INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF THE INHABITANTS OF LA OROYA V. PERU

JUDGMENT OF NOVEMBER 27, 2023
(Preliminary Objections, Merits, Reparations and Costs)

In the *case of the Inhabitants of La Oroya v. Peru,*

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") composed of the following judges:

Ricardo C. Pérez Manrique, President
Eduardo Ferrer Mac-Gregor Poisot, Vice President
Humberto Antonio Sierra Porto, Judge
Nancy Hernández López, Judge
Verónica Gómez, Judge
Patricia Pérez Goldberg, Judge
Rodrigo Mudrovitsch, Judge

also present,

Pablo Saavedra Alessandri, Registrar
Romina I. Sijniensky, Deputy Registrar

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") and Articles 31, 32, 42, 65 and 67 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), delivers this judgment, which is structured as follows:

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I
INTRODUCTION OF THE CASE AND CAUSE OF THE ACTION

1. *The case submitted to the Court.* On September 30, 2021, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted to the jurisdiction of the Court the case of the "Community of La Oroya against the Republic of Peru" (hereinafter "the State" or "Peru"). According to the Commission, the case concerns a series of alleged human rights violations to the detriment of a group of inhabitants of La Oroya,[1] as a result of alleged pollution caused by the La Oroya Metallurgical Complex (*Complejo Metalúrgico de La Oroya*, hereinafter "the CMLO"). The Commission argued that the Peruvian State had failed in its obligation to act with due diligence in regulating, monitoring and supervising the CMLO's activities in order to protect the rights to a healthy environment, health, life and personal integrity. It also alleged that the State failed to comply with its obligation to progressively ensure the realization of the rights to health and a healthy environment due to the modification of air quality standards approved by the State, which were regressive. Furthermore, it held that Peru is responsible for the violation of the rights of the child, since the State failed to adopt adequate measures to protect children and did not address the main source of risk to ensure their health. Furthermore, it noted that the State failed to ensure the alleged victims' right to public participation, since they did not receive any relevant information on measures that affected their rights. It also indicated that the State violated the right to judicial protection, given that more than 14 years had passed since the ruling of the Constitutional Court (hereinafter "CC"), which had ordered protection measures, and yet the State had not taken effective steps to fully implement all the points mentioned in the judgment, nor had it initiated actions to ensure compliance. Finally, the Commission argued that the State is also responsible for failure to carry out a thorough and effective investigation into alleged acts of harassment, threats and reprisals reported by some of the alleged victims.

2. *Procedure before the Commission*. The procedure before the Commission was as follows:

a) *Precautionary measures before the Commission.* On November 21, 2005, the petitioners submitted a request for precautionary measures to protect the rights to life, personal integrity and health of 66 people. On August 31, 2007, the Commission granted measures in favor of 65 individuals. On May 3, 2016, the Commission decided to extend this measure in favor of 14 others.

b) *Petition.* On December 27, 2006, the Inter-American Association for Environmental Defense (AIDA), the Center for Human Rights and Environment (CEDHA), EarthJustice, and the *Asociación Pro Derechos Humanos* (APRODEH), filed the initial petition before the Commission.

[1] In their petition before the Inter-American Commission, the representatives requested that the identity of the [alleged] victims be kept strictly confidential due to the pressures suffered by those engaged in efforts to protect the environment and human health. In response to this request, the Commission withheld the names of the alleged victims, replacing them with the pseudonyms "María" and "Juan," each with a respective number. The State is aware of the real names that correspond to each of the pseudonyms used. The alleged victims identified by the Commission, in accordance with the pseudonyms, are listed in Annex 1 to this judgment.

c) *Admissibility Report.* On August 5, 2009, the Commission issued Admissibility Report Nº 76/09, in which it concluded that the petition was admissible.[2]

d) *Merits Report.* On November 19, 2020, the Commission adopted the Report on the Merits Nº 330/20 (hereinafter "the Merits Report"), in which it reached a number of conclusions and made several recommendations to the State.

e) *Notification to the State*. On December 30, 2020, the Commission notified the Merits Report to the State, granting it two months to report on its compliance with the recommendations. After being granted two extensions, the State requested a further extension, which was denied by the Commission.

3. *Submission to the Court*. On September 30, 2021, the Commission submitted to the jurisdiction of this Court all the facts and human rights violations described in the Merits Report,[3] given the need to obtain justice and reparation for the victims. The Court notes with concern that, between the presentation of the initial petition before the Commission, and the submission of the case before the Court, nearly 15 years have elapsed.

4. *Requests of the Inter-American Commission.* Based on the foregoing, the Commission requested that the Court conclude and declare the international responsibility of Peru for the violation of the rights established in Articles 4(1), 5(1), 8(1), 13(1), 19, 23(1)(a), 25(1), 25(2)(c) and 26 of the American Convention, in relation to Articles 1(1) and 2 of the same instrument and, as measures of reparation, to order the State to implement the recommendations indicated in its report.

II
PROCEEDINGS BEFORE THE COURT

5. *Notification to the State and the representatives.* The Court notified the submission of the case to the representatives[4] and to the State on December 2, 2021.[5]

6. *Brief with pleadings, motions and evidence.* On February 3, 2022, the representatives of the alleged victims presented their brief with pleadings, motions and evidence (hereinafter the "pleadings and motions brief"), pursuant to Articles 25 and 40 of the Rules of Procedure. The representatives substantially agreed with the Commission´s observations and complemented its line of argument. In addition, they proposed specific measures of reparation.

7. *Answering brief.* On July 20, 2022, the State submitted to the Court its brief containing preliminary objections, its answer to the submission of the case and the Merits Report, and to the pleadings and motions brief (hereinafter "answering brief"), pursuant

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[2] On August 14, 2009 the Commission notified the Admissibility Report to the parties.

[3] The Commission appointed then Commissioner Edgar Stuardo Ralón Orellana and Executive Secretary Tania Reneaum Panszi as its delegates before the Court. It also appointed the then Assistant Executive Secretary, Marisol Blanchard Vera, and Jorge Humberto Meza Flores, Christian González Chacón and Daniela Saavedra Murillo, as its legal advisers.

[4] The alleged victims were represented by the Inter-American Association for Environmental Defense (AIDA) and the *Asociación Pro Derechos Humanos* (APRODEH).

[5] The State appointed as its agents in the case Carlos Miguel Reaño Balerezo, Specialized Supranational Public Prosecutor, Carlos Llaja Villena, Specialized Supranational Assistant Public Prosecutor, and Christian Adolfo Samillan Law Cuen, lawyer of the Specialized Supranational Public Prosecutor's Office.

to Article 41 of the Court's Rules of Procedure. In its brief, the State raised three preliminary objections, denied its responsibility for the alleged violations and dismissed requests for reparation measures made by the Commission and the representatives.

8. *Observations on the preliminary objections.* On September 2 and 5, 2022, the representatives and the Commission forwarded their observations on the preliminary objections filed by the State.

9. *Public hearing.* In an order issued on September 12, 2022,[6] the President of the Court summoned the parties and the Commission to a public hearing to receive their final oral arguments and observations on the preliminary objections and possible merits, reparations and costs, and to receive the statements of three alleged victims and two expert witnesses offered by the representatives,[7] as well as one witness and an expert witness offered by the State.[8] The public hearing took place on October 12 and 13, 2022, during the Court's 153rd Regular Session held in Montevideo, Uruguay.[9]

10. *Amici curiae.* The Court received seventeen *amici curiae* briefs submitted by: 1) the Legal Clinic of the Business Institute (*IE Law School*);[10] 2) the Technical Group on Environment and Human Health and the civil society platform on Business and Human

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6 *Cf. Case of Community of La Oroya v. Peru.* Call to a hearing. Order of the President of the Inter-American Court of Human Rights, September 12, 2022. Available at: www.cortedh.or.cr/docs/asuntos/communidad_la_oroya_12_09_22.pdf

7 On September 19, 2022 the representatives the representatives advised that the declarant Maria 9 was physically unable to attend the hearing and therefore requested that Maria 9 give her statement by affidavit and that, instead, Maria 1, who had been called to testify by affidavit, be allowed to testify during the public hearing. On September 26, 2022, the State and the Commission presented their observations on the representatives' request for substitution. In a note from the Secretariat dated September 29, 2022, it was decided to receive the statement of Maria 1 during the public hearing, and the statement of María 9 by affidavit.

8 On September 19, 2022 the State requested two clarifications in relation to the Order of the President of the Court of September 12, 2022. Specifically, it requested clarification of the following: a) the manner in which María 15 would provide her statement, and b) the omission of the statement of C.M. in substitution of Juan 12. In a note of the Secretariat of September 16, 2022, the material errors present in in the Order of the President were rectified.

9 The following persons appeared at the hearing: a) for the Inter-American Commission, Jorge Meza Flores, Assistant Executive Secretary and Daniela Saavedra, Adviser of the Commission; b) for the representatives of the alleged victims: Anna Cederstav, Liliana Ávila García, Marcella Ribeiro, Daniela Garcia, Jacob Kopas, Gloria Cano and Christian Huaylinos; c) for the State of Peru: Carlos Miguel Reaño Balarezo, Specialized Supranational Public Prosecutor, Judith Cateriny Córdova Alva, lawyer of the Specialized Supranational Public Prosecutor's Office, José Carlos Vargas Soncco and Manuel Jesús Gallo Esteves, lawyers of the Specialized Supranational Public Prosecutor's Office.

10 The brief was signed by Celia Cabré Sánchez, Lucía Camarero Garau, Santiago Celis and Alexandra Martínez and discusses the development of the rights to a healthy environment, health, life, personal integrity and judicial guarantees in international human rights law.

Rights;[11] 3) the United Nations Special Rapporteur on Human Rights and Environment;[12] 4) Susana Ramírez Hita;[13] 5) Carla Luzuriaga-Salinas;[14] 6); Laura Sofía Garzón Quijano, Verónica Hernández López, Julián Murcia Rodríguez, Valentina Sierra Camacho and Andrés Felipe López;[15] 7) the Mexican Center for Environmental Law A.C. (CEMDA);[16] 8) the NGO *Defensoría Ambiental*;[17] 9) the Center for Justice and International Law (CEJIL);[18] 10) the Human Rights Clinic of the Human Rights Research and Education Center of the University of Ottawa and the Human Rights Clinic of the Graduate Law Program of the Pontificia Universidad Católica of Paraná;[19] 11) Ezio Costa Cordella and Macarena Martinic Cristensen;[20] 12) the organizations Earthjustice and Justice for

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[11] The State pointed out that the Technical Group on Environment and Human Health is composed of several organizations, including two organizations that represent the alleged victims, AIDA and APRODEH. The State provided a link to a web page dated December 16, 2020, which stated that the Technical Group on Environment and Human Health (hereinafter, "the Technical Group") was composed of various organizations, such as AIDA and APRODEH. In view of this, it argued that the *amicus curiae* briefs should be presented by individuals or institutions not involved in the litigation or proceedings, and therefore requested that the brief not be admitted. In this regard, the Court notes that AIDA and APRODEH do not appear as signatories of the *amicus curiae* brief. However, considering the State's observations, and the fact that the representatives indicated in their pleadings and motions brief that they belong to the Technical Group, and based on Article 2(3) of the Rules of Procedure, the brief presented by the Technical Group is not admissible. Accordingly, the Court will not consider this brief.

[12] The brief was signed by David R. Boyd and relates to: (i) factual considerations of the case; (ii) the right to a clean, healthy and sustainable environment; (iii) clean air; (iv) non-toxic environments; (v) key principles to guide the interpretation of the right to a clean, healthy and sustainable environment; (vi) the special impact of environmental damage on the rights of the child; (vii) the right to a healthy environment, access to justice and effective remedies; (viii) compensation; (ix) non-pecuniary restitution, and (x) conclusions.

[13] The brief was signed by Susana Ramírez Hita and discusses possible measures of reparation that could be implemented in the instant case. The proposal for measures of reparation considered cases such as: (i) oil spills in the Ynayo Creek, and (ii) the oil spill due to lack of maintenance by *PetroPeru* in the Marañón River.

[14] The brief was signed by Carla Luzuriaga-Salinas, and considers aspects related to the violation of the right to a healthy environment, as well as possible forms of comprehensive reparation.

[15] The brief was signed by Julián Ricardo Murcia Rodríguez, María Verónica Hernández, Laura Sofía Garzón Quijano, Valentina Sierra Camacho, law students of the Universidad de La Sabana, and Andrés Felipe López Latorre, member of the Research Group on International Law and professor at the Law and Political Science Faculty of Universidad de La Sabana. The brief considers: (i) the risk of a lack of analysis of State responsibility for acts committed by third parties in inter-American jurisprudence, and (ii) the justiciability of ESCER.

[16] The brief was signed by Gustavo Adolfo Alanís Ortega, and considers: (i) the relationship between air quality, a healthy environment and health; (ii) obligations and international air quality standards, and (iii) conclusions and requests.

[17] The brief was signed by Alejandra Donoso and contains considerations on: (i) cases of pollution in La Oroya, Peru and in Quintero and Pachuncaví, Chile, as examples of "sacrifice zones" and environmental injustice in Latin America, and (ii) the importance of the ruling of the Honorable Inter-American Court of Human Rights for environmental justice in Latin America.

[18] The brief was signed by Viviana Krsticevic, Gisela de León, Florencia Reggiardo, and Francisco Quintana, and focuses on: (i) the State's obligations to ensure the right to life and personal integrity in relation to the right to clean air; (ii) the State's obligations to ensure the right to a healthy environment in relation to the right to clean air; (iii) the State's obligations to ensure the right to health in relation to the right to clean air; (iv) international standards that could be developed on the right to clean air *vis à vis* poor quality air and the climate emergency, and (v) conclusions.

