

The La Oroya Case: the Relationship Between Environmental Degradation and Human Rights Violations

by Paula Spieler*

INTRODUCTION

The right to a healthy environment is expressly recognized in the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights (Protocol of San Salvador). However, there are no international mechanisms to ensure its enforcement. In fact, the Protocol of San Salvador states that only two economic, social and cultural rights—the right to education and trade union rights—can give rise to legal petitions against states for non-compliance within the Inter-American Human Rights System (IAHRS).¹ International environmental law continues to adopt stricter standards, but individuals still lack recourse to claim environmental violations in the regional and universal systems.² Therefore, a state cannot be held directly accountable for environmental degradation or contamination.

The regional and universal human rights instruments exist in order to protect individuals' rights under international human rights law by providing quasi-judicial or judicial procedures to allege human rights violations.³ This paper will focus on the use of the IAHRS to allege human rights violations caused by environmental degradation. Although the Inter-American Commission on Human Rights (IACHR) cannot specifically analyze a violation of the right to a healthy environment, it has indirectly referred to environmental contamination in the context of other human rights violations. Moreover, the IACHR has asked states to protect the environment in order to promote other human rights.

This article will analyze the close relationship that exists between environmental degradation and human rights violations—mainly the rights to life and personal integrity—through

one case study: the case of *La Oroya Community v. Perú*, admitted by the IACHR in August 2009. The La Oroya case was the first to be admitted by the IACHR that specifically alleged that environmental degradation (including air, water and soil contamination) caused by the activities of a company could violate the rights to health, life, and personal integrity of the population of the region.

The next step will be for the IACHR to issue a Report on the Merits. If the State of Perú does not comply with the recommendations in the IACHR's Report on the Merits, the IACHR can send the case to the Inter-American Court of Human Rights (Court).⁴ The case would be the first time that the Court has assessed the responsibility of a state for the violation of human rights of a non-indigenous community caused by contamination of the environment. It is increasingly important to have the opportunity to hold states accountable for acts or omissions related to the protection of the environment, and a favorable ruling from the Court would be a significant step in that direction.

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ENVIRONMENTAL PROTECTION AND HUMAN RIGHTS

Human rights and environmental protection are two of the main concerns of modern international law,⁵ and the deterioration of the global environment is threatening human life and health. Whether international human rights law can contribute to environmental protection is an issue that remains to be conclusively resolved, but scholars have discussed the relationship between human rights and environmental protection at length.

Dinah Shelton claims that human rights and environmental protection represent “overlapping social values with a core of common goals.”⁶ Both seek the achievement of the highest quality of human life. In this sense, human rights depend on environmental protection and environmental protection depends on human rights. According to the World Charter for Nature, “mankind is part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of

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energy and nutrients.”⁷ Human rights and environmental protection are linked because both are required in order to achieve the highest quality of life for all.

In this context, the relationship between human rights and environmental protection has been described primarily in three ways: (1) environmental protection as a precondition to the promotion of human rights; (2) environmental protection as a human right itself; and (3) environmental protection as the result of the exercise of other human rights.

In the first perspective, human rights can only be realized if the environment is protected.⁸ According to Shelton, this perspective risks allowing states to use this precondition as an excuse not to protect human rights.⁹ Furthermore, it fails to account for the complexity of the interrelation between human rights and the environment.

The second perspective, which views the emergence of a right to a healthy environment as a human right itself in the international sphere, emerged in the 1970s. In 1972, the United Nations Conference on the Human Environment produced the Stockholm Declaration, which established that all persons should have the right to live in a quality environment.¹⁰ This idea continued to build momentum; by 1990, the UN General Assembly adopted a resolution stating that “all individuals are entitled to live in an environment adequate for their health and well-being.”¹¹ In 1992, the Rio Declaration characterized the right to a healthy environment as an “entitlement.”¹² Principle 10 of the Rio Declaration establishes the right to information, participation, and access to justice, as well as the central role these rights play in the protection of the environment.¹³ Under the Rio Declaration, individuals have the right to access information in relation to the environment that is held by public authorities and should have the opportunity to participate in decision-making processes.¹⁴ Moreover, individuals have the right to effective access to judicial and administrative proceedings.¹⁵

