most polluted places on earth.³⁰ As in La Oroya, Cerro de Pasco endures excessive levels of heavy metals in the air, soil and water.³¹ Studies have established that there have been alarming impacts on the health of the population, especially amongst the city's children, which have registered unsettlingly high blood-lead levels.³² As one of the poorest cities in Peru, Cerro de Pasco does not have the resources to provide adequate medical care to those suffering from the health conditions caused by the mine's pollution.³³ Furthermore, the town's educational system has been unable to address the cognitive and behavioral effects that have developed from children's exposure to deleterious heavy metals.³⁴

14. Despite studies over the last several decades detailing the detrimental effects of the mine on the population,³⁵ Peru has failed to fully investigate the impact of heavy metal

²⁹ 'End of mission statement by Michel Forst, United Nations Special Rapporteur on the situation of human rights defenders: Visit to Peru, 21 January – 3 February 2020' *United Nations*, 3 February 2020,

<https://www.ohchr.org/en/statements/2020/01/end-mission-statement-michel-forst-united-nations-special-rapporteur-situatio>.

³⁰ 'Cerro de Pasco, Peru' *Source International*, <https://www.source-international.org/featured-cerro-de-pasco>, accessed 26 October 2022.

³¹ 'Cerro de Pasco, Peru' *Source International*, <https://www.source-international.org/featured-cerro-de-pasco>, accessed 26 October 2022; Piñeiro, XF et al. (2021), 'Heavy Metal Contamination in Peru: Implications on Children's Health,' *Sci Rep*, 11, 22729, p. 2.

³² Conklin L et al, *Reporte Final: Exposiciones a Metales Pesados en Niños y Mujeres en Edad Fértil en Tres Comunidades Mineras, Cerro de Pasco, Perú*, Centers for Disease Control and Prevention, Atlanta, 1 May 2008; Defensoría del Pueblo, *En Defensa de las Personas Expuestas a Metales Pesados, Metaloides y Otras Sustancias Químicas: Los Impactos de la Contaminación Ambiental*, Informe de Adjuntía No. 19-2021-DP/AMASPPI, 13 December 2021; Piñeiro, XF et al.

(2021), 'Heavy Metal Contamination in Peru: Implications on Children's Health,' *Sci Rep*, 11, 22729, p. 2.; Luis Chacón, 'Según Estudio: Niños de Cerro de Pasco Respiran hasta 15 Tipos de Metales Pesados,' *Actualidad Ambiental*, 18 March 2022, <https://www.actualidadambiental.pe/cerro-de-pasco-metales-pesados>, accessed 26 October 2022; 'The Last Investigation in Cerro de Pasco Helps to Proceed with a Legal Case,' *Source International*,

<https://www.source-international.org/news/the-last-investigation-in-cerro-de-pasco-help-to-proceede-with-the-legal-case>, accessed 26 October 2022; Dajer, T, 'High in the Andes, A Mine Eats a 400-Year-Old City,' *National Geographic*, 2 December 2015,

<https://www.nationalgeographic.com/history/article/151202-Cerro-de-Pasco-Peru-Volcan-mine-eats-city-environment>.

³³ Dajer, T, 'High in the Andes, A Mine Eats a 400-Year-Old City,' *National Geographic*, 2 December 2015, <https://www.nationalgeographic.com/history/article/151202-Cerro-de-Pasco-Peru-Volcan-mine-eats-city-environment>.

³⁴ Dajer, T, 'High in the Andes, A Mine Eats a 400-Year-Old City,' *National Geographic*, 2 December 2015, <https://www.nationalgeographic.com/history/article/151202-Cerro-de-Pasco-Peru-Volcan-mine-eats-city-environment>; 'The Last Investigation in Cerro de Pasco Helps to Proceed with a Legal Case,' *Source International*, <https://www.source-international.org/news/the-last-investigation-in-cerro-de-pasco-help-to-proceede-with-the-legal-case> accessed 26 October 2022.