[19] The brief was signed by Danielle Anne Pamplona, Juliana Bertholdi and Salvador Herencia Carrasco, and considers: (i) the effects of mining activities on the human rights of the community of La Oroya; (ii) the repercussions of economic activities on human rights and the State's responsibility to protect rights, even when violations are committed by business corporations; (iii) the State's obligations to ensure a healthy environment and health to communities affected by business activities, and (iv) conclusions and petition.

[20] The brief was signed by Ezio Simone Costa Cordella and Macarena Martinic Cristensen, and relates to: (i) compliance with the guarantees established in the Convention and the need for a precautionary approach;

Nature;[21] 13) the United Nations Working Group on human rights and transnational corporations and other business enterprises and the Special Rapporteur on the situation of human rights defenders; [22] 14) ALTSEAN-Burma (Alternative ASEAN Network on Burma); the Center for Studies on Law, Justice and Society (*Dejusticia*); the Center for Legal and Social Studies (CELS); the Colombian Commission of Jurists (CCJ); the Egyptian Initiative for Personal Rights (EIPR); the Due Process of Law Foundation (DPLF); the Human Rights Clinic of the University of Virginia; *Justiça Global*; Minority Rights Group (MRG); and the Project on Organization, Development, Education and Investigation (PODER), as members of the working group on strategic litigation of Red-DESC;[23] 15) the University Network for Human Rights;[24] 16) Juan Méndez, John Knox, James Anaya, Tracy Robinson, James Cavallaro, Paulo de Tarso Vannuchi, Flavia Piovesan, Paulo Abrão and *Red Universitaria para los Derechos Humanos*;[25] and 17) the Legal Clinic on Environment and Public Health – MASP – of Universidad de los Andes.[26]

(ii) content and application of the precautionary principle; (iii) consequences of applying the precautionary principle; (iv) application of the precautionary principle in this case, and (v) final thoughts.

21 The brief was signed by Mae Manupipatpong, Jacob Kopas, Martin Wagner and Rafael González Ballar, and considers: (i) the impacts on health of pollution from the metallurgical complex; (ii) the contamination of La Oroya caused substantial and predictable risks to human health, and the harm already evident in many victims is the expected outcome of such risks.

22 The brief was signed by Fernanda Hopenhaym, President of the Working Group on the issue of human rights and transnational corporations and other commercial enterprises, and Mary Lawlor, Special Rapporteur on the situation of human rights defenders, and relates to: (i) significant developments in international standards related to businesses and human rights and their application when determining the international responsibility of States in light of their duty to protect against human rights abuses committed by businesses; (ii) the State's duty to respect and protect human rights in the context of business activities; (iii) the responsibility of businesses to respect human rights; (iv) access to reparation and (v) final observations.

23 The brief was signed by Debbi Stothard, Vivian Newman Pont, Diego Morales, Moises David Meza, Sebastían Saavedra Eslava, Nelson Camilo Sánchez, Ahmed Elseidi, Daniel Cerqueira, Eduardo Baker, Stefanía Carrer, Jennifer Castello, Victoria de los Ángeles Beltrán Camacho, Fernando Ribeiro Delgado and María Eugenia Meléndez Margarida, and relates to: (i) the State's obligations to ensure the right to a healthy environment and related rights through the effective regulation of business activities *vis à vis* industrial pollution; (ii) the disproportionate effects of environmental injustice on the human rights of specific populations and the corresponding obligation of the State to ensure substantive equality and prevent and redress intersectional discrimination; (iii) the State's human rights obligations with respect to the protection of environmental defenders; (iv) the primacy of human rights over business and investment instruments and decisions, and (v) regional and global importance of the standards involved in the present case.

24 The brief was signed by Thomas B. Becker Jr., María Luisa Aguilar Rodríguez, Juliana Bravo, Eliana Rojas, Margarita Flórez, Guillermo Pérez, Marlene Alleyne, Sofía Chávez, Gédéon Jean, Rosa María Mateus, Dakota Fenn, Alejandra Donoso Cáceres, Ruhan Nagra, Danny Noonan, Alberto Mexia, Freddy Ordóñez, Maricler Acosta, Angie Tórrez, Perry Gottesfeld, Martha Inés Romero, Gabriella Alves of Paula, Laura Chacón, Priyanka Radhakrishnan and Mayeli Sánchez Martínez, and relates to: (i) the State's positive obligations with respect to the right to a healthy environment; (ii) background; (iii) similar violations of environmental rights in Peru, Chile, Colombia, Mexico and Brazil, and (iv) conclusions.

25 The brief was signed by Juan Méndez, John Knox, James Anaya, Tracy Robinson, James Cavallaro, Paulo of Tarso Vannuchi, Flavia Piovesan, Paulo Abrão, Aua Balde, Bernard Duhaime, Dominique Hervé, Sergio Puig, César Rodríguez Garavito, Armando Rocha, Adriana Sanín, Jânia Saldanha and Tomaso Ferrando, and discusses the following issues: (i) the fact that the right to a heathy environment has been recognized at international level and is applicable to the case of Peru regarding control of the private industrial contamination; (ii) the right to a healthy environment imposes substantive obligations on States which apply to cases of environmental contamination by private agents and entities; (iii) the right to a healthy environment imposes procedural obligations on States applied to cases of environmental contamination by private agents and entities, and (iv) the State of Peru is responsible and must remedy environmental contamination in La Oroya.

26 The brief was signed by Mauricio Felipe Madrigal Pérez, Silvia Catalina Quintero, Leonardo Fernández Jiménez and Juan Sebastián Avendaño Castañeda. It contains arguments related to the international responsibility of the Peruvian State for the facts of this case and considers the soft law provisions applicable to this specific case.

11. *Final written arguments and observations.* On November 29, 2022, the parties and the Commission presented their final written arguments and observations, respectively. The State and the representatives forwarded the annexes to their final written arguments.

12. *Observations on the annexes to the final arguments.* On January 12, 2023, the representatives and the State submitted their observations on the annexes together with the final written arguments of the parties, respectively, and the representatives forwarded their annexes together with said observations. On that same date, the Commission reported that it had no observations to make on the annexes submitted by the State together with its final written arguments.

13. *Observations on the annexes presented by the representatives in their brief of January 12, 2023.* On January 30, 2023, the State submitted its observations to the annexes sent by the representatives with their brief of January 12, 2023. On the same date, the Commission stated that it had no observations to make on said annexes.

14. *Disbursements in application of the Legal Assistance Fund.* On August 1, 2023, the Secretariat, following the instructions of the President of the Court, sent information to the State on the expenditures made in application of the Victims' Legal Assistance Fund of the Inter-American Court (hereinafter "the Fund") in the instant case. In accordance with Article 5 of the Rules for the Operation of the Fund, it granted the State a period of time to submit any observations deemed pertinent. On August 10, 2023, the State submitted its observations.

15. *Other briefs.* On October 20, 2023, a brief was received from the representatives reporting the reactivation of operations at the Metallurgical Complex of La Oroya as well as further acts of stigmatization and harassment against the alleged victims. On October 27, 2023, the State and the Commission forwarded their observations on the representatives' brief, and the State submitted various annexes. In a note sent by the Secretariat, the representatives and the Commission were granted a period of time to present any observations deemed pertinent to said annexes. On November 10, 2023, the representatives and the Commission forwarded their observations on the annexes to the State's brief.

16. *Deliberation of the case*. The Court deliberated this judgment virtually on October 19 and 20, 2023, and in person on November 13, 14, 20 and 27, 2023.

III
JURISDICTION

17. The Court has jurisdiction to hear this case pursuant to Article 62(3) of the American Convention, given that Peru has been a State Party to said instrument since July 28, 1978, and accepted this Court's contentious jurisdiction on January 21, 1981.

IV
PRELIMINARY OBJECTIONS

18. The State filed three preliminary objections, which will be analyzed in the following order: a) preliminary objection regarding lack of jurisdiction *ratione materiae* and *ratione temporis*, and b) preliminary objection regarding failure to exhaust domestic remedies.

A. Regarding the lack of jurisdiction *ratione materiae* and *ratione temporis*

A.1. Arguments of the State and observations of the Commission and the representatives

19. The ***State*** argued that, according to Article 19(6) of the Protocol of San Salvador, only the protection of the right to freedom of association or the right to education can be analyzed through the mechanism of petitions before the Inter-American System for the Protection of Human Rights (either directly or indirectly) but no such possibility is permitted with respect to the right to a healthy environment or the right to health. Therefore, the State considered that, in view of the erroneous inclusion by the representatives of Articles 10 and 11 of the Protocol of San Salvador, it was appropriate to file a preliminary objection on the grounds of *ratione materiae*. It also argued that it is not possible to infer the direct justiciability of Article 26 of the Convention, and therefore filed a preliminary objection on the grounds of the "erroneous inclusion" of said article.

20. The State also filed a preliminary objection based on *ratione temporis*, arguing that the litigation is limited by a time period, which the representatives have exceeded with their arguments. Specifically, the State argued that the representatives' request that the Court examine violations of Article 10 and 11 of the Protocol of San Salvador for events that occurred at least since 1974 exceeds the Court's jurisdiction *ratione temporis*. This is so, given that the Peruvian State signed the Protocol of San Salvador in 1988 and ratified it in 1995, entering into force in 1999. In this regard, it considered that if it were appropriate to analyze facts under the rights contained in the Protocol of San Salvador, this would only be possible with respect to those that occurred after November 1999.

21. The ***representatives*** pointed out that the facts of this case clearly indicate a violation of the right to a healthy environment, which in turn led to the violation of other rights, such as the rights to life and personal integrity, regarding which the State had immediate obligations that were not complied with. In this sense, they held that "it is obvious that the Court can rule on violations of the right to a healthy environment and health, as evidenced in the present case." They also recalled that the Court has reiterated on numerous occasions its competence to examine violations of Article 26 of the American Convention. With respect to Articles 10 and 11 of the Protocol of San Salvador, they stated that the use of these articles serves to identify and interpret rights protected by the Convention. Consequently, they requested that the Court dismiss the preliminary objection raised by the State on the grounds of *ratione materiae*.

22. Regarding the preliminary objection based on *ratione temporis*, the representatives argued that the rights to a healthy environment and to health are protected under Article 26 of the Convention. In this regard, they pointed out that Peru ratified the OAS Charter on February 12, 1954; hence it recognition of these rights pre-dates the entry into force of the Protocol of San Salvador. They also emphasized that these rights have been recognized in the Peruvian Constitution since 1979 and that they are also recognized in other international instruments for the protection of rights. The representatives further argued that the Court has jurisdiction to examine violations of a permanent and continuous nature that began before the entry into force of the Protocol of San Salvador.

23. The ***Commission*** observed that under Article 62 of the American Convention, the Court is fully competent to rule on compliance with Article 26 of the Convention,

since the Peruvian State has recognized the Court's contentious jurisdiction in the interpretation and application of the provisions of said treaty. In this regard, it affirmed that the Court has jurisdiction *ratione materiae* to determine whether the State has complied with its obligations arising from said article, and therefore the objection raised by the State is inadmissible. Moreover, the Commission noted that Peru ratified the Protocol of San Salvador, which recognizes the right to a healthy environment in Article 11, but did not comment on the Court's jurisdiction to declare autonomous violations of this article.

A.2. Considerations of the Court

24. The Court recalls that, like any jurisdictional body, it has the power inherent to its functions to determine the scope of its own jurisdiction (*compétence de la compétence*). In making such a determination, the Court must take into account that the instruments that recognize the enabling clause of compulsory jurisdiction (Article 62(1) of the Convention) presuppose the States' acceptance of the Court's authority to settle any dispute relating to its jurisdiction.[27] Furthermore, the Court has established that it is competent to examine and decide disputes relating to Article 26 of the American Convention as an integral part of the rights set forth therein, and regarding which Article 1(1) establishes the general obligations of State to respect and to ensure rights.[28]

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[27] *Cf. Case of Ivcher Bronstein v. Peru. Competence.* Judgment of September 24, 1999. Series C No. 54, paras. 32 and 34, and *Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs.* Judgment of February 8, 2018. Series C No. 348, para. 220.