At the regional human rights system level, there are two instruments that expressly recognize the right to a healthy environment. In the African Union sphere, the African Charter on Human and Peoples’ Rights recognizes in Article 24 that “all peoples have the right to a generally satisfactory environment favorable for their development.”¹⁶ In the Inter-American system, the 1988 Protocol of San Salvador states in Article 11 that: “1. Everyone shall have the right to live in a healthy environment and to have access to basic public services. 2. The States Parties shall promote the protection, preservation, and improvement of the environment.”¹⁷

The European Human Rights System, however, does not have a clause on the right to a healthy environment. Since the 1970s, the Council of Europe has proposed the inclusion of the right to environment to the European Convention on Human Rights several times. For example, the European Conference on the Protection of Nature proposed a protocol to the European Convention that included the right to a healthy and non-degraded environment in 1970.¹⁸ The protocol also established the right to reasonably pollution-free air and water as well as the right to be protected against excessive noise and other nuisances.¹⁹ According to Shelton, the proposals were not approved mainly



By Maurice Chédel.

Railway Station of the Peruvian mining city of La Oroya.

because non-governmental bodies were the primary authors and the Council of Europe member states had no political will to accept them.²⁰

In the third perspective, environmental protection is seen as part of the protection of human rights. Linking human rights to environmental harm allows individuals to use global and regional human rights complaint procedures when states violate human rights by allowing substantial environmental degradation. Within this framework, a person can allege that environmental degradation, such as noise pollution or water and soil contamination, has affected certain rights guaranteed under international human rights instruments. Human rights protection is strengthened with the incorporation of environmental protection because it extends human rights protection to an area previously overlooked.

Shelton argues that this third perspective has two advantages over the establishment of a right to environment in human rights treaties.²¹ First, it avoids the need to define what a “decent” or “healthy” environment is, which avoids conflict with international environmental law. Second, it enables victims to bring complaints to human rights protection organs. Taking into account the absence of petition procedures in environmental treaties and international institutions, human rights organs are the only international alternative to hold States accountable for action or omission related to environmental protection.

In this context, it is important to highlight that even though the Protocol of San Salvador establishes the existence of the right to a healthy environment and states’ obligation to protect, preserve, and improve the environment, it doesn’t allow individuals to send petitions to the IACHR alleging that a state party is not fulfilling these obligations. Environmental harm can only be alleged in an instrumental way, by showing that it can cause severe violation of rights established under the American Convention on Human Rights (ACHR). This paper supports Shelton’s perspective and will argue that the IAHRs can be used to protect the environment, albeit in an indirect way.

THE INTER-AMERICAN HUMAN RIGHTS SYSTEMS

On a number of occasions since 2001, the OAS has recognized the relationship between human rights violations and environmental degradation.²² In 2001, the General Assembly of the OAS passed a resolution requesting “the General Secretariat to conduct, in collaboration with other organs of the Inter-American system, a study of the possible interrelationship of environmental protection and the effective enjoyment of human rights.”²³ A resolution in 2002 requested, “institutional cooperation in the area of human rights and the environment in the framework of the Organization and in particular between the IACHR and the OAS Unit for Sustainable Development and Environment.”²⁴

The Inter-American Court and the IACHR have also considered cases involving indigenous communities that alleged human rights violations caused by environmental degradation.²⁵ The most common allegations involve violations of the rights to health, life, property, and culture. Some cases have also alleged violations of respect for culture and freedom of religion, and others have addressed resource exploitation on lands traditionally owned or used by indigenous peoples. Specifically, the IACHR has requested the suspension of the activities on indigenous territories affected by oil exploration²⁶ and medical treatment for people affected by severe environmental pollution.²⁷

The first time that the IACHR addressed an environmental issue was in 1983. In its seventh report on Cuba, the IACHR recommended that the State should take specific environmental measures to protect the right to health. It highlighted that water supply and sanitation can have a strong impact on the population’s health.²⁸ In its 1997 Report on the Situation of Human Rights in Ecuador, the IACHR said that regulations for the development of land within the territory of indigenous populations should protect the environment and natural resources.²⁹ Moreover, it stated that oil development and exploitation in the Oriente damaged the environment and directly affected Ecuador’s Amazonian indigenous peoples’ “right to physically and culturally survive as people.”³⁰