³⁵ Dajer, T, 'High in the Andes, A Mine Eats a 400-Year-Old City,' *National Geographic*, 2 December 2015, <https://www.nationalgeographic.com/history/article/151202-Cerro-de-Pasco-Peru-Volcan-mine-eats-city-environment>.

on the health of its population.³⁶ The State has also neglected to properly govern lead standards in Peru, monitor the mining activities in the town, and mitigate the consequences of the industrial pollution.³⁷

15. In 2008, Peru's Congress passed a law calling for the resettlement of the entire population of Cerro de Pasco.³⁸ While this may be a necessary remediation in the short-term, the government has largely ignored its own law.³⁹ In spring 2017, the Cerro de Pasco mine was forced to build a wall as a barrier to protect the inhabitants from heavy metal contamination. However, studies reveal that the barrier has been insufficient since high heavy metals concentrations were still detected after the wall's construction.⁴⁰ In June of that same year, the Government of Peru declared its third state of emergency in Cerro de Pasco because of the tremendous levels of pollution. Meanwhile, Cerro de Pasco's residents remain in peril.⁴¹

B. Chile

16. Like Cerro de Pasco, the Quintero-Puchuncavi commune in Chile suffers from concerning levels of pollution. Home to the Ventanas industrial complex, it hosts more than 15 industrial businesses that include a copper smelter, oil refineries, petrochemical facilities, coal-fired power plants and gas terminals. These industries contaminate the air in the region by releasing particulate material, sulfur dioxide, toluene, methyl chloroform, and nitrobenzene,⁴² which have caused various health problems for nearby residents.⁴³ One of several environmental catastrophes in the zone took place in 2018 when a series of toxic gas leaks made hundreds of school children

³⁶ Piñeiro, XF et al. (2021), 'Heavy Metal Contamination in Peru: Implications on Children's Health,' *Sci Rep*, 11, 22729, p. 2.

³⁷ van Geen, A et al. (2012) 'Lead Exposure from Soil in Peruvian Mining Towns: a National Assessment Supported by Two Contrasting Examples,' *Bull World Health Organ*, 90(12): 878–886; Piñeiro, XF et al. (2021), 'Heavy Metal Contamination in Peru: Implications on Children's Health,' *Sci Rep*, 11, 22729, p. 2.

³⁸ República del Perú, Ley que Declara de Necesidad Pública e Interés Nacional la Implementación de Medidas para Lograr el Desarrollo Urbano Sostenible Concertado y la Reubicación de la Ciudad de Cerro de Pasco, Law No. 29293 of 2008.

³⁹ Dajer, T, 'High in the Andes, A Mine Eats a 400-Year-Old City,' *National Geographic*, 2 December 2015,

<https://www.nationalgeographic.com/history/article/151202-Cerro-de-Pasco-Peru-Volcan-mine-eats-city-environment>.

⁴⁰ Piñeiro, XF et al. (2021), 'Heavy Metal Contamination in Peru: Implications on Children's Health,' *Sci Rep*, 11, 22729, p. 6.

⁴¹ Livingstone, G and Souesi, J, 'Is this Peruvian city the most polluted on Earth?' *BBC News*, 12 August 2018,

<https://www.bbc.co.uk/news/av/world-latin-america-45047474>.

⁴² Oyarzún G, M and Valdivia C, G (2021) 'Impactos en la Salud de la Contaminación del Aire,' *Revista Chilena de Enfermedades Respiratorias*, 37(2), 103-106.

⁴³ United Nations, *Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, A/HRC/49/53, 12 January 2022, para. 39; 'Quintero: Informe Da Cuenta de Emanaciones de SO₂ que Superan casi 6 Veces lo Recomendado por la OMS,' *Sustentable* 22 January 2020, <https://www.sustentable.cl/quintero-informe-da-cuenta-de-emanaciones-de-so2-que-superan-casi-6-veces-lo-recomendado-por-la-oms>.

ill⁴⁴ and more than 300 people required urgent medical care against intoxication symptoms.⁴⁵ At least 19 schools had to cancel classes due to air quality alerts caused by the industrial pollution. Shockingly, the government ordered the suspension of classes instead of the suspension of the polluting activity.⁴⁶

17. The Chilean cities of Coronel, Mejillones, Huasco and Tocopilla, which house coal-fired power plants, have also been designated “sacrifice zones.”⁴⁷ Research about the effects of exposure to coal plants on human health found that the risk of dying from cerebrovascular diseases and lung cancer among the residents of Huasco and Tocopilla were several times higher than the national average.⁴⁸ Moreover, the risk of chronic lower respiratory diseases was 90% higher than in the study’s control city.⁴⁹