[28] *Cf. Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Comptroller") v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of July 1, 2009. Series C No. 198, paras. 97 – 103; *Case of Lagos del Campo v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of August 31, 2017. Series C No. 340, paras. 142 and 154; *Case of Dismissed Workers of PetroPeru et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2017. Series C No. 344, para. 192; *Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs*. Judgment of February 8, 2018. Series C No. 348, para. 220; *Case of Poblete Vilches et al. v. Chile. Merits, reparations and costs*. Judgment of March 8, 2018. Series C No. 349, para. 100; *Case of Cuscul Pivaral et al. v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of August 23, 2018. Series C No. 359, paras. 75 to 97; *Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of March 6, 2019. Series C No. 375, paras. 34 to 37; *Case of the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB-SUNAT) v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 21, 2019. Series C No. 394, paras. 33 to 34; *Case of Hernández v. Argentina. Preliminary objection, merits, reparations and costs.* Judgment of November 22, 2019. Series C No. 395, para. 62; *Case of the Indigenous Communities Members of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs*. Judgment of February 6, 2020. Series C No. 400, para. 195, *Case of Spoltore v. Argentina. Preliminary objection, merits, reparations and costs*. Judgment of June 9, 2020. Series C No. 404, para. 85; *Case of the Workers of the Fireworks Factory in Santo Antônio de Jesus and their Families v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of July 15, 2020. Series C No. 407, para. 23; *Case of Casa Nina v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 24, 2020. Series C No. 419, paras. 26 and 27*; Case of Guachalá Chimbo et al. v. Ecuador. Merits, reparations and costs.* Judgment of March 26, 2021. Series C No. 423, para. 97*; Case of the Miskito Divers (Lemoth Morris et al.) v. Honduras.* Judgment of August 31, 2021. Series C No. 432, paras. 62 – 66*; Case of Vera Rojas et al. v. Chile. Preliminary objections, merits, reparations and costs*. Judgment of October 1, 2021. Series C No. 439, paras. 32 to 35*; Case of the Maya Kaqchikel Indigenous Peoples of Sumpango et al. v. Guatemala. Merits, reparations and costs.* Judgment of October 6, 2021. Series C No. 440, para. 118*; Case of Manuela et al. v. El Salvador. Preliminary objections, merits, reparations and costs.* Judgment of November 2, 2021. Series C No. 441, para. 182*; Case of the Former Employees of the Judiciary v. Guatemala. Preliminary objections, merits and reparations.* Judgment of November 17, 2021. Series C No. 445, paras. 100 to 104*; Case of Palacio Urrutia et al. v. Ecuador. Merits, reparations and costs.* Judgment of November 24, 2021. Series C No. 446, para. 153*; Case of the National Federation of Maritime and Port Workers (FEMAPOR) v. Peru. Preliminary objections, merits and reparations.* Judgment of February 1, 2022. Series C No. 448, paras. 107-112; *Case of Pavez Pavez v. Chile. Merits, reparations and costs.* Judgment of February 4, 2022. Series C No. 449, para. 87*; Case of Guevara Díaz v. Costa Rica. Merits, reparations and costs.* Judgment of June 22, 2022. Series C No. 453, paras. 55 to 63, and *Case of Mina Cuero v. Ecuador. Preliminary objection, merits, reparations and costs*. Judgment of September

25. In particular, the Court has indicated that a literal, systematic, teleological and evolutive interpretation regarding the scope of its competence leads to the conclusion that Article 26 of the Convention protects the rights derived from the economic, social, educational, scientific and cultural standards set forth in the OAS Charter. The scope of such rights should be understood in relation to other articles of the American Convention, and are therefore subject to the general obligations contained in Articles 1(1) and 2 of the Convention and may be supervised by this Court in the terms of Articles 62 and 63 of this instrument. This conclusion is based not only on formal issues, but results from the interdependence and indivisibility of civil and political rights and economic, social, cultural and environmental rights, as well as their compatibility with the object and purpose of the Convention, which is the protection of the fundamental rights of human beings. In each specific case that requires an analysis of economic, social, cultural and environmental rights (ESCER), it will be necessary to determine whether a human right protected by Article 26 of the American Convention can be explicitly or implicitly derived from the OAS Charter, as well as the scope of such protection.[29]

26. Similarly, the Court has concluded that the rights to health and to a healthy environment are protected under Article 26 of the American Convention, inasmuch as the first right is derived from Articles 34(i), 34(l) and 45(h) of the OAS Charter,[30] and the second from Articles 30, 31, 33 and 34 of the same instrument.[31] The Court has also stated that the obligations contained in Articles 1(1) and 2 of the American Convention constitute, in essence, the basis for determining a State's international responsibility for violations of the rights recognized in the Convention in the context of a contentious proceeding, including those recognized under Article 26.[32] However, the Court has established that the Convention itself expressly refers to the norms of international law for its interpretation and application, specifically through Article 29, which provides for the *pro personae* principle.[33] Therefore, as has been the constant practice of this Court, the Court may interpret the obligations and rights they contain in light of other pertinent treaties and norms.[34]

7, 2022. Series C No. 464, para. 127; *Case of Brítez Arce et al. v. Argentina. Merits, reparations and costs.* Judgment of November 16, 2022. Series C No. 474, para. 58; *Case of Nissen Pessolani v. Paraguay. Merits, reparations and costs.* Judgment of November 21, 2022. Series C No. 477, paras. 99 to 104, and *Case of Aguinaga Aillón v. Ecuador. Merits, reparations and costs*. Judgment of January 30, 2023. Series C No. 483, paras. 91 to 101, and *Case of Rodríguez Pacheco et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of September 1, 2023. Series C No. 504. para. 114

29 *Cf. Case of Cuscul Pivaral et al. v. Guatemala supra,* paras. 75 to 97, and *Case of Benites Cabrera et al. v. Peru, supra,* para. 110.

30 *Cf. Case of Poblete Vilches et al. v. Chile, supra*, para. 106, and *Case of Vera Rojas et al. v. Chile, supra*, para. 34.

31 *Cf. 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) in relation to Articles 1(1) and 2 of the American Convention on Human Rights).* Advisory Opinion OC-23/17, November 15, 2017. Series A No. 23, para. 57, and *Case of the Indigenous Communities Members of the Lhaka Honhat (Our Land) Association v. Argentina*, *supra*, para. 186, footnote 173.

32 *Cf. Case of Hernández v. Argentina, supra*, para. 65, and *Case of Vera Rojas et al. v. Chile,* para. 34.

33 *Cf. Case of the Pacheco Tineo Family v. Bolivia. Preliminary objections, merits, reparations and costs.* Judgment of November 25, 2013. Series C No. 272, para. 143, and *Case of Vera Rojas et al. v. Chile, supra,* para. 34.

34 *Cf. Case of Muelle Flores v. Peru, supra*, para. 176, and *Case of the National Federation of Maritime and Port Workers (FEMAPOR) v. Peru, supra*, para. 107.

27. In view of the foregoing, and given that Peru is a party to the American Convention, and is therefore bound to comply with its obligations under Article 26 of the Convention, over which the Court has jurisdiction *ratione materiae* to examine violations of rights protected by said provision, the Court dismisses the preliminary objection presented by the State. Consequently, it will rule on the merits of the case in the corresponding section.

28. The representatives also pointed out that the reference made in their pleadings and motions brief to Articles 10 and 11 of the Protocol of San Salvador fulfils the purpose of "characterizing the content and progress of the recognition and interpretation of the rights to life and personal integrity, to a healthy environment and to health, among the rights protected by the American Convention in general and Article 26 in particular."[35] As asserted by the representatives, no direct violation of the Protocol of San Salvador was claimed and, consequently, it is not necessary to examine the merits of this Court's jurisdiction to rule on direct violations of the rights recognized in said instrument. For this reason, the Court dismisses the State's preliminary objection regarding the Court's jurisdiction *ratione materiae* and *ratione temporis* to examine violations of the Protocol of San Salvador.

B. Regarding the failure to exhaust domestic remedies

B.1. Arguments of the State and observations of the Commission and the representatives

29. The ***State*** emphasized that when the initial petition was lodged on December 27, 2006, the representatives had not complied with the requirement to exhaust the remedies provided in domestic legislation. Specifically, the State noted that on that date, the execution of judgment stage was still ongoing in relation to the 'motion to enjoin enforcement' analyzed by the Constitutional Court. It also argued that the Peruvian legal system offers different remedies to challenge the following: a) the failure to investigate alleged acts of harassment and threats against the alleged victims; b) the protection of the environment, the right to health and the right to personal integrity, and c) access to public information. In particular, the State pointed out that the *amparo* process, the *habeas data* remedy and the possibility of filing criminal complaints and seeking civil compensation – available remedies that were not exhausted - were suitable mechanisms for protecting the rights claimed by the alleged victims. Therefore, it argued that there was a failure to comply with the requirement to file and exhaust domestic remedies in accordance with Article 46(1)(a) of the Convention. The State also requested that the Court review the legality of the Commission's actions at the time of evaluating the petition, in line with the requirements specified in Article 46 of the Convention, and, in particular, with respect to the way in which the requirement to exhaust domestic remedies was accredited.

30. The ***representatives*** argued that the State had tacitly and partially waived the objection of failure to exhaust domestic remedies, since it did not raise the objection during the admissibility stage of the case or in the proceedings before the Commission, nor did it refer to the failure to exhaust criminal actions, civil law claims or *habeas data*. They further noted that the motion to enjoin enforcement was a suitable action to validate the exhaustion of domestic remedies, since "by its design and approach in the specific case, it sought to effectively protect the human rights of the individuals concerned." However, the representatives considered that the motion to enjoin enforcement was not effective and that there was no need to wait indefinitely for its execution. Finally, they argued that the requirement to exhaust domestic remedies does not imply filing all possible actions under

[35] Brief with pleadings, motions and evidence (Merits file, folio 948).

domestic law, nor the filing of domestic remedies for each alleged violation. In the instant case, they affirmed that said requirement was met when the victims exhausted the remedy deemed most suitable for the protection of their rights, i.e., the motion to enjoin enforcement.

31. With regard to the alleged failure to comply with the execution of the motion to enjoin enforcement, the ***Commission*** recalled that this argument was duly addressed in Admissibility Report N°76/09. Thus, it recalled that, when it issued its decision on admissibility, more than three years had passed since the Constitutional Court's judgment was handed down and the process of execution of said judgment remained open, without verification of compliance with this ruling. Therefore, the Commission determined that in this case the exception of unwarranted delay, provided for in Article 46(2)(c) of the American Convention, had arisen. Furthermore, the Commission recalled that it is not the practice of the organs of the inter-American system to require the exhaustion of domestic remedies separately and autonomously for each of the consequences arising from a principal violation. In any event, it pointed out that, if the State considered that autonomous remedies had not yet been exhausted with respect to certain facts or allegations of the petitioners, this matter should have been raised at the appropriate time, that is, at the admissibility stage, a situation that did not occur in this case. Likewise, with respect to the amparo remedy, the Commission argued that, although it could have been a suitable mechanism, it was not necessary to file it since the motion to enjoin enforcement, which could also be considered a suitable remedy, had already been pursued,

B.2. Considerations of the Court

32. Article 46(1)(a) of the American Convention establishes that admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 requires that "the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.[36] The Court recalls that the rule requiring prior exhaustion of domestic remedies was conceived in the interests of the State, since it seeks to exempt it from responding before an international organ for acts of which it is accused before it has had the opportunity to remedy them by its own means.[37] This means that not only must such remedies formally exist, but they must also be adequate and effective, as is clear from the exceptions specified in Article 46(2) of the Convention.[38]

33. Accordingly, the Court will decide, first of all, whether the preliminary objection was raised by the State at the proper procedural opportunity. On this matter, the Court recalls that an objection to the exercise of its jurisdiction based on a supposed failure to exhaust domestic remedies must be presented at the proper procedural moment, that is, during the admissibility proceedings before the Commission.[39] The State must, in the first place, clearly specify before the Commission during the admissibility stage, the remedies that, in its view, have not yet been exhausted. In addition, the arguments that give content to the

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[36] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary objections*. Judgment of June 26, 1987. Series C No. 1, paras. 85 and 86, and *Case of Rodríguez Pacheco et al. v. Venezuela, supra,* para. 26.

[37] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 61, and *Case of Bendezú Tuncar v. Peru. Preliminary objections and merits. Judgment of August 29, 2023*. Series C No. 497, para. 20.

[38] *Cf. Case of Velásquez Rodríguez v. Honduras*. *Merits*, *supra*, para. 63, and *Case of Bendezú Tuncar v. Peru, supra,* para. 20.

[39] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary objections*, *supra*, paras. 84 and 85, and *Case of Rodríguez Pacheco et al. v. Venezuela, supra*, para. 23.

preliminary objection filed by the State before the Commission during the admissibility stage must correspond to those put forward before the Court.[40]

34. In the proceedings before the Commission, the State filed a preliminary objection for failure to exhaust domestic remedies at the appropriate procedural opportunity with respect to the motion to enjoin enforcement, stating that the alleged victims had not requested that "warnings on compliance with the judgment [of the Constitutional Court] be applied." The Court also notes that the State's arguments sought to point out that the process of verifying compliance with the judgment had not been exhausted; that the warning mechanisms provided for in Article 22 of the Code of Constitutional Procedure were not applied; and that no *amparo* action was filed in response to this situation.[41]

35. From the above, it is clear that the State determined with sufficient clarity that the Constitutional Court's enforcement proceeding had not been exhausted in accordance with domestic law, which includes the application of warning mechanisms, and that the *amparo* remedy had not been filed with respect to the alleged violations of the rights claimed. The Court also notes that, with respect to these actions, the arguments presented by the State during the admissibility stage correspond to those presented before the Court, and that in this sense the State indicated that the position of the representatives "was aimed at substituting the domestic jurisdiction through the direct intervention of the inter-American system in a proceeding." In this regard, the Court considers that the State alleged that the requirement set forth in Article 46 of the Convention was not met at the appropriate procedural moment.

36. That said, the Court recalls that the Constitutional Court issued a judgment on May 12, 2006 in which it admitted the claim filed on behalf of the inhabitants of La Oroya for the protection of their rights to life and personal integrity, and, indirectly, with regard to their rights to health and the environment, and ordered the Ministry of Health to implement a series of measures to address the health situation of the inhabitants of La Oroya, improve air quality, declare a state of alert and establish epidemiological and environmental surveillance programs (*infra*, para. 87). This judgment was result of a motion to enjoin enforcement filed on the basis of Article 200 of the Constitution,[42] and Article 66 of the Code of Constitutional Procedure.[43] Specifically, the claim before the Constitutional Court was filed for non-compliance with several legal provisions with the aim of preventing damage to health and the environment by various government agencies. Based on this consideration, the Court will proceed to analyze the suitability and effectiveness of the remedy pursued.

37. With regarding to the suitability of the motion to enjoin enforcement, the Court notes that the Constitutional Court itself, in its judgment of May 12, 2006, established that the

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[40] *Cf. Case of Furlan and Family v. Argentina. Preliminary objections, merits, reparations and costs.* Judgment of August 31, 2012. Series C No. 246, para. 29, and *Case of Bendezú Tuncar v. Peru, supra,* para. 21.

[41] *Cf.* Brief of the State regarding aspects of admissibility and merits before the Inter-American Commission on Human Rights. July 25, 2007 (evidence file, folio 416).

[42] Article 200(6) of the Peruvian Constitution establishes the writ of *mandamus* as a constitutional guarantee "which operates against any authority or official who refuses to abide by a legal rule or administrative act, without prejudice to any legal liabilities." See: Constitution of the Republic of Peru, promulgated on December 29, 1993.