In the case of *Yanomami v. Brazil*, the IACHR determined that the State of Brazil had violated the rights to life, liberty and personal integrity guaranteed by the American Declaration.³¹ The State’s construction of a highway through Yanomami territory and authorization of private exploitation of the territory’s resources led to an influx of non-indigenous people who brought contagious diseases that were not treated due to insufficient medical care.³² *Yanomami* demonstrated that a State can be held accountable for

violating human rights and for failing to take measures to prevent other actors from degrading the environment.³³

The Inter-American Court has determined in two cases involving indigenous communities that a state should adopt measures to protect economic, social, and cultural rights (ESCR), such as access to clean water and food, by linking it to the violation of the collective right to property and the right to life.³⁴ According to the Court, Article 21 of the ACHR encompasses the protection of natural resources traditionally used by a community and their necessity for survival.³⁵ In the case of *Saramaka v. Suriname*, the Court determined that the State had violated the collective right to property of an afro-descendent tribe when

it gave concessions to wood-logging activities and mining inside the tribe’s territory without consulting it first.³⁶ The Court held that it was necessary for the State to conduct a study on the social and environmental impact before granting any concession in the Saramaka territory.

The IAHRs has recognized the relationship between environmental degradation and human rights violations on a number of different occasions, but the Court has never found a relationship between a company’s contamination of the environment and human rights violations for an *entire* population, both indigenous

and non-indigenous. In this regard, *La Oroya* could be the first of its kind.

LA OROYA COMMUNITY V. PERÚ

La Oroya, Perú is located at an altitude of 3,700 meters in the Peruvian Andes, 175km from Lima, along the central highway and the Mantaro River in Yauli Province.³⁷ It is surrounded by rugged mountains, which makes the area susceptible to temperature inversions that trap pollution over the city. Sixty-five percent of the population of Yauli Province lives below the poverty line and most of the community lacks basic services.³⁸ La Oroya has around 30,000 inhabitants, and for many of them, work at the local smelter is their primary income source.³⁹

On December 27, 2006, the *Asociación Interamericana para la Defensa del Ambiente (AIDA)*, *Centro de Derechos Humanos y Ambiente (CEDHA)*, *Sociedad Peruana de Derecho Ambiental (SPDA)* and Earthjustice filed a petition on behalf of a group of inhabitants of La Oroya to the IACHR. The petition alleged that the State of Perú had violated the following Articles of the ACHR: 4 (life), 5 (personal integrity), 11 (honor and dignity), 13 (freedom of thought and expression), 8 (fair trial), and 25 (judicial protection), in connection with the duties of the State in Articles 1.1 and 2 of the Convention. The petition also alleged violations of Articles 10 (health) and 11 (healthy environment) of the Protocol of San Salvador.⁴⁰

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The petitioners alleged that the Peruvian Government was responsible for violations of the American Convention through continual actions and omissions in La Oroya—mainly a lack of control and supervision of the metallurgical complex and failure to adopt measures to mitigate the health effects caused by the operations.⁴¹ La Oroya residents were constantly exposed to lead, arsenic, cadmium, and sulfur dioxide pollution caused by multi-metal smelting activities.⁴² The petitioners alleged that the metallurgical complex owned by the American company Doe Run caused severe environmental contamination of La Oroya and that State actions and omissions had led to several violations of the rights of the presumed victims.⁴³ The petitioners also claimed that the State had known about the grave situation in La Oroya since 1999 because of numerous local authority reports and judicial decisions on the issue.⁴⁴

When the petition was filed in 2006, La Oroya was one of the ten most contaminated cities in the world.⁴⁵ According to the petitioners, the population, especially children and pregnant women, have been exposed to high levels of lead, arsenic, and cadmium because of the activity of the Doe Run smelter.⁴⁶ In most cases, these levels exceed the national and World Health Organization permitted standards. Four blood tests were conducted, in 1999, 2000, 2001, and 2005 to check the population of La Oroya's lead levels and the results demonstrated that the lead levels were above the permitted standard and directly linked to the activity of the metallurgical complex.⁴⁷ State reports concluded that these levels of contamination were a consequence of the metallurgical complex's activities.⁴⁸

It is important to understand the impact of these toxic substances on health. Lead is an extremely toxic element and if absorbed, can reduce reaction time, impact memory, and debilitate limbs. In a child, lead can diminish learning capacity and negatively affect behavior. The effects range from cognitive problems to death, depending on the level and duration of exposure.⁴⁹ Cadmium can deteriorate lung function, cause lung diseases, weaken the immune system, damage the kidneys, and impair heart function.⁵⁰ Excessive arsenic exposure is linked to lung, bladder, skin, and liver cancers. Arsenic is carcinogenic and toxic as well. In addition, arsenic can cause gastrointestinal problems (such as nausea and diarrhea) and nervous system and blood disorders.⁵¹ Despite limited information on the effects of simultaneous exposure to multiple contaminants, it is known that it can increase levels of mortality. Cadmium, lead and arsenic together form a "toxic cocktail"⁵² that can increase the health risk to the population.