18. The government of Chile has failed to adequately protect the health of locals in the several areas prone to environmental contamination.⁵⁰ In 2022, one month before another episode of massive intoxication in the Quintero-Puchuncavi and Concon region, the national Office of the Comptroller reported several failures in the authorities’ approach to the problem and a lack of appropriate laws and regulations to address the negative impact of the pollution.⁵¹ Moreover, the report concluded that the State has responded reactively (and not in a preventative manner) to address the pollution issues.⁵² The United Nations recognized the dangers associated with pollution in Chile’s “sacrifice zones” in its 2019 universal periodic review, recommending that the Chilean government speed up the implementation of

⁴⁴ United Nations, *Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, A/HRC/49/53, 12 January 2022, para. 39; Instituto Nacional de Derechos Humanos, *Informe Misión de Observación, Zona de Quintero y Puchuncaví*, 1 October 2018, p. 18.

⁴⁵ Instituto Nacional de Derechos Humanos, *Informe Misión de Observación, Zona de Quintero y Puchuncaví*, 1 October 2018, p. 18.

⁴⁶ Instituto Nacional de Derechos Humanos, *Informe Misión de Observación, Zona de Quintero y Puchuncaví*, 1 October 2018, pp. 19-12.

⁴⁷ Vivanco Font, E, *Zonas de Sacrificio en Chile: Quintero-Puchuncaví, Coronel, Mejillones, Tocopilla y Huasco*, Biblioteca del Congreso Nacional de Chile, July 2022.

⁴⁸ Ramos Miranda, NA, ‘In Chile’s Polluted “Sacrifice Zones,” Residents Seek Respite in New Constitution,’ *Reuters*, 22 December 2020, <https://www.reuters.com/article/us-chile-environment-constitution-idUSKBN28W1CH>.

⁴⁹ Viviani G., P (2021), ‘Daños de Salud Respiratoria en Comunas Expuestas a Entrales Termoeléctricas a Carbón en el Norte de Chile: Análisis de Datos Secundarios,’ *Revista Chilena de Enfermedades Respiratorias*, 37, 17-25.

⁵⁰ Es Urgente el Cierre de las Termoeléctricas de Quintero-Puchuncaví y el Fin de las Zonas de Sacrificio,’ *Greenpeace*, <https://www.greenpeace.org/chile/tag/chaocarbon>, accessed 26 October 2022.

⁵¹ ‘Al menos 105 Personas Afectadas por Contaminación Industrial en el “Chernóbil Chileno”,’ *France 24*, 9 July 2022 <https://www.france24.com/es/minuto-a-minuto/20220609-al-menos-105-personas-afectadas-por-contaminacion-C3%B3n-industrial-en-el-ch-C3%A9rnobil-chileno>.

⁵² Contraloría General de la República, *Informe Final 27-2022 Subsecretaría de Medio Ambiente, Subsecretaría de Salud Pública, Secretarías Regionales, Ministeriales del Medio Ambiente y de la Región de Valparaíso*, 2 May 2022.

socio-environmental recovery programs and develop environmental quality standards in accordance with those established by the World Health Organization.⁵³

C. Colombia

19. Various sites in Colombia also suffer from high levels of dangerous pollution. One stark example is Cerrejón, an open-pit coal mine located in Colombia's northern desert department of La Guajira. Owned by Glencore, a European multinational company, the Cerrejón is the largest open pit mine in South America and has been a source of extreme environmental pollution and contamination for decades.⁵⁴ In 2019, the Constitutional Court determined that human health is at stake in La Guajira due the permanent dispersion of particulate matter that violates national and WHO standards. Carbon dust, nitrogen oxides, polycyclic aromatic hydrocarbons, sulfur, chromium, copper, and zinc contaminate the local water and air,⁵⁵ causing locals, particularly the indigenous Wayuu population, to suffer from elevated levels of toxic substances in their blood.⁵⁶ In addition, nearby populations suffer from elevated rates of respiratory illnesses, heart diseases, and premature births.⁵⁷ Because of the detrimental health situation, the UN Special Rapporteur on Human Rights and the Environment released a statement in 2020 calling for the cessation of mining operations that are closest to the Wayuu indigenous reserve.⁵⁸

⁵³ United Nations Human Rights Council, Working Group on the Universal Periodic Review, *Compilation on Chile*, A/HRC/WG.6/32/CHL/2, 1 February 2019.