[43] Article 66 of the Code of Constitutional Procedure provides that the purpose of the motion to enjoin enforcement is "to order the reluctant public official or authority to: 1) Comply with a legal regulation or execute an administrative act; or 2) Rule expressly when the legal norms require the official or authority to issue an administrative resolution or a regulation." See: Constitutional Procedural Code, Law No. 28237, 2004.

mandates contained in various regulatory and legal provisions "are not only related to control and administrative inaction but, precisely, because (sic) such inaction violates the rights to health and to a balanced and adequate environment […]."[44] This suggests that the filing of said remedy, and the ruling of the Constitutional Court, was aimed at ensuring the protection of the rights to health and to a healthy environment of the inhabitants of La Oroya, including the alleged victims. The Court also notes that throughout the proceedings before the Commission and in its answering brief before the Court, the State argued that the process of compliance with the Constitutional Court's judgment was still underway, and therefore the domestic remedies had not been exhausted. Consequently, this Court considers that the motion to enjoin enforcement was a suitable remedy for the protection of the rights claimed by the alleged victims.

38. Now, with respect to the effectiveness of the remedy, the Court recalls that an effective remedy is one that "capable of producing the result for which it was conceived."[45] In the instant case, the Court recalls that the motion to enjoin enforcement, filed before the Constitutional Court, was decided in favor of the alleged victims. In this regard, the appeal determined the failure of the authorities to comply with various regulatory and legal provisions and ordered the adoption of a series of measures aimed at protecting the rights to health and a healthy environment of the inhabitants of La Oroya, including the petitioners and the rest of the alleged victims. However, the Court notes that the Constitutional Court delivered its judgment on May 12, 2006, and that by August 5, 2009 – the date on which the Commission's Admissibility Report was decided – said judgment had not been fully executed. This leads to the conclusion that, although the remedy attempted was suitable for the protection of the rights to health and the environment on behalf of the alleged victims,[46] the orders of the Constitutional Court had not been complied with by the time the Inter-American Commission ruled on the admissibility of the case, and therefore the remedy was not effective.

39. Moreover, in its answering brief, the State argued that the Commission should have verified the exhaustion of domestic remedies at the time when the representatives filed the initial petition, and not when it ruled on its admissibility. In this regard, the Court notes that the State's argument could have an impact on the consideration of the applicability of the exception provided for in Article 46(2) (c) of the Convention, since it could be understood that at the time the initial petition was filed there had not yet been an "unwarranted delay" in complying with the ruling of the Constitutional Court. However, the Court has already pointed out that the fact that the analysis of compliance with the requirement to exhaust domestic remedies is carried out according to the situation at the time of deciding on the admissibility of the petition, does not affect the State's benefit derived from the rule of exhaustion of domestic remedies, and in fact allows the State to resolve the alleged situation during the admissibility stage.[47] This Court finds no reason to depart from the aforementioned criterion.

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[44] *Cf.* Constitutional Court of Peru, Case of Pablo Miguel Fabián Martínez et al., Judgment of May 12, 2005 (evidence file, folio .820).

[45] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits*, *supra,* paras. 66 and 67, and *Case of Aguinaga Aillón v. Ecuador, supra,* para. 104.

[46] In this regard, the Constitutional Court stated that the judgment "is not only related to control and administrative inaction but, precisely, to the fact that such inaction violates the rights to health and a healthy environment."

[47] *Cf. Case of Wong Ho Wing v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of June 30, 2015. Series C No. 297, para. 28, and *Case of Barbosa de Souza et al. v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of September 7, 2021. Series C No. 435, para. 33.

40. The State also alleged that the representatives had not exhausted the *amparo* action as an effective mechanism for protecting the rights to health and the environment, and instead had "only activated as a remedy" the so-called "motion to enjoin enforcement." In this regard, the Court considers that although the *amparo* could be a suitable and effective remedy to protect the rights on which the Constitutional Court ruled through the motion of enforcement, for the purposes of compliance with the requirement to exhaust domestic remedies, in accordance with Article 46(1) of the Convention, it is sufficient that the alleged victims exhaust an adequate and effective remedy to achieve the objectives pursued, regardless of the fact that there may have been other remedies that were equally suitable and effective to achieve the same ends. Consequently, the Court considers that it was not necessary to exhaust the *amparo* remedy in order to comply with the requirement to exhaust domestic remedies in the terms of Article 46(1) of the American Convention.

41. In addition, the Court recalls that the State alleged that the representatives did not exhaust other remedies that would have been effective to protect the rights not invoked through the motion of enforcement, namely: the *amparo* remedy with respect to the right to political participation; the *habeas data* remedy regarding access to information; the filing of complaints with the Public Prosecutor's Office in relation to acts of harassment; and the claim for civil compensation. In this regard, the Court found that the arguments relating to the failure to exhaust domestic remedies with respect to the aforementioned remedies were not presented during the admissibility stage before the Commission, nor at any subsequent stage prior to the issuance of the Commission's Merits Report. These arguments were clearly formulated for the first time in the contentious proceeding before the Court through the answering brief. Consequently, the State's arguments regarding the failure to exhaust domestic remedies are time-barred.

42. As for the State's request that the Court conduct a review of legality, the Court recalls that the Inter-American Commission has full autonomy and independence to exercise its mandate in accordance with the American Convention, especially, in relation to the procedure for analyzing individual petitions provided for in Articles 44 to 51 of the Convention. Nevertheless, in its constant case law, this Court has established that it may review the legality of the Commission's actions when one of the parties alleges the existence of a serious error that might affect their right of defense.[48] In the instant case, the Court considers that the State did not present arguments or evidence to establish the existence of a serious error affecting the State's right of defense with respect to the Commission's actions; rather, it was a matter of disagreement with the Commission's legal analysis of the admissibility of this case.

43. Therefore, the Court concludes that the State's preliminary objection of failure to exhaust domestic remedies is inadmissible, and that the requirements to review the legality of the Commission's actions are not met.

V
PRELIMINARY CONSIDERATIONS

44. The State presented additional considerations to its preliminary objections regarding: a) the inclusion of facts and rights not mentioned in the Merits Report, and b)

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[48] *Cf. Control of Due Process in the Exercise of the Powers of the Inter-American Commission on Human Rights (arts. 41 and 44 of the American Convention on Human Rights).* Advisory Opinion OC-19/05 of November 28, 2005. Series A No. 19, first and third operative paragraphs; *Case of the Saramaka People v. Suriname. Preliminary objections, merits, reparations and costs.* Judgment of November 28, 2007. Series C No. 172, para. 32, and *Case of Rodríguez Pacheco et al. v. Venezuela, supra,* para. 21.

observations on the number of alleged victims. The Court will analyze both issues as preliminary considerations.

A. The inclusion of facts and rights not mentioned in the Merits Report

A.1. Arguments of the State and observations of the Commission and the representatives

45. The ***State*** argued that the representatives referred to certain facts in their pleadings and motions brief in which they attempted to claim violations of rights to the detriment of the alleged victims that were not included within the factual framework of the case analyzed by the Commission in its Merits Report. In particular, the State understood that the factual considerations taken into account by the Commission were limited to the period after Constitutional Court's ruling in 2006, since, according to the Merits Report, there was no dispute regarding the harm caused to the inhabitants of La Oroya. In this regard, the State pointed out that the analysis of alleged violations should be limited to the international obligations allegedly breached after the issuance of the Constitutional Court's 2006 ruling. Thus, the State argued that the analysis of the violation of the right to health and to a healthy environment alleged by the representatives in their pleadings and motions brief would mean opening a debate on matters that have already been examined in the domestic jurisdiction by the Constitutional Court, based on facts outside the factual framework, contrary to the principle of subsidiarity. Accordingly, it concluded that the Court should limit its analysis to the obligations allegedly breached after the issuance of the Constitutional Court's ruling.

46. The ***representatives*** argued that, according to the procedural rules on the litigation of contentious cases before the Court, the applicable factual framework should be the one established in the Commission's Merits Report, which covers the entire dispute concerning the environmental contamination caused by the CMLO, and the effects on human rights derived from such contamination. Thus, they argued that these facts, on which the allegations of human rights violations are based, are clearly described in the Merits Report, including those related to the entire operation of the CMLO. Consequently, they held that the Court should admit as proven all the facts prior to 2006, which were alleged in the pleadings and motions brief, since they are complementary to those established by the Commission in its Merits Report.

47. The ***Commission*** emphasized that the aspects indicated by the representatives of the alleged victims (presented by the State as "new"), only provide supplementary information describing both the regulatory and historical context in which the metallurgical operations in La Oroya took place, which are part of the factual framework and would provide the Court with more elements to determine the State's responsibility in this case. Based on the foregoing, it asked the Court to dismiss the arguments presented by the State.

A.2. Considerations of the Court

48. In its Merits Report, the Commission referred to the following facts: a) the La Oroya Metallurgical Complex and the Environmental Remediation and Management Program or *Programa de Adecuation y Manejo Ambiental* (hereinafter the "PAMA"); b) the modifications to the PAMA and closure of the metallurgical complex; c) the effects on the right to health and other rights caused by the operations of the metallurgical complex in La Oroya; d) the health situation of the alleged victims; e) the motion to enjoin enforcement and the judgment of the Constitutional Court; f) the actions taken by the State to remedy the contamination and its effects in La Oroya in the context of the Constitutional Court's ruling

of May 12, 2006; and g) alleged acts of harassment against certain alleged victims. The facts described in the aforementioned sub-sections of the Merits Report covered various factual issues that occurred before and after the Constitutional Court's 2006 judgment, the merits of which were also analyzed by the Commission.

49. In this regard, the Court reiterates that the factual framework of the case before the Court is constituted by the facts contained in the Merits Report submitted for its consideration. Consequently, it is not admissible for the parties to allege new facts other than those contained in said report, without prejudice to presenting those facts that may explain, clarify or reject those mentioned therein and submitted to the Court for its consideration.[49] The exception to this principle are the facts classified as supervening, which may be submitted to the Court at any stage of the proceedings, prior to the issuance of the judgment.[50] Likewise, the alleged victims and their representatives may invoke the violation of rights other than those included in the Merits Report, as long as they adhere to the facts contained in said document.[51] It is up to this Court to decide in each case on the merits of the arguments relating to the factual framework in order to safeguard the procedural balance of the parties.[52]

50. Thus, the Court advises that, in the instant case, the representatives may present facts additional to those described by the Commission in its Merits Report, and present new legal arguments with respect to said facts, and that this Court is competent to analyze them. Furthermore, the Court considers that the State's argument that the facts of the case are restricted –by the Commission itself, and therefore for the Court- to those that occurred after the judgment of the Constitutional Court, is an interpretation of the way in which the merits of the present case should be analyzed, and not an objection to the inclusion of new facts on the part of the representatives or allegations that cannot be analyzed by this Court. This is evident because the Commission itself included facts and analyzed violations of the alleged victims' rights in relation to events prior to 2006, and did not limit its analysis of the merits exclusively to compliance with the Constitutional Court's ruling.

51. Also, with regard to the representatives' supposed inability - based on the principle of subsidiarity – to allege a violation of the right to a healthy environment and health by virtue of the Constitutional Court's 2006 judgment, the Court recalls that the inter-American system shares with the national or domestic systems the jurisdiction to protect the rights and freedoms set forth in the Convention and to investigate and, where appropriate, to prosecute and punish the violations committed; and, if a specific case is not resolved at the domestic or national level, the Convention provides for an international level in which the main organs are the Commission and this Court. In this regard, the Court has indicated that "when a matter has been definitively settled under domestic law, according to the provisions of the Convention, it need not be brought before this Court for approval or confirmation of such decision." This is based on the principle of subsidiarity or complementarity that permeates the inter-American human rights system which, as expressed in the Preamble

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[49] *Cf. Case of "Five Pensioners" v. Peru. Merits, reparations and costs.* Judgment of February 28, 2003. Series C 98, para. 153, and *Case of Bendezú Tuncar v. Peru, supra,* para. 49.

[50] *Cf. Case of Vera Vera et al. v. Ecuador. Preliminary objection, merits, reparations and costs.* Judgment of May 19, 2011. Series C No. 226, para. 32, and *Case of Álvarez v. Argentina. Preliminary objection, merits and reparations*. Judgment of March 24, 2023. Series C No. 487, para. 45.

[51] *Cf. Case of Five Pensioners v. Peru. Merits, reparations and costs.* Judgment of February 28, 2003. Series C No. 98, para. 155, and *Case of Baptiste et al. v. Haiti. Merits and reparations.* Judgment of September 1, 2023. Series C No. 503, para. 60.

[52] *Cf. Case of the Mapiripán Massacre v. Colombia. Merits, reparations and costs.* Judgment of September 15, 2005. Series C No. 134, para. 58 and *Case of Bendezú Tuncar v. Peru, supra,* para. 49.

to the American Convention, "is reinforcing and complementing the protection provided by the domestic law of the American state."[53]

52. The subsidiary or complementary nature of the international jurisdiction means that the system of protection established by the American Convention does not replace the national jurisdictions, but rather complements them.[54] Thus, the State is the principal guarantor of human rights and, therefore, if a violation of such rights occurs, the State must resolve the matter in the domestic system and, if applicable, redress the victim before resorting to international forums.[55] In this regard, the Court's recent case law has recognized that all the authorities of a State Party to the Convention have the obligation to exercise a control of conventionality, so that the interpretation and application of domestic law is consistent with the State's international obligations on matters of human rights.[56] Likewise, the Court has indicated that the State's responsibility under the Convention can only be required at the international level after the State has had an opportunity to acknowledge, if appropriate, a violation of a right, and to repair the harm caused by its own means.[57]

53. Consequently, the fact that there has been a judgment by the Constitutional Court that upheld the protection of the rights to health and the environment in favor of the alleged victims does not prevent this Court from examining arguments that have been presented regarding the State's international responsibility for the violation of said rights. In any case, according to this Court's jurisprudence, and in application of the principle of subsidiarity, the State could claim that the violations of the rights to a healthy environment and health have ceased and have been repaired by virtue of said judgment, and that, therefore, they have been remedied, a situation that could be examined on the merits. However, this argument has not been expressly formulated by the State in the instant case, and even if it had been raised, this would not affect this Court's competence to examine the violations of rights alleged by the Commission and the representatives; rather, in any case, it would make it possible to determine that the State had ceased and repaired said violations and, therefore, that it is not internationally responsible for them.