On August 31, 2007, the IACHR granted precautionary measures in favor of 65 residents of La Oroya because they suffered from a series of health problems that stemmed from the lead, arsenic, and cadmium that were released into the air, soil, and water by the metallurgical complex in La Oroya. The beneficia-

ries of the precautionary measures did not have adequate medical care for diagnosis, treatment, or prevention, so the IACHR ordered the State to give specific medical care to the victims in order to mitigate irreparable damage to their health and life. In 2009, the individuals who received medical care provided blood and urine samples to check the levels of lead, cadmium, and arsenic.⁵³ The results showed that they still suffered negative health effects as a consequence of the high levels of contamination in La Oroya.⁵⁴

According to the 2010 Report on the Level of the Toxic Substances on the Beneficiaries of the Precautionary Measures, the Peruvian Government still had not implemented effectively all medical diagnostics and assessments two years and seven months after the adoption of the precautionary measures. The

report emphasizes that the State should adopt immediate preventive measures to reduce the environmental contamination and the levels of lead, arsenic, and cadmium, because the absence of clinical symptoms does not indicate the absence of long-term health implications.⁵⁵

The IACHR declared the petition admissible on August 5, 2009, based on the rights established under Articles 4 (life), 5 (humane treatment), 8 (fair trial), 13 (freedom of thought and expression), and 25 (judicial protection)

of the American Convention, in connection with the duties of the State established in Articles 1.1 and 2.⁵⁶ Specifically, the IACHR noted that the State's hostile attitude towards those who aimed to disseminate information on the environmental contamination in La Oroya could constitute a violation of the freedom of thought and expression under Article 13.⁵⁷ It declared the petition inadmissible in relation to the violation of the Article 11 (right to honor and dignity). The IACHR said that it was not competent to analyze the violation of Articles 10 (health) and 11 (healthy environment) of Protocol of San Salvador, because the Protocol of San Salvador expressly states that only Articles 8 and 13 can be brought to the IACHR through individual petition.⁵⁸ The IACHR concluded that the deaths and diseases allegedly caused by environmental contamination could constitute violations of the rights to life and personal integrity.⁵⁹

In March 2010, the IACHR held a public hearing in which the petitioners presented evidence that the State was not complying with the IACHR's precautionary measures and its lack of actions in order to deal with the situation in La Oroya. The IACHR will issue a Report on the Merits very soon, which could force the State of Perú to address the IACHR's precautionary measures or face being brought before the Court.

CONCLUSION

The *La Oroya* case has the potential to expand the concept that environmental protection is closely related to human rights promotion and effectiveness. As with the people of La Oroya,

Failure to preserve a healthy environment has a clear and ever increasing effect on the enjoyment of human rights.”

environmental degradation can directly cause human rights violations. The maintenance of a healthy environment should be a major concern today, both domestically and internationally, because of the human rights implications associated with failing to protect the environment effectively. The regional and universal organs for human rights protection should be able to address this issue, and cases like *La Oroya v. Perú* can bring the IAHRs a step closer to doing so.

As of today, all of the cases judged by the Inter-American Court regarding to environmental degradation were related to indigenous communities and the protection of their rights and territories.⁶⁰ Although these cases represented significant developments in the connection of environmental degradation to human rights violations, the facts in the *La Oroya* case show that the human rights of people outside indigenous communities can also be violated through environmental contamination. If the IACHR issues a report in favor of the petitioners and the State of Perú continues to fail to address the concerns of the IACHR, the Court should also be able to address this important issue.

The next step will be for the IACHR to issue a Report on the Merits. If the State of Perú fails to comply with the IACHR's recommendations and the IACHR sends the *La Oroya* case to the Inter-American Court, it will be the first case involving environmental contamination of a non-indigenous community to be judged by the Court. Such treatment could encourage the

filing of petitions to the IACHR based on other environmental problems that affect the health, life, or the personal integrity of a community, like pesticide contamination or air pollution in cities.