⁵⁴ Global Legal Action Network, *Non-Compliance with the OECD Guidelines for Multinational Enterprises. BHP, Anglo American and Glencore*, 2021; 'New Commission to Assess Social and Environmental Impact of Coal Mining,' *Justice for Colombia*, 18 March 2021, <https://justiceforcolombia.org/news/new-commission-to-assess-social-and-environmental-impact-of-coalmining>.

⁵⁵ Constitutional Court of Colombia, Sentencia T-614/19, Judgment of 16 December 2019.

⁵⁶ United Nations, *Annex 1 of the Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, A/HRC/49/53, 12 January 2022, p. 14, para. 37; Balch, O, 'Cerrejón Mine in Colombia: Can it Address its Human Rights Risks?,' *Guardian*, 15 July 2013,

<https://www.theguardian.com/sustainable-business/cerrejon-mine-colombia-human-rights>; Harrison, A, "'We Are Going to Kill You.'" A Case Study in Corporate Power Left Unchecked,' *Global Witness*, 25 January 2021,

<https://www.globalwitness.org/en/blog/we-are-going-to-kill-you-a-case-study-in-corporate-power-left-unchecked>.

⁵⁷ United Nations, *Annex 1 of the Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, A/HRC/49/53, 12 January 2022, p. 14, para. 37; Balch, O, 'Cerrejón Mine in Colombia: Can it Address its Human Rights Risks?,' *Guardian*, 15 July 2013,

<https://www.theguardian.com/sustainable-business/cerrejon-mine-colombia-human-rights>; Harrison, A, "'We Are Going to Kill You.'" A Case Study in Corporate Power Left Unchecked,' *Global Witness*, 25 January 2021,

<https://www.globalwitness.org/en/blog/we-are-going-to-kill-you-a-case-study-in-corporate-power-left-unchecked>.

⁵⁸ Office of the High Commissioner for Human Rights, 'UN Expert Calls for Halt to Mining at Controversial Colombia Site,' *OHCHR*, 28 September 2020, <https://www.ohchr.org/en/press-releases/2020/09/un-expert-calls-halt-mining-controversial-colombia-site#:~:text=David%20R,the%20University%20of%20British%20Columbia>.

20. In addition to communities near coal mines, rural communities living along train tracks used to transport coal to Caribbean ports in Colombia have also been exposed to harmful coal dust, resulting in elevated cancer rates and other respiratory diseases.⁵⁹ The problem has been so extreme in some areas that the government relocated residents in towns such as El Hatillo, Plan Bonito and Boquerón in 2010 due to the extreme air and water pollution from coal mining and its transportation. The relocation lacked the community's free and informed consent, resulting in forced displacement.⁶⁰

D. Mexico

21. In Mexico, residents of the Atoyac and Santiago river basins have suffered from dramatic health problems for decades as a direct result of industrial waste dumping into streams and rivers. Community members in the region continue to show elevated levels of cancer and gastrointestinal diseases that have been linked to the consumption of these contaminated waters.⁶¹ Human rights and environmental rights advocates have asserted that a lack of proper regulations and monitoring have allowed the waterways to become a channel for dangerous industrial waste, including arsenic, lead, cadmium, cyanide, mercury and microplastics. Although some measures have been adopted by the government, they have been largely inadequate as safety standards and monitoring have remained insufficient.⁶²

22. Factories in Mexicali, a major manufacturing hub on the northern border of Mexico, have also served as sites of widespread pollution. By exploiting lax regulations and monitoring, these factories have been able to avoid accountability for contaminating air and water.⁶³ Emissions of lead, mercury, arsenic, cadmium and particulate matter, among others, have made air quality unhealthy for local residents,

⁵⁹ Gomez, K and Regaignon, G (eds.), *Digging Deeper: The Human Rights Impacts of Coal in the Global South*, November 2015, p. 23.

⁶⁰ Gomez, K and Regaignon, G (eds.), *Digging Deeper: The Human Rights Impacts of Coal in the Global South*, November 2015, p. 23.