54. In view of the foregoing, the Court dismisses the State's request, and will decide on the proven facts and their legal consequences in the corresponding sections of this judgment.

B. Observations regarding the number of alleged victims

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53 *Cf. Case of Las Palmeras v. Colombia. Merits.* Judgment of December 6, 2001. Series C No. 90*,* para. 33 *and Case of the Garífuna Community of San Juan and its Members v. Honduras. Preliminary objections, merits, reparations and costs.* Judgment of August 29, 2023. Series C No. 496, para. 149.

54 *Cf. Case of Tarazona Arrieta et al. v. Peru. Preliminary objection, merits, reparations and costs. Judgment of October 15, 2014. Series C No. 286*, para. 137, and *Case of Benites Cabrera et al. v. Peru, supra*, para. 133.

55 *Cf. Case of Acevedo Jaramillo et al. v. Peru. Interpretation of the Judgment on preliminary objections, merits, reparations and costs*. Judgment of November 24, 2006. Series C No. 157, para. 66, and *Case of Benites Cabrera et al. v. Peru, supra*, para. 133.

56 *Cf. Case of Almonacid Arellano et al. v. Chile.* Preliminary objections, merits, reparations and costs. Judgment of September 26, 2006. Series C No. 154, para. 124, and *Case of the National Federation of Maritime and Port Workers (FEMAPOR) v. Peru, supra*, para. 99.

57 *Cf. Case of the Santo Domingo Massacre v. Colombia, supra,* para. 143, and *Case of Tzompaxtle Tecpile et al. v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 7, 2022. Series C No. 470, para. 194.

B.1. Arguments of the State and observations of the Commission and the representatives

55. The ***State*** argued that the claims made by the representatives regarding alleged violations of rights to the detriment of the community of La Oroya should be dismissed, since only those included in the Commission's Merits Report should be considered as alleged victims. The State also pointed out that the representatives had been unable to contact María 38, the family of Juan 40, Juan 29, María 35, Juan 20, Juan 27, Juan 28 and Juan 39; therefore, in order to determine the legitimacy of the representation, it is necessary to validate the final number of alleged victims, excluding any number greater than 80 alleged victims, and limiting it only to those persons whose interest in the case is proven.

56. The ***representatives*** recalled that throughout the proceedings before the Commission and the Court they had insisted that the number of victims listed in the Merits Report does not correspond to the total number of those affected by the reported contamination. They emphasized that the harm evaluated in this case went beyond the individual sphere, collectively affecting the injured party and the entire community. Thus, they called on the Court to assess the collective damage and harm caused by the facts reported and, therefore, to include collective reparation measures that would benefit the community in general. Regarding the alleged lack of powers of attorney, they insisted that they have fulfilled their obligation to demonstrate their legitimacy to represent the interests of the duly identified victims. The ***Commission*** did not comment on this point.

B.2. Considerations of the Court

57. The Court recalls that, according to its case law and based on Articles 50 of the Convention and 35(1) of the Court's Rules of Procedure, it is for the Commission and not this Court to identify precisely, and at the proper procedural moment, the alleged victims in a case submitted to the Court.[58] Legal certainty requires, as a general rule, that all alleged victims be duly identified in the Merits Report, and it is not possible to add new alleged victims at subsequent stages[59] without this affecting the right of defense of the respondent State. In the instant case, the Commission identified 80 individuals in its Merits Report as alleged victims, who were listed in a "single annex."

58. The Court notes that the representatives did not seek the inclusion of alleged victims in addition to those identified by the Commission in its Merits Report, but rather requested that the collective impacts of the violations alleged in this case be taken into account. Indeed, the Court considers that in the instant case the alleged violations of the right to a healthy environment could have had impacts that extend beyond the alleged victims mentioned in the Merits Report,[60] since the environmental contamination could have affected the rights of other people in La Oroya during the more than 100 years that the CMLO has operated in that location. It will be up to the Court to determine,

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[58] *Cf. Case of the Río Negro Massacres v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of September 4, 2012. Series C No. 250, para. 48, and *Case of Valencia Campos et al. v. Bolivia. Preliminary objection, merits, reparations and costs.* Judgment of October 18, 2022. Series C No. 469, para. 34.

[59] *Cf. Case of the Río Negro Massacres v. Guatemala, supra,* para. 48, and *Case of Valencia Campos et al. v. Bolivia, supra,* para. 34.

[60] *Cf.* 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 personal integrity - interpretation and scope of Articles 4(1) and 5(1), in relation to Articles 1(1) and 2 of the American Convention on Human Rights). Advisory Opinion OC-23/17 of November 15, 2017. Series A No. 23, para. 59.

when considering the merits of the dispute and, if appropriate, the question of reparations, the legal consequences of the collective scope of the violations alleged in this case. Consequently, the Court decides that the State's argument is inadmissible.

59. Regarding the supposed lack of legitimacy of the representation of some alleged victims, the Court finds that the evidence in the case file includes the powers of attorney of María 35, María 38, Juan 20, Juan 27, Juan 28 and Juan 39, and of the father of Juan 40.[61] Accordingly, the Court considers that there is no dispute over the legitimacy of the Inter-American Association for Environmental Defense (AIDA) and the *Asociación Pro Derechos Humanos* (APRODEH) to represent the aforementioned alleged victims. Moreover, with respect to Juan 3, 19 and 29, the Court observes that there was continuity in the representatives' actions throughout the processing of the case before the Commission and, in all the years that the process lasted, there is no evidence that the petitioners indicated their wish not to continue with said representation.[62] Therefore, the Court considers, as it has done in other cases,[63] that the powers of attorney provided by the representatives in the proceeding before the Commission are current and sufficient to accredit AIDA and APRODEH as representatives of Juan 3, 19 and 29 before this Court.

VI
EVIDENCE

A. Admissibility of the documentary evidence

60. The Court received various documents provided as evidence by the Commission,[64] the representatives[65] and the State[66] (*supra* paras. 6, 7, 11, 12 and 15), which it admits on the understanding that they were presented at the appropriate procedural opportunity (Article 57 of the Rule of Procedure).[67]

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61 *Cf.* Power of attorney signed by R.D.E.G. on behalf of his son, Juan 40, on November 15, 2021 (evidence file, folio 17994); Power of attorney signed by María 35 on November 12, 2021 (evidence file, folio 26718); Power of attorney signed by María 38 on November 12, 2021 (evidence file, folio 26715); Power of attorney signed by Juan 20 on June 10, 2022 (evidence file, folio 30202); Power of attorney signed by Juan 27 on June 10, 2022 (evidence file, folio 30204); Power of attorney signed by Juan 28 on June 10, 2022 (evidence file, folio 30206), and Power of attorney signed by Juan 39 on June 10, 2022 (evidence file, folio 30208).

62 *Cf.* Power of attorney signed by R.E.G and S.D.O. on behalf of their son, Juan 3, on January 25, 2007 (evidence file, folio 30210); Power of attorney signed by Juan 19 on May 17, 2005 (evidence file, folio 30212); Power of attorney signed by Juan 29 on December 6, 2006 (evidence file, folio 30214).

63 *Cf. Case of the Maya Kaqchikel Indigenous Peoples of Sumpango et al. v. Guatemala, supra,* para. 25 *and Case of Habbal et al. v. Argentina. Preliminary objections and merits.* Judgment of August 31, 2022. Series C No. 463, para. 24.

64 The Court received 79 annexes submitted by the Inter-American Commission together with its Merits Report No. 330/20.

65 The Court received 181 annexes submitted by the representatives of the alleged victims together with their pleadings and motions brief.

66 The Court received 94 annexes submitted by the State together with its answering brief.

67 In general, documentary evidence may be presented in accordance with Article 57(2) of the Rules of Procedure, together with the briefs submitting the case, of pleadings and motions or answering brief, as the case may be, and is not admissible when submitted outside of those procedural opportunities, except in the exceptions established Article 57(2) of the Rules of Procedure (namely, force majeure, serious impediment) or when it concerns a supervening fact, i.e., one that occurred after the cited procedural moments. *Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra, para. 140,* and *Case of Córdoba v. Paraguay. Merits, reparations and costs.* Judgment of September 5, 2023. Series C No. 505, para. 20.

61. The representatives forwarded the annexes to their final written arguments,[68] to their communication of January 12, 2023, in which they submitted their observations to the annexes submitted by the State in its final written arguments,[69] and to their brief of October 20, 2023.[70] In relation to the annexes to the final written arguments, the State argued that these were submitted "extemporaneously," since they were not presented at the appropriate procedural moment, together with their brief containing pleadings, motions and evidence. In this regard, the Court notes that annexes 1 and 2 refer to documents that were prepared based on evidence contained in the case file, which were forwarded to the State in a timely manner, and regarding which it could have exercised its right of defense. Consequently, these annexes are admissible under Article 58(a) of the Rules of Procedure, since they involve the systematization of different evidentiary elements that had already been submitted in a timely manner. With regard to annexes 3 and 4, the Court considers that these are new documents submitted after the pleadings and motions brief, which refer to supervening facts related to the instant case,[71] and are therefore admissible pursuant to Article 57(1) of the Rules of Procedure. As for the annexes to the briefs dated January 12 and October 20, 2023, the Court confirms that they concern facts which took place after the presentation of the pleadings and motions brief and, therefore, constitute evidence related to facts alleged as supervening.

62. For its part, the State presented several annexes to its final written arguments,[72] and to its brief of October 27, 2023.[73] The Court admits the following documents: a) Annex 1, since it was already submitted as Annex 129 of the representatives' pleadings and motions brief; b) Annexes 2, 3, 4 and 6, which were submitted after the presentation of the answering brief and, therefore, constitute evidence concerning facts alleged as supervening; c) Annexes 7, 8, and 9, which contain documents and information

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[68] Annex 1: Table summarizing the alleged victims' health problems based on their affidavits and the expert report of M. Yáñez; Annex 2: Table: summary of the statements of the alleged victims rendered by affidavit; Annex 3: Communication of the representatives of June 21, 2022, in which they included the powers of attorney of María 34 and Juan 3, 19, 20, 27, 28, 29 and 39, and Annex 4: Table of liquidation of pecuniary damages for Juan 12 for the period June 2020 and November 2022.

[69] Annex 1: Decision No. 51 of the 20th Civil Court, dated December 1, 2022; Annex 2: Decision No. 52 of the 20th Civil Court, dated December 1, 2022; Annex 3: death certificate of María 38, dated December 5, 2022, and Annex 4: Communication of AIDA and APRODEH sent to Mr. C.l.V. Assistant Supranational Specialized Public Prosecutor, of January 12, 2023.

[70] Annex 1: Press release of *Metalúrgica Business Perú S.A.*, dated f September 3, 2023; Annex 2: Radio Karisma program of September 26, 2023 and Annex 3: Radio Karisma program of October 9, 2023.

[71] Annex 3 includes supervening facts regarding the submission of the powers of attorney of the alleged victims María 34 and Juan 3, 19, 20, 27, 28, 29 and 39, which were obtained after the presentation of the brief with pleadings, motions and evidence. Annex 4 refers to estimates for pecuniary damage allegedly suffered by Juan 12, and includes information for the months of March to August 2022, dates subsequent to the presentation of the pleadings and motions brief.

[72] Annex 1: Application for motion to enjoin enforcement of October 25, 2002; Annex 2: Unsigned letter dated October 26, 2022; Annex 3: Official letter No. 45-2022-GRJ-DRSJ-DESP/ESRMP of November 22, 2022; Annex 4: Decision No. 50 of June 11, 2022; Annex 5: Official letter No. 12-2021/CCO-INDECOPI of January 19, 2021; Annex 6: Official letter No. 436-2022/CCO-INDECOPI of September 19, 2022; Annex 7: Flow chart PTAI; Annex 8: Treatment Plant for domestic residual waters, Huaymanta, and Annex 9: Database of effluent samples, 2007-2022.

[73] Annex 1: Report N° 0630-2022/MINEM-DGAAM-DGAM of December 15, 2022, issued by the General Directorate of Environmental Affairs of the Ministry of Energy and Mines; Annex 2: Report N°1090-2023MINEM/OGAL of October 26, 2023, issued by the Legal Counsel Office of the Ministry of Energy and Mines; Annex 3: Administrative Decision N.° 0210-2023-ANA-AAA.MAN-ALA.MANTARO of October 11, 2023, issued by the *Autoridad Administrativa del Agua de Mantaro* (Mantaro Water Authority) of the National Water Authority, and Annex 4: Report N° 009-2023-VOI/DGIN/SPROV of October 24, 2023, issued by the provincial Sub-Prefecture of Yauli – La Oroya.

requested by the judges during the public hearing. However, the Court will not admit Annex 5 because the information presented by the State in that annex refers to facts or situations that occurred prior to the presentation of the answering brief. Consequently, this document is not admissible because it is time-barred under the terms of Article 57(2) of the Court's Rules of Procedure. Regarding the annexes to the brief of October 27, 2023, the Court notes that they refer to facts that occurred after the presentation of the answering brief, and, therefore, constitute evidence on facts alleged as supervening.