Failure to preserve a healthy environment has a clear and ever increasing effect on the enjoyment of human rights. Whichever perspective one adopts regarding the link between human rights and environmental protection—1) the stand-alone right to a healthy environment, 2) environmental protection as precondition to human rights realization, 3) or environmental protection as part of the enjoyment of human rights—it is undeniable that environmental health and human rights are strongly interrelated. The Inter-American Court and IACHR should be able to address, at least indirectly, the relationship between the two and determine the measures that a state should take in order to protect the environment, and through it, human rights.

The potential importance of *La Oroya v. Perú* is two-fold: it could further establish the link between environmental degradation and human rights violation and it could demonstrate that a state can be held accountable for human rights violations caused by environmental contamination. The case could have a profound impact on the IAHRs, particularly if the Commission and the Court hold the State responsible for the human rights violations alleged by the petitioners. HRB

ENDNOTES: The La Oroya Case: the Relationship Between Environmental Degradation and Human Rights Violations

¹ Organization of American States, Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights art. 19.6, *opened for signature* Nov. 17, 1988, O.A.S.T.S. No. 69 (*entered into force* Nov. 16, 1999) [hereinafter Protocol of San Salvador].

² Caroline Dommen, "How Human Rights Norms Can Contribute to Environmental Protection," in *Linking Human Rights and the Environment* 105, 105 (Romina Picolotti & Jorge Daniel Taillant eds., 2003).

³ Romina Picolotti, "Agenda 21 and Human Rights," in *Linking Human Rights and the Environment* 47, 47 (Romina Picolotti & Jorge Daniel Taillant eds., 2003).

⁴ As November 1st, 2010, the last movement that occurred in relation to the case was a public hearing in the IACHR in March. The next step of the IACHR will be to issue its Report on the Merits and fix a deadline for the State to comply with the recommendations.

⁵ Dinah Shelton, *Human Rights, Environmental Rights, and the Right to Environment*, 28 *Stan. J. Int'l L.* 103, 138 (1991).

⁶ *Id.* at 138.

⁷ *Id.* at 109-10.

⁸ *Id.* at 112.

⁹ *Id.* at 113.

¹⁰ Declaration of the U.N. Conference on the Human Environment, June 16, 1972, Principle 1, U.N. Doc. A/CONF.48/14/Rev.1 (1973), reprinted in 11 *I.L.M.* 1416 (1972), [hereinafter Stockholm Declaration]. (Principle 1 states: "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity

and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.")

¹¹ G.A. Res. 45/94, ¶ 1, U.N. Doc. A/RES/45/94 (Dec. 14, 1990). In 1994, a Draft Declaration of Principles on Human Rights and the Environment was elaborated at the United Nations in Geneva by a group of experts on human rights and environmental protection. Final Report on Human Rights and the Env't, Comm'n on Human Rights Sub-Comm'n on Prevention of Discrimination and Prot. of Minorities, 46th session, Annex I, U.N. Doc. E/CN.4/Sub.2/1994/9 (July 6, 1994).

¹² U.N. GAOR, Report of the United Nations Conference on Environment and Development: Rio Declaration on Environment and Development, Vol. I, Annex I, Principle 1, U.N. Doc. A/CONF.151/26 (1992) [hereinafter Rio Declaration].

¹³ Rio Declaration, Principle 10.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ African Charter on Human and Peoples' Rights art. 24, OAU Doc. CAB/LEG/67/3 rev. 5; 1520 UNTS 217; 21 *ILM* 58 (1982).

¹⁷ Protocol of San Salvador, *supra* note 2, art. 11.

¹⁸ Shelton, *supra* note 6, at 132.

¹⁹ World Charter for Nature, G.A. Res. 37/7, U.N. GAOR, 37th Sess., Supp. No. 51, pmb., para. 3(a), at 17, U.N. Doc. A/37/51 (1982).

²⁰ Shelton, *supra* note 6, at 132.

²¹ Dinah Shelton, "The Environmental Jurisprudence of International Human Rights Tribunals," in *Linking Human Rights and the Environment* 1 (Romina Picolotti & Jorge Daniel Taillant eds., 2003).

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