⁶¹ Mora, A et al. (2021). 'A Review of the Current Environmental Status and Human Health Implications of one of the Most Polluted Rivers of Mexico: The Atoyac River, Puebla,' *Science of the Total Environment* 782: 1-16; Perez Castresana, G et al. (2019) Evaluation of Health Risks Due to Heavy Metals in a Rural Population Exposed to Atoyac River Pollution in Puebla Mexico, *Water* 11(2): 277.

⁶² Fisher, S and Malkin, E, 'Un Chernóbil en Cámara Lenta,' *New York Times*, 1 January 2020,

<https://www.nytimes.com/es/2020/01/01/espanol/america-latina/mexico-medioambiente-tmec.html>.

⁶³ James, I and Meyers, Z, 'This Mexican City was Transformed by Factories. Its People Pay a Heavy Price,' *Desert Sun*, 15 December 2019,

<https://eu.desertsun.com/in-depth/news/environment/border-pollution/poisoned-cities/2018/12/05/mexicali-industrial-city-factories-maquiladoras-border-pollution/1295896002>.

triggering asthma and other chronic diseases.⁶⁴ Meanwhile, hazardous waste that has entered the New River continues to pose health risks to inhabitants in Mexicali and other towns and cities along the river.⁶⁵ Efforts to monitor this pollution has been overwhelmingly insufficient,⁶⁶ as information about the pollution is often self-reported by companies⁶⁷ and frequently inaccessible to the public.⁶⁸ Although workers and residents have complained for years about the health impact on their community, the government has continued to allow the growth of industrial activity. Thus, Mexicali remains as a “haven for polluting industries” and cheap labor, which continues to attract many American companies.⁶⁹

E. Brazil

23. Industrialization in Brazil has also come at a cost to people’s health and, at times, life.⁷⁰ Studies show that in Brazil, air pollution levels exceed WHO standards, and there are elevated levels of toxic heavy metals.⁷¹ In addition, factories and plants often

⁶⁴ Reyna, M (2008) ‘Air Quality in Mexicali,’ *Epidemiology*, 19(6), p.S17; James, I and Meyers, Z, ‘This City's Air is Killing People. Who Will Stop it?’, *Desert Sun*, 15 December 2019,

<https://eu.desertsun.com/in-depth/news/environment/border-pollution/poisoned-cities/2018/12/05/air-pollution-taking-deadly-toll-u-s-mexico-border/1381585002>; Jose A, ‘La Crisis de una Ciudad Fronteriza no tiene nada que ver con los Migrantes,’ *New York Times*, 11 February 2019, <https://www.nytimes.com/es/2019/02/11/espanol/calexico-rio-nuevo-contaminacion.html>.

⁶⁵ James, I and Meyers, Z, ‘This Mexican City was Transformed by Factories. Its People Pay a Heavy Price,’ *Desert Sun*, 15 December 2019,

<https://eu.desertsun.com/in-depth/news/environment/border-pollution/poisoned-cities/2018/12/05/mexicali-industrial-city-factories-maquiladoras-border-pollution/1295896002>; Jose A, ‘La Crisis de una Ciudad Fronteriza no tiene nada que ver con los Migrantes,’ *New York Times*, 11 February 2019,

<https://www.nytimes.com/es/2019/02/11/espanol/calexico-rio-nuevo-contaminacion.html>.

⁶⁶ James, I and Meyers, Z, ‘This City's Air is Killing People. Who Will Stop it?’, *Desert Sun*, 15 December 2019,

<https://eu.desertsun.com/in-depth/news/environment/border-pollution/poisoned-cities/2018/12/05/air-pollution-taking-deadly-toll-u-s-mexico-border/1381585002>.

⁶⁷ James, I and Meyers, Z, ‘A Toxic Dumping Ground Festers on the Border,’ *Desert Sun*, 15 December 2019,

<https://eu.desertsun.com/in-depth/news/environment/border-pollution/poisoned-cities/2018/12/05/toxic-dumping-ground-mexicali-mexico-border-pollution/1295722002>.

⁶⁸ James, I and Meyers, Z, ‘This Mexican City was Transformed by Factories. Its People Pay a Heavy Price,’ *Desert Sun*, 15 December 2019,

<https://eu.desertsun.com/in-depth/news/environment/border-pollution/poisoned-cities/2018/12/05/mexicali-industrial-city-factories-maquiladoras-border-pollution/1295896002>.