B. Admissibility of the testimonial and expert evidence

63. During the public hearing, the Court received the testimonies of three alleged victims, one witness and three expert witnesses.[74] It also received the affidavits of eight expert witnesses and 22 witnesses.[75] The Court finds it pertinent to admit the statements provided during the public hearing and by affidavit, insofar as these are in keeping with the purpose defined by the President in the order requiring them.[76]

64. In addition, the State, in its final written arguments, pointed out that the statements of Juan 18, María 25 and María 9 were not provided by affidavit, and should therefore be rejected.[77] The representatives explained that the statement of Juan 18 was not made before a notary public because, under Peruvian law, a medical certificate issued by a State health institution was required to legalize the signature of the declarant, who is 92 years old. In the case of María 25, they explained that this alleged victim is a minor, and was therefore unable to legalize her signature before a notary public under Peruvian law. Finally, in the case of María 9, they indicated that, owing to poor health, she was unable to arrange for the authentication of her signature when making her statement**.**

65. On this point, it should be noted that, in previous cases and exceptionally, the Court has accepted the statements of alleged victims that were not made before a notary public, considering, in light of the specific case, that there were duly reasoned justifications.[78] In the instant case, the Court notes that the statements of Juan 18, María

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74 During the public hearing the Court received the statements of the alleged victims María 1, María 13 and María 15; of the witness John Maximiliano Astete Cornejo; and of the expert witnesses Marcos Orellana and Marisol Yáñez de la Cruz, proposed by the representatives; and of Patricia Mercedes Gallegos Quesquén, proposed by the State. In response to a request by the Court at the public hearing held on October 10, 2022, the expert witnesses submitted a written version of their statements, which have been included in the evidence file of this case.

75 The Court received affidavits containing reports from the expert witnesses Christian Courtis and Juan P. Olmedo Bustos, offered by the Commission; of Federico Chunga Fiestas, offered by the State; and of Fernando Serrano, Caroline Weil, Howard Meilke, Diego Miguel Quirama Aguilar and Oscar Cabrera, offered by the representatives. The Court also received the testimonies of Jazmín Monrroy Polanco and Katherine Andrea Melgar Támara, offered by the State; of Juan 1, Juan 2, Juan 6, Juan 8, the son of Juan 12, Juan 15, Juan 18, Juan 25, Juan 30, María 3, María 9, María 16, María 24, María 25, María 32, María 33, María 37, Pedro Barreto, Hugo Villa, Mercedes Lu, and Hunter Farrell, offered by the representatives (evidence file, folios 28763 to 29577). Furthermore, the Court received written versions of the expert reports provided at the public hearing by the expert witnesses Marisol Yáñez and Marcos Orellana, offered by the representatives, as well as by the expert witness Patricia Gallegos Quesquén, offered by the State.

76 *Cf. Case of the Community of La Oroya v. Peru. Call to a hearing.* Order of the President of the Inter-American Court of Human Rights of September 12, 2022.

77 In this regard, the State argued, *inter alia,* that the representatives "did not legalize the signatures of the alleged victims before a notary public," as "required by the Court" and "established in Article 50(1) of the Rules of Procedure".

78 *Cf. Case of Valencia Campos et al. v. Bolivia, supra*, para. 45.

25 and María 9 were duly signed by the alleged victims, but were not authenticated by a notary public.[79] However, taking into account the reasonable nature of the justifications given by the representatives regarding the constraints stemming from the provisions of domestic law in the cases of Juan 18 and María 25, and the specific health condition of María 9, the Court finds that there were indeed reasons of force majeure for not making their statements before a notary public, and therefore it decides, exceptionally, to admit the statements of Juan 18, María 25 and María 9.

VII
FACTS

66. The following are the facts considered as proven based on the factual framework presented by the Commission, other supplementary facts provided by the representatives and the State, as well as the evidence that has been admitted. They are presented in the following order: a) the CMLO (Metallurgical Complex of La Oroya) and the PAMA (Environmental Remediation and Management Program); b) modifications to the PAMA, the granting of extensions for compliance with the PAMA, and mining activities from 2009 to 2023; c) environmental contamination in La Oroya and its effects on the population; d) the health situation of the alleged victims; e) the motion to enjoin enforcement filed with the Constitutional Court, the precautionary measures granted by the Inter-American Commission and the measures adopted by the State in compliance with those decisions; and f) the alleged acts of harassment against some of the alleged victims.

A. The Metallurgical Complex of La Oroya (CMLO) and the Environmental Remediation and Management Program (PAMA)

67. The town of La Oroya is located in the central Andean highlands of Peru, in the department of Junín, and has a population of more than 33,000 inhabitants. In 1922, the privately-owned Cerro de Pasco Copper Corporation of the United States established the La Oroya Metallurgical Complex for copper smelting and refining. Subsequently, the CMLO added the smelting and refining of polymetallic concentrates with high contents of lead, copper, zinc, and metals such as silver, gold, bismuth, selenium, tellurium, cadmium, antimony, indium and arsenic. In 1974, the CMLO was nationalized and became the property of the state-owned company *Compañía Minera del Centro del Peru* S.A. (hereinafter "CENTROMIN"), which operated the CMLO until 1997. That year, the CMLO was purchased by the private company Doe Run Peru S.R.L. (hereinafter "Doe Run" or "DRP"), an affiliate of the US company "The Renco Group, Inc."[80]

68. From 1922 to 1993, Peru had no specific legislation on environmental monitoring or prevention of pollution in the mining-metallurgical sector; however, the general

[79] *Cf.* Sworn statements of Juan 18, María 9 and María 25 (evidence file, folios 29014 to 29021; 29049 to 29059, and 29077 to 29083).

[80] *Cf.* Action Plan for the Improvement of Air Quality and Health in La Oroya, approved by the Technical Group *Gesta Zonal del Aire de La Oroya*, March 1, 2006 (evidence file, folio 0.13); Ministry of Energy and Mines, Official communication No. 693-2007/JUS/CNDH-SE of June 2007. Annex to the State's brief of July 12, 2007 submitted in the precautionary measures proceedings (evidence file, folio .73 and .91); Government of Peru, White Paper concerning the Privatization of Metaloroya S.A., 1999 (evidence file, folios 19729 to 19792); FIDH, Peru: Metallurgical Complex of La Oroya - When investor protection threatens human rights, 2013 (evidence file, folios 20566, 20567 and 20570), and *RPP Noticias*. Case of Doe Run: La Oroya to be liquidated following unsuccessful auctions, July 26, 2017 (evidence file, folio 20414).

regulations contained in different instruments regulated environmental obligations.[81] In 1993, the Regulations for Environmental Protection in Mining and Metallurgy (hereinafter "Mining and Metallurgy Regulations") were enacted.[82] These regulations required companies with mining and metallurgical operations to conduct a preliminary environmental assessment (*Evaluación Ambiental Preliminar*)[83] or prepare an Environmental Remediation and Management Program (*Programa de Adecuación y Manejo Ambiental)* hereinafter PAMA,[84] as a mechanism to identify, monitor and address the environmental impacts of their activities. Article 5 of the Mining and Metallurgy Regulations establishes that the operator of the mining and metallurgical facility is "responsible for emissions, discharges and disposal of waste into the environment resulting from processes carried out at its facilities." Article 48 establishes the penalties applicable for non-compliance with the obligations established in the PAMA.[85]

69. CENTROMIN was the company responsible for preparing the first PAMA for the Complex in 1996. The PAMA specified the actions and investments required to reduce or eliminate emissions and/or discharges of substances in order to comply with the maximum levels permitted by the competent authority. This PAMA was approved on January 13, 1997 by the Ministry of Energy and Mines (*Ministerio de Energía y Minas*, hereinafter "MEM"), and a 10-year period was established for its implementation. It also contained a commitment to invest USD $129,125,000 (one hundred and twenty-nine million one hundred and twenty-five thousand United States dollars) in cleanup and remediation programs.[86] The PAMA included a group of projects designed to fulfil the

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81 *Cf. Activos Mineros S.A.C.,* Report No. 008-2011-GO of March 17, 2011 (evidence file, folio .45).

82 *Cf.* Supreme Decree No. 016-93-EM: Environmental Protection Regulations for Mining and Metallurgy. Official Gazette *El Peruano*, of May 1, 1993 (evidence file, folio .59). Supreme Decree N°016-93-EM was revoked by Supreme Decree No. 040-2014-EM of November 12, 2014 (evidence file, folios 28611 to 28641).

83 The Regulations defined EVAPs as: "Studies that must be carried out in projects for the execution of activities in mining, processing, general works and mining transportation concessions, which must evaluate and describe the physical-natural, biological, socio-economic and cultural aspects in the project's area of influence, in order to determine the existing conditions and capacities of the environment, analyze and anticipate the nature and magnitude of the effects and consequences of the project's implementation, indicating measures to be applied to achieve a harmonious development between the operations of the mining industry and the environment."

84 The Regulations defined the PAMA as: "A program containing the actions and investments necessary to incorporate into mining and metallurgical operations the technological advances and/or alternative measures aimed at reducing or eliminating emissions and/or discharges in order to comply with the maximum permissible levels established by the Competent Authority."

85 The Regulations stipulate that, in the event of non-compliance with the PAMA without just cause, the following sanctions may be applied: (a) upon detection of the infraction, the operator of the mining-metallurgical activity will be ordered to comply with the provisions contained in the PAMA within 90 days; (b) if, upon the expiry of such term the noncompliance persists, the General Directorate of Mining will order the closure of operations for a period of thirty calendar days, together with a fine of 10 Tax Units (UIT); (c) in the event of a second non-compliance, the operations will be closed for an additional period of 60 calendar days and the fine will be increased to 20 UIT; (d) if the offender fails to comply with the program for the third time, the closure will be for an additional period of 90 calendar days and the fine will be 30 UIT; and (e) if the non-compliance persists, the competent authority will order the closure of the operation for additional periods of 90 days and the payment of the last fine imposed. In "serious cases," the definitive closure of the metallurgical facility may be ordered. The scope of this article was amended by Article 1 of Supreme Decree N° 058-990-EM of November 24, 1999 and replaced by Article 1 of Supreme Decree N° 022-2002-EM of July 4, 2002, excluding penalties for "acts of God or force majeure," and modifying the compliance deadlines and regulatory fines.

86 *Cf.* Ministry of Energy and Mines, Official letter No. 693-2007/JUS/CNDH-SE of June 2007. Annex to the State's brief of July 12, 2007, submitted during the processing of the precautionary measures (evidence file, folios .71 to .116).

company's environmental obligations.[87] Subsequently, after acquiring the CMLO, Doe Run Peru (DRP) assumed the commitment to implement most of the obligations established in the PAMA, except those that remained under the responsibility of CENTROMIN.[88]

B. Modifications to the PAMA, the granting of extensions, and mining activities from 2009 to 2023

B.1. Modifications to the PAMA

70. The PAMA was modified on several occasions after its adoption in 1997. As a result of these modifications, the amounts of investment progressively increased,[89] the schedule of actions and investments was modified[90] and the scope of certain projects was expanded.[91] Thus, in 2004, the PAMA consisted of the following projects and achieved the following percentages of compliance: a) Sulfuric Acid Plant (with a programed investment of USD$ 107,564,000, and 7.4% compliance level); b) Copper Refinery Water Treatment Plant (with a programmed investment of USD$ 5,548,000, and a 44% compliance level); c) Liquid Effluent Treatment Plant (industrial) (with a programed investment of USD$ 33,760,000, and a 35% compliance level); d) Copper and Lead Slag Management System (with a programed investment of USD 9,618,000, and a 101% compliance level); e) Environmental Remediation of the Huanchán Slag Deposit (copper and lead slag) (with a programed investment of USD$ 841,000, and 138% compliance level); f) Vado Arsenic Trioxide Deposit (with a programed investment of USD$ 2,398,000, and 101% compliance level); g) Conditioning of the Huanchán Zinc Ferrites Deposit (with a programed investment of USD$ 1,825,000, and 94% compliance level); h) Sewage and Waste Treatment and Disposal (with a programed investment of USD$ 11,727,000, and 20% compliance level), and i) Monitoring and Aerial Photography Station (with a programed investment of USD$ 672,000, and 93% compliance level).[92]

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87 The PAMA approved for the CMLO included the following projects, with their respective investments: Process Gases: a) Acid-Smelting Plant for Copper (USD$ 41,200,000); b) Acid-Smelting Plant for Lead and Zinc (USD$ 48,800,000); Process Liquids: c) Industrial Liquid Effluents (USD$ 3,075,000); Process Solids: d) New Handling System for Copper and Lead Slags (USD$ 6,500,000); New Copper and Lead Slag Deposit (USD$ 2.500.000); Closure of Slag Deposit (USD$ 5,250,000); New Arsenic Trioxide Deposit (USD$ 2,000,000); Closure of Arsenic Trioxide Deposit (USD$ 8,700,000); Closure of Zinc Ferrite Deposit (USD$ 5,600,000); Air Quality, Emissions: Replanting of Areas Affected by Fumes (USD$ 2,000,000); Public Health: Discharge/Waste (USD$ 3,500,000). *Cf.* "Environmental Remediation and Management Program (PAMA) of La Oroya Foundry," Presentation by Jaime Quijandria Salmón, Minister of Energy and Mines, April 2004 (evidence file, folio .121).

88 *Cf.* Government of Peru, White Paper concerning the Privatization of *Metaloroya S.A.*, 1999 (evidence file, folio 19741).

89 Originally, an investment of USD$ 129,125,000 was allocated to the PAMA. This was increased through Decision No. 325-97-EM/DGM of October 6, 1997; No. 178-99-EM/DGM of October 19, 1999; No 133-2001-EM/DGAA, of April 10, 2001 and No. 28-2002-EM/DGAA of January 25, 2002. This last decision established an investment of USD$ 173,953,000, which means that between 1997 and 2002, an increase in the investment of USD$ 44,828,000 was approved. *Cf.* Modifications to the PAMA for La Oroya Metallurgical Complex (evidence file, folios .160 to .165).