⁶⁹ James, I and Meyers, Z, ‘This Mexican City was Transformed by Factories. Its People Pay a Heavy Price,’ *Desert Sun*, 15 December 2019,

<https://eu.desertsun.com/in-depth/news/environment/border-pollution/poisoned-cities/2018/12/05/mexicali-industrial-city-factories-maquiladoras-border-pollution/1295896002>.

⁷⁰ United Nations, *Report of the Special Rapporteur on the Implications for Human Rights of the Environmentally Sound Management and Disposal of Hazardous Substances and Wastes*, A/HCR/45/12/Add 2, 5 August 2020.

⁷¹ Rodríguez-Cotto, RI et al. (2014), ‘Particle Pollution in Rio de Janeiro, Brazil: Increase and Decrease of Pro-inflammatory Cytokines IL-6 and IL-8 in Human Lung Cells,’ *Environmental Pollution*, 194, 112-120; United Nations, *Report of the Special Rapporteur on the Implications for Human Rights of the Environmentally Sound Management and Disposal of Hazardous Substances and Wastes*, A/HCR/45/12/Add 2, 5 August 2020, para. 19.

have been constructed close to communities,⁷² causing an array of health issues to residents, including cancer and respiratory diseases.⁷³

24. In Piquiá de Baixo, for instance, inhabitants have been exposed to pollution by the steel industry since the 1970s, when factories arrived without the community's consent.⁷⁴ Over the last decade, steel factories in the region around Piquiá de Baixo have continued operating without licenses after failing to meet environmental requirements.⁷⁵ Brazil has repeatedly failed to enforce its own environmental protection standards against large companies in the area, and authorities do not adequately monitor these factories and provide the public with independent information,⁷⁶ while the industries withhold information on environmental pollution.⁷⁷

25. In Piquiá de Baixo, residents suffer from coughs, wheezing, and various skin conditions due to pollution.⁷⁸ A staggering 300,000 workers there have suffered from chronic exposure to asbestos.⁷⁹ Many have developed cancer,⁸⁰ while countless cases will go undetected because of lack of proper tracking.⁸¹ Despite the threat to its citizens, Brazil, nonetheless, continues to allow industries to expose workers to hazardous substances and processes that are forbidden in the rest of the world.⁸²

⁷² Carvalho, LVB et al. (2019), 'Vigilância Popular Ambiental e Siderurgia: As Experiências de Piquiá de Baixo (MA) e Santa Cruz (RJ),' *Ciência & Saúde Coletiva*, 17475; United Nations, *Report of the Special Rapporteur on the Implications for Human Rights of the Environmentally Sound Management and Disposal of Hazardous Substances and Wastes*, A/HCR/45/12/Add 2, 5 August 2020, para. 19.

⁷³ Carvalho, LVB et al. (2019), 'Vigilância Popular Ambiental e Siderurgia: As Experiências de Piquiá de Baixo (MA) e Santa Cruz (RJ),' *Ciência & Saúde Coletiva*, 17475; United Nations, *Report of the Special Rapporteur on the Implications for Human Rights of the Environmentally Sound Management and Disposal of Hazardous Substances and Wastes*, A/HCR/45/12/Add 2, 5 August 2020, para. 19.

⁷⁴ United Nations, *Report of the Special Rapporteur on the Implications for Human Rights of the Environmentally Sound Management and Disposal of Hazardous Substances and Wastes*, A/HCR/45/12/Add 2, 5 August 2020, para. 20.

⁷⁵ International Federation for Human Rights, *PIQUIÁ STOOD UP FOR THEIR RIGHTS: Assessing the Fulfillment of Recommendations to Address Human Rights Violations of the Mining and Steel Industry in Acailândia, Brazil*, May 2019.

⁷⁶ United Nations, *Report of the Special Rapporteur on the Implications for Human Rights of the Environmentally Sound Management and Disposal of Hazardous Substances and Wastes*, A/HCR/45/12/Add 2, 5 August 2020, paras. 21 & 76.

⁷⁷ United Nations, *Report of the Special Rapporteur on the Implications for Human Rights of the Environmentally Sound Management and Disposal of Hazardous Substances and Wastes*, A/HCR/45/12/Add 2, 5 August 2020, para. 76;

International Federation for Human Rights, *PIQUIÁ STOOD UP FOR THEIR RIGHTS: Assessing the Fulfillment of Recommendations to Address Human Rights Violations of the Mining and Steel Industry in Acailândia, Brazil*, May 2019.