90 *Cf.* Modifications to the PAMA for the La Oroya Metallurgical Complex (evidence file, folio .160), and Directorial Order No. 325-97-EM/DGM of October 6, 1997 (evidence file, folio 27565).

91 *Cf.* Modifications to the PAMA for La Oroya Metallurgical Complex (evidence file, folio .161); Directorial Order No. 082-2000-EM-DGAA of April 17, 2000; Directorial Order No. 1333-2001-EM/DGAA of April 10, 2000, and Directorial Order N°28-2002-EM/DGAA of January 23, 2002 (evidence file, folio 19939).

92 *Cf.* Modifications to the PAMA for the La Oroya Metallurgical Complex (evidence file, folio .164), and "Environmental Remediation and Management Program (PAMA) at La Oroya Metallurgical Complex."

B.2. Extensions granted for compliance with the PAMA

71. On December 20, 2005, Doe Run submitted a request for an exceptional extension in order to comply with its commitments under the PAMA, based on Supreme Decree No. 046-2004-EM.[93] The company explained that it was unable to implement the "sulfuric acid plants project" –for smelting lead and copper—[94] for technical, economic and financial reasons due to "unfavorable conditions in the metals market in 2002 – 2003." It indicated that the "commissioning of three sulfuric acid plants would be gradually completed in 2006, 2008 and 2010."[95] In response, on May 29, 2006, the Ministry of Energy and Mines partially approved the exceptional request for an extension of the PAMA, establishing October 2009 as the deadline for completion and stating that the company must execute the "sulfuric acid plants" project and the special and complementary measures approved.[96]

72. In June 2009, a few months before the deadline for complying with its PAMA commitments, Doe Run completely suspended its operations due to financial problems and initiated a liability restructuring process.[97] As a result, it requested a further extension of the PAMA for an additional thirty months to implement the "Sulfuric Acid Plant" and "Modification of the Copper Circuit."[98] This stoppage prompted several workers to request the Ombudsman's Office to "intercede" to achieve "greater speed in making the PAMA more flexible in order to [reach a] comprehensive and sustainable solution that respects the rights of Doe Run's workers […] and of the people of La Oroya."[99] They also went on strike for 93 days[100] and blocked the main highway, an action that resulted in four workers being injured and ten others arrested.[101]

73. In this context, a second extension of the PAMA was granted on September 26, 2009, and the deadline for the financing and completion of the projects was extended

Presentation by Jaime Quijandria Salmón, then Minister of Energy and Mines, April 2004 (evidence file, folios .118 to .134).

93 *Cf.* Ministry of Energy and Mines, Supreme Decree No. 046-2004-EM, December 29, 2004 (evidence file, folio 20037).

94 *Cf. Doe Run Peru*, Request for special extension of the deadline for implementing the sulfuric acid plants project, December 2005 (evidence file, folio 19962).

95 *Cf. Doe Run Peru,* Request for special extension of the deadline for implementing the sulfuric acid plants project, December 2005 (evidence file, folios 19956 and 20038).

96 *Cf.* Ministry of Energy and Mines, Ministerial Resolution No. 257-2006 of May 29, 2006 (evidence file, folios .179 to .186).

97 *Cf. El Comercio* newspaper, "Doe Run Peru: chronology of the mining company that paralyzes 100% of its operations after 11 years in crisis." February 20, 2020 (evidence file, folio 20095).

98 *Cf.* Ministry of Energy and Mines, Report No. 771-2009-MEM-DGM/DNM of July 17, 2009 (evidence file, folio .190).

99 *Cf.* Committee for the Defense of La Oroya. Official letter N° 048-CDLO/2009 of August 10, 2009, addressed to the President of the Peruvian Congress (evidence file, folio 20887).

100 *Cf.* Environmental Assessment and Control Agency (OEFA). Aide Memoire "CMLO shutdown period," January 28, 2016 (evidence file, folio .211).

101 *Cf. El Comercio* newspaper. "Doe Run Peru: chronology of a mining company that suspends 100% of its operations after 11 years in crisis," February 20, 2020 (evidence file, folio 20095).

by means of Law No. 29410.[102] This law stipulated a maximum non-extendable term of ten years for financing the projects, and a maximum non-extendable period of twenty months for their construction and implementation. It also required Doe Run to provide assurances of full compliance with its obligations in relation to the PAMA.[103]

B.3. Mining activities in the CMLO from 2009 to 2023

74. The PAMA reached its expiration date in 2010,[104] without the completion of the sulfuric acid plant and copper circuit retrofitting projects.[105] Doe Run's activities were partially suspended from June 2009 to June 2012.[106] In July 2012, the MEM authorized the resumption of activities in the zinc and lead circuits.[107] From 2014 to 2015, the CMLO's production was partial with respect to sulfuric acid and ferrites.[108] In 2020, the General Directorate of Mining suspended activities at the CMLO due to the failure to provide guarantees.[109] Doe Run subsequently provided the necessary guarantees to accredit its compliance with the La Oroya Metallurgical Complex Closure Plan, and the MEM decided to lift the stoppage of the CMLO's activities.[110]

75. On January 15, 2022, Doe Run's Board of Creditors agreed to transfer the CMLO to its workers as dation in payment; the workers then constituted a company named *Metalúrgica Business Perú S.A.A*.[111] On December 12, 2022, the company requested the change of ownership of the certificates, permits, licenses and/or authorizations owned by Doe Run. In 2023, the General Directorate of Mining decided to lift the suspension of

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[102] *Cf.* Law Nº 29410: "Law extending the term for the financing and completion of the 'Sulfuric Acid Plant and Modification of the Copper Circuit Project' at the Metallurgical Complex of La Oroya" of September 26, 2009 (evidence file, folio 20090).

[103] *Cf.* Law Nº 29410, "Law extending the term for the financing and completion of the 'Sulfuric Acid Plant and Modification of the Copper Circuit Project' at the Metallurgical Complex of La Oroya," of September 26, 2009 (evidence file, folio 20090).

[104] *Cf.* Law No. 29410 "Law extending the term for the financing and completion of the 'Sulfuric Acid Plant and Modification of the Copper Circuit Project' at the Metallurgical Complex of La Oroya," of September 26, 2009 (evidence file, folio 20090), and Supreme Decree No. 075-2009-EM that regulates Law No. 29410, of October 28, 2009 (evidence file, folios 27801 to 27809).

[105] *Cf.* Ministry of Energy and Mines, Directorial Order 055-2010-MEM-AAM approving the Closure Plan of the La Oroya Metallurgical Complex, of February 10, 2010 (evidence file, folio 20248).

[106] *Cf.* Environmental Assessment and Control Agency (OEFA). Aide memoire: "CMLO shutdown period," January 28, 2016 (evidence file, folio .210).

[107] *Cf.* Brief with pleadings, motions and evidence (merits file, folio 135, footnote 48), and Ministry of Energy and Mines, Report No. 1090-2023-MINME/OGAJ of October 26, 2023 (evidence file, folios 30249 to 30258).

[108] *Cf.* Environmental Assessment and Control Agency (OEFA). Aide memoire: "CMLO shutdown period," January 28, 2016 (evidence file, folio .211).

[109] *Cf.* Brief with pleadings, motions and evidence (merits file, folio 138).

[110] *Cf.* Ministry of Energy and Mines, Resolution No. 443-2020-MINEM of July 8, 2020 (evidence file, folios 20132 to 20141).

[111] *Cf.* Ministry of Energy and Mines, Report No. 1090-2023-MINME/OGAJ of October 26, 2023 (evidence file, folio 30257).

mining activities at the CMLO,[112] which allowed *Metalurgia Business Perú S.A.* to start operations under the responsibility of Doe Run's former workers in October 2023.[113]

C. Environmental contamination in La Oroya and its effects on the population

76. The metallurgical industry is considered to be one of the main sources of air pollution in Peru.[114] In the specific case of the CMLO, a 1970 study on the effects caused by smelting and refining activities determined that the production of sulfur dioxide (SO_2) was affecting the vegetation in an estimated area of 30,200 hectares.[115] The environmental effects of this activity were caused by the emission of gases and suspended particles, the accumulation of which affected the soil and water in La Oroya and adjacent areas.[116] Air pollution has been present in La Oroya since the CMLO began operations in 1922, and in 2006 it was ranked as one of the 10 most polluted cities in the world.[117] It has also been shown that 99% of the air pollutants in La Oroya are produced by activities at the CMLO.[118]

77. Since 1999, several studies and investigations have been carried out to establish the extent of the pollution in La Oroya and its effects on the population. A study conducted on November 23-30, 1999, by the General Directorate of Environmental Health of the Ministry of Health (hereinafter "DIGESA") found that concentrations of air pollutants in La Oroya "considerably" exceeded the respective "Air Quality Guidelines" for sulfur dioxide, Total Suspended Particulate Matter (TSP) and Particles Smaller than 10 Microns (PM10), and that the concentration of lead in the air was 17.5 times higher than the US Environmental Protection Agency's (hereinafter "EPA") quarterly lead standard. In addition, it found that the concentration of lead in the water was up to 70 times higher than the permitted limit according to the General Law of Water, since pollutants in the air and soil were deposited in the water, and therefore also in plants and animals.[119] It was also demonstrated that environmental pollution resulted in the presence of lead in the population's blood, which exceeded three times the limit established by the World Health Organization (hereinafter "WHO").[120]

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112 *Cf.* Ministry of Energy and Mines, Report No. 1090-2023-MINME/OGAJ of October 26, 2023 (evidence file, folio 30255).

113 *Cf.* Brief of the Inter-American Commission on Human Rights dated October 27, 2023 (merits file, folio 1983).

114 *Cf.* National Office of Evaluation of Natural Resources (ONERN) and Agency for International Development (AID), "Environmental Profile of Peru," 1986 (evidence file, folios 18228 to 18231).

115 *Cf.* Office National of Evaluation of Natural Resources (ONERN) and Agency for International Development (AID), "Environmental Profile of Peru," 1986 (evidence file, folio 18230).

116 *Cf.* Office National of Evaluation of Natural Resources (ONERN) and Agency for International Development (AID), "Environmental Profile of Peru," 1986 (evidence file, folio 18230).

117 *Cf.* The Blacksmith Institute, New York, "The World's Worst Polluted Places-The top 10," September 2006 (evidence file, folio .230).

118 *Cf.* National Environment Council (CONAM), Executive Council Decree No. 020-2006-CONAM/CD, "Action Plan to Improve the Air Quality of the Atmospheric Basin of La Oroya," June 23, 2006, published on August 2, 2006 (evidence file, folio .401).

119 *Cf.* General Directorate of Environmental Health of the Ministry of Health, "Blood Lead Study on a Selected Group of the Population of La Oroya," November 1999 (evidence file, folio .489), and The Blacksmith Institute, New York, "The World's Worst Polluted Places-The top 10," September 2006 (evidence file, folio 245).

120 *Cf.* General Directorate of Environmental Health of the Ministry of Health, "Blood Lead Study on a Selected Population of La Oroya", November 1999 (evidence file, folios .485 a .543); The Blacksmith Institute,

78. In 2003, the Baseline Assessment of Air Quality in La Oroya, prepared by the local government of Yauli Province, concluded that the main source of pollutant emissions in the city of La Oroya was the CMLO operated by Doe Run.[121] It also concluded that there were "considerable" levels of toxic pollutants in the atmospheric basin, which exceeded national environmental air quality standards. The same study found that the progressive deterioration of air quality "correlates with the increase in acute respiratory infections," and that the main people affected by these infections are children living in the La Oroya basin.[122] The Ministry of Health also conducted a blood census in the first quarter of 2005, in which it analyzed samples from 788 children under six years of age living in the La Oroya Antigua sector and established that 99.9% had lead levels above the maximum limit recommended by the WHO.[123]

79. In June 2005, the Ministry of Health warned of the prevalence of respiratory diseases in children aged 3 to 14 years in La Oroya between 2002 and 2003,[124] emphasizing that "[w]hen air pollution levels exceed the permissible limits, they can cause or aggravate respiratory or cardiovascular problems in the most vulnerable population." In this regard, the Ministry stressed that the main fixed sources of pollution were the mining and metallurgical facilities that generate emissions, i.e., the lead smelter located in La Oroya Antigua and the refinery located in La Oroya Nueva. It also noted that in this region, "respiratory diseases in children [were] a health problem with a growing tendency of morbidity and mortality." It concluded that 90% of the schoolchildren sampled lived and studied in areas with high and medium exposure to sources of air pollution.[125] According to the "Hematological Census of Lead and Clinical-Epidemiological Evaluation" in selected populations of La Oroya," conducted by DIGESA in 2005, 99% of children under six years of age had lead levels above the WHO reference values.[126]

80. In June 2007, the Commission for Andean, Amazonian and Afro-Peruvian Peoples, Environment and Ecology of the Peruvian Congress published a parliamentary report in which it concluded that "La Oroya is experiencing a situation of permanent contamination due to the smelting at the [CMLO], which is affecting the lives of all its inhabitants,

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New York, "The World's Worst Polluted Places-The top 10," September 2006 (evidence file, folio .245); *Consorcio Unión para el Desarrollo Sustentable* (UNES), "Evaluation of Lead Levels and Factors of Exposure in Pregnant Women and Children under three in the city of La Oroya," of March 2000 (evidence file, folio .411), and Doe Run Peru, "Study of blood lead levels in the population of La Oroya 2000-2001," 2001 (evidence file, folio .473).

121 *Cf.* National Environmental Council (CONAM), "Baseline Assessment of Air Quality in La Oroya," conducted by *Gesta Zonal del Aire de La Oroya*, 2004 (evidence file, folio 0.397).

122 *Cf.* National Environmental Council (CONAM), "Baseline Assessment of Air Quality in La Oroya", led by *Gesta Zonal del Aire de La Oroya*, 2004 (evidence file, folio 0.397).