⁷⁸ 'MA – Poluição Causada por Atividade Siderúrgica Ameaça Sxistência da Comunidade Piquiá de Baixo, em Açailândia,' *Mapa de Conflitos*, September 2018,

<https://mapadeconflitos.ensp.fiocruz.br/?conflito=ma-industria-guseira-contaminacao-da-agua-falta-de-seguranca-e-condicoes-impropias-a-vida-e-a-saude-dos-moradores-do-distrito-industrial-de-pequia-acailandia>; International Federation for Human Rights, *Brazil: How Much are Human Rights Worth in the Brazilian Mining and Steel Industry?*, March 2012.

⁷⁹ Koller, FJ et al (2017), 'Monitoring of Mesothelioma in Southern Brazil: A Situation to be Investigated,' *Cogitare Enferm.*, 22(1), 1-6.

⁸⁰ Koller, FJ et al (2017), 'Monitoring of Mesothelioma in Southern Brazil: A Situation to be Investigated,' *Cogitare Enferm.*, 22(1), 1-6.

⁸¹ Koller, FJ et al (2017), 'Monitoring of Mesothelioma in Southern Brazil: A Situation to be Investigated,' *Cogitare Enferm.*, 22(1), 1-6.

⁸² United Nations, *Report of the Special Rapporteur on the Implications for Human Rights of the Environmentally Sound Management and Disposal of Hazardous Substances and Wastes*, A/HCR/45/12/Add 2, 5 August 2020, para. 58.

V. Conclusion

26. Tragically, La Oroya is just one of many examples of industries polluting the environment at the cost of human lives in the Americas.⁸³ In the balancing act between economic growth and the protection of human health, the latter is being sacrificed by Peru and other governments in the region, who are failing to guarantee citizens' rights to a healthy environment and, ultimately, to life. Rather than regulating industrial activity rigorously and effectively, governments have abandoned towns and their inhabitants, opting to satisfy private interests. Although some States have promised to resettle concerned populations, such relocation has been incomplete. Even if undertaken, relocation offers, at best, a limited solution to the problem of industrial pollution.

27. This Court is uniquely situated to recognize the widespread nature of this problem and to provide the guidance necessary to ensure that States throughout the hemisphere understand their legal obligations. We ask the Court to reaffirm and clear instructions on the positive obligations that fall upon the State under the recognized right to a healthy environment. Guidance from the Court would be a vital step in limiting future human rights abuses related to industrial pollution by State and private actors across the Americas.

⁸³ See other cases of industrial pollution not addressed in this brief: *Argentina; El Salvador; Venezuela*, United Nations, *Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, A/HRC/49/53, 12 January 2022.

VI. Signatures⁸⁴

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Asociación Unión Nacional de Integración Rural (Colombia)

⁸⁴ We filed the original copy of this amicus on Friday, October 28. On November 4, we refiled with the signatures of the organizations that supported the amicus. The following organizations expressed interest in supporting the amicus, but did not send signatures: SOBREVIVENCIA, Amigos de la Tierra Paraguay; Grupo de Acciones Públicas de la Universidad del Rosario; Fundalatin; Cátedra Unicap de Direitos Humanos Helder Camara de la Universidad Católica de Pernambuco; y Clínica Interdisciplinar de Direitos Humanos da Universidade Católica de Pernambuco. Consequently, we understand that according to the rules of the Court they will not be considered signatories of this amicus.

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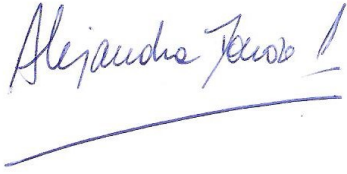
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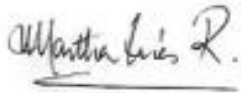
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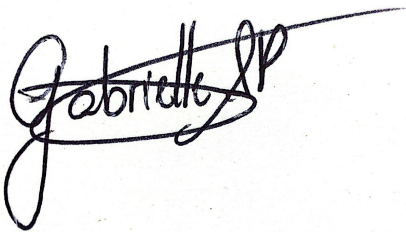
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