123 *Cf.* Ministry of Health, General Directorate of Environmental Health, "Blood Lead Census and Clinical-Epidemiological Evaluation in Selected Populations of La Oroya Antigua," 2005 (evidence file, folios .479 to .481).

124 *Cf.* Ministry of Health, "Prevalence of Respiratory Diseases in Schoolchildren aged 3-14 years and factors associated with air quality, La Oroya, Junín, Peru. 2002-2003," June 2005 (evidence file, folios .552 to .568).

125 *Cf.* Ministry of Health, "Prevalence of Respiratory Diseases in Schoolchildren aged 3-14 years and factors associated with air quality, La Oroya, Junín, Peru. 2002-2003", June 2005 (evidence file, folios .552 to .568).

126 *Cf.* Ministry of Health, General Directorate of Environmental Health, "Blood Lead Census and Clinical-Epidemiological Evaluation in Selected Populations of La Oroya Antigua," 2005 (evidence file, folio .480).

especially vulnerable groups such as children and women of childbearing age." Based on studies by DIGESA and the Centers for Disease Control and Prevention of the United States (hereinafter "CDC"), it considered that the public health problem in La Oroya represented "an imminent danger to human life and health," and called on the competent authorities to implement "effective and comprehensive measures to protect life."[127]

81. On July 19, 2010, the "Evaluation of toxic metals in biological samples before and after the closure of the Doe Run Peru complex" was presented. This evaluation indicated that the temporary closure of the CMLO's operations, which occurred in 2009, reduced pollutant emissions and as a consequence the levels of toxic metals in the inhabitants of La Oroya, except in the case of cadmium.[128] The report concluded that "[t]he persistence of lead, cadmium and arsenic in the human body and in the environment is most likely due to the historical accumulation of these toxic metals in La Oroya, which includes the period prior to the acquisition of the complex by Doe Run Peru in 1997 and the 12 years in which the complex has operated under the responsibility of DRP (1997-2009)."[129]

82. In December 2011 and July 2013, the Environmental Assessment and Control Agency (OEFA) conducted inspection visits to the CMLO, specifically to the former mining facility in La Oroya, where it collected groundwater samples adjacent to the Malpaso and Vado arsenic trioxide deposits, located near the Mantaro River, where remediation efforts were being carried out by *Activos Mineros S.A.C.* These samples revealed that there were high concentrations of arsenic at two monitoring points, indicating that "the groundwater would have had contact with the encapsulated material of the arsenic trioxide deposits, due to a leakage caused by current failures in the closure of these components." Therefore, it concluded that the environmental mitigation measures for these facilities had not been implemented in line with the provisions of the environmental management plan.[130]

83. Between February 1 and 28, 2017, the Environmental Assessment and Control Agency (OEFA) conducted air quality monitoring and surveillance in the city of La Oroya, approximately 700 meters from the CMLO. The monitoring showed that on February 2, 2017, the daily average concentration exceeded the environmental quality standard (ECA) value for SO_2 equal to 365 $\mu g/m^3$ for 24 hours. OEFA found that the SO_2 parameters had also exceeded the respective ECA on December 10 and 11, 2016 and January 17 and 21, 2017.[131]

84. A study in 2017 concluded that emissions of lead, cadmium and arsenic produced by the CMLO's activities during 87 years of productive life had affected around 2,300 square kilometers of soil in the central region; thus, the concentration of lead in the soil was found to be so high that it exceeded the maximum permitted limit by 87%. Regarding the lead content in the water of the Mantaro River, the study determined that

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127 *Cf.* Peruvian Congress, Commission for Andean, Amazonian and Afro-Peruvian Peoples, Environment and Ecology, "The problem of public environmental health in La Oroya," June 2007 (evidence file, folio .666).

128 *Cf.* Fernando Serrano, "Evaluation of toxic metals in biological samples before and after the closure of the Doe Run Peru Complex in La Oroya," July 19, 2010 (evidence file, folio .639).

129 *Cf.* Fernando Serrano, "Evaluation of toxic metals in biological samples before and after the closure of the Doe Run Peru Complex in La Oroya," July 19, 2010 (evidence file, folio .639).

130 *Cf.* Ministry of the Environment, Environmental Assessment and Control Agency, Directorial Order No. 1706-2017-OEFA/DFSAI, December 22, 2017 (evidence file, folios 23140, 23145, 23146).

131 *Cf.* Ministry of the Environment, Environmental Assessment and Control Agency, Report No. 15-2017-OEFA/DE-SDCA-CMVA, April 10, 2017 (evidence file, folios 21862 to 21907).

the levels of presence of this component in the area of the Huanchán slag deposit could not support aquatic life, had an impact on the soil, and was not suitable for irrigation or drinking water for animals.[132]

D. The health situation of the alleged victims

85. The Court recalls that the instant case involves 80 alleged victims[133] comprising 17 families and 6 individuals, of whom 38 are women and 42 are men. All the alleged victims have lived in La Oroya since the establishment of the CMLO in 1922, and six of them are deceased: María 14 and 38, and Juan 5, 12, 19 and 40. Given the importance of examining the specific circumstances of each of the alleged victims, and as has occurred in other cases,[134] Annex 3 of this judgment contains a description of the proven facts with respect to the medical conditions and treatment provided to each individual, as well as the particular circumstances of those who have died.

E. Motion to enjoin enforcement filed before the Constitutional Court, the precautionary measures granted by the Inter-American Commission, and the measures adopted by the State in compliance with those decisions

E.1. Motion to enjoin enforcement and the decision of the Constitutional Court

86. On December 6, 2002, Juan 7, María 11, and four others (hereinafter, "the petitioners") lodged a motion to enjoin enforcement against the Ministry of Health and the General Directorate of Environmental Health (DIGESA) before the Twenty-second Civil Court of Lima. In their petition, they requested the protection of the right to health and to a healthy environment of the population of La Oroya, through the design and implementation of an "emergency public health strategy" to mitigate and remedy the health conditions of the inhabitants, the declaration of "states of alert," and the establishment of "epidemiological and environmental surveillance programs."[135] The claim was based on studies on the health and environmental impacts of the CMLO's activities in La Oroya.[136]

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132 *Cf.* Siles Arce and Marilú Calderón, "Soils contaminated with lead in the city of La Oroya, Junín and its impact on the waters of the Mantaro River," *Rev. of the Research Institute of FIGMM-UNMSM* vol. 20, No. 40, 2017 (evidence file, folio 20815).

133 The alleged victims in this case have requested the use of the pseudonyms "María" and "Juan": Juan 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, María 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, and 38.

134 *Cf. Case of Cuscul Pivaral et al. v. Guatemala, supra*, para. 55; *Case of the Miskito Divers (Lemoth Morris et al.) v. Honduras*, *supra*, footnote 29, and *Case of Members and Militants of the Patriotic Union v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of July 27, 2022. Series C No. 455, para. 149.

135 *Cf.* Motion to enjoin enforcement, filed on December 6, 2002 (evidence file, folio .783).

136 These studies are: 1) the "Study of Lead in Blood in a Selected Population of La Oroya" prepared by DIGESA in 1999; 2) the "Study of Blood Lead Levels in the Population of La Oroya 2000-2001" by Doe Run, and 3) the "Evaluation of Lead Levels and Factors of Exposure in pregnant women and children under three years in the City of La Oroya" conducted by the Union for Sustainable Development. *Cf.* Motion to enjoin enforcement, filed on December 6, 2002 (evidence file, folio .786).

87. On April 1, 2005, the Twenty-second Civil Court of Lima granted the motion to enjoin enforcement.[137] However, on April 14, 2005, the Public Prosecutor appealed the decision.[138] On October 11, 2005, the First Civil Chamber of the Superior Court of Justice of Lima decided to revoke the appealed decision and declared the motion to enjoin enforcement inadmissible, stating *inter alia* that the dispute "requires a complex evidentiary analysis which is not possible in constitutional proceedings."[139] Therefore, the petitioners filed a constitutional grievance appeal against the aforementioned judgment. On May 12, 2006, the Constitutional Court partially upheld the motion to enjoin enforcement and ordered the following measures:[140]

> 1. Orders the Ministry of Health to implement, within thirty (30) days, an emergency system to provide health care to people contaminated by lead in the city of La Oroya, prioritizing specialized medical care for children and pregnant women, for the purpose of their immediate recovery, as set forth in paragraphs 59 to 61 of this judgment, under penalty of applying the coercive measures established in the Code of Constitutional Procedure to the responsible parties.
> 2. Orders the Ministry of Health, through the General Directorate of Environmental Health (DIGESA), to comply, within thirty (30) days, with all actions necessary to carry out the baseline assessment, as stipulated in Article 11 of Supreme Decree 074-2001-PCM, Regulation of National Environmental Air Quality Standards *(Reglamento de Estándares Nacionales de Calidad Ambiental del Aire)*, so that the respective action plans for the improvement of air quality in the city of La Oroya can be implemented as soon as possible.
> 3. Orders the Ministry of Health to declare a state of alert in the city of La Oroya, within thirty (30) days, as required by Articles 23 and 25 of Supreme Decree 074-2001-PCM and Article 105 of Law 26842.
> 4. Orders the General Directorate of Environmental Health (DIGESA) to carry out, within thirty (30) days, actions to establish epidemiological and environmental monitoring programs in the city of La Oroya.
> 5. Orders the Ministry of Health, once the periods mentioned in the preceding paragraphs have elapsed, to inform the Constitutional Court of the actions taken to comply with the provisions of this judgment.[141]

88. As part of its reasoning, the Constitutional Court (CC) recalled that since 1999, the General Directorate of Environmental Health (DIGESA) had reported high levels of air pollution and lead in the blood of the population of La Oroya. The CC noted that in the seven years since the issuance of DIGESA's report, the Ministry of Health had not implemented an emergency system to protect and restore the health of the affected population. In this regard, it emphasized that the serious health condition of the contaminated children and pregnant women required a concrete and efficient intervention, and that the Ministry of Health was "the main [institution] responsible for the immediate recovery of the health of the affected population."[142]

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137 *Cf.* Twenty-second Civil Court of Lima, Decision No. 14, of April 1, 2005 (evidence file, folios .810 and .811).

138 *Cf.* Twenty-second Civil Court of Lima, Decision No. 14, of April 1, 2005 (evidence file, folio .819).

139 *Cf.* First Chamber of the Superior Court of Justice. Judgment of October 11, 2005 (evidence file, folio .815).

140 *Cf.* Constitutional Court, Judgment of May 12, 2006 (evidence file, folio .839).

141 Constitutional Court, Judgment of May 12, 2006 (evidence file, folio 0.839).

142 Constitutional Court, Judgment of May 12, 2006 (evidence file, folios 0.831, 0.834, 0.836 to 0.838).

E.2. Precautionary measures granted by the Inter-American Commission

89. On November 21, 2005, the representatives filed a request for precautionary measures to protect the rights to life, personal integrity and health of 66 residents of La Oroya affected by the pollution caused by the CMLO.[143] On August 31, 2007, the Commission granted precautionary measures in favor of 65 inhabitants of La Oroya, including children, and requested that the Peruvian State:

> Adopt appropriate measures to provide the beneficiaries identified in this request for precautionary measures with specialized medical diagnoses; also, provide appropriate specialized medical treatment to those persons whose diagnoses indicate danger of irreparable harm to their personal well-being or their lives; and coordinate implementation of the precautionary measures with the petitioners and beneficiaries.[144]

90. On September 1, 2010, the representatives asked the Commission to extend the precautionary measures in favor of 14 other persons who were, for the most part, "close relatives of the beneficiaries" and "residents of La Oroya."[145] On May 3, 2016 the Commission granted an extension of the precautionary measures in favor of the aforementioned 14 persons, requiring the Peruvian State to:

> Adopt the measures necessary to preserve the lives and integrity of María 29, María 30, María 31, María 32, María 33, María 34, María 35, María 36, María 37, María 38, Juan 39, Juan 40, Juan 41, and Juan 42, by carrying out the necessary medical diagnoses to determine the levels of lead, cadmium and arsenic in their blood, in order to provide them with appropriate medical care, according to applicable international standards;
> Agree upon the measures to be adopted with the beneficiaries and their representatives [,] and
> Report on the actions taken to investigate the facts that gave rise to the extension of the present precautionary measures and thus prevent their repetition.[146]

91. The precautionary measures granted by the Commission are currently in force.

E.3. Actions taken by the State to remediate the pollution and its effects in La Oroya following the decisions of the Constitutional Court and the Inter-American Commission

92. The State adopted a number of measures following the Constitutional Court's judgment of May 12, 2006, and the Inter-American Commission's decision of August 31, 2007. These measures were aimed at addressing the following aspects: a) the implementation of an emergency health care system; b) the adoption of measures for the improvement of air quality and the establishment of environmental 'states of alert', and c) the implementation of environmental remediation and oversight processes. The

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143 *Cf.* Petition submitted to the Inter-American Commission on Human Rights by AIDA, CEDHA and Earthjustice, December 2006 (evidence file, folio 12).

144 *Cf.* Communication of the Inter-American Commission of August 31, 2007 (evidence file, folios 11362 to 11364).

145 *Cf.* Inter-American Commission, MC 271-05. Community of La Oroya regarding Peru. Order No. 29/2016 of May 3, 2016 (evidence file, folio 16573).

146 *Cf.* Inter-American Commission, MC 271-05. Community of La Oroya regarding Peru. Order No. 29/2016 of May 3, 2016 (evidence file, folio 16578).

Court will refer to the central aspects of these measures in its analysis of the merits in this judgment (*infra* Chapter VIII-2)

F. Alleged acts of harassment against some of the alleged victims

93. In 2002, the residents of La Oroya formed the Health Movement of La Oroya (hereinafter the "MOSAO"). The alleged victims Juan 1, Juan 6, Juan 7, Juan 11, Juan 12, Juan 13, Juan 17, Juan 18, Juan 19, María 1, María 3, María 6, María 11, and María 13, were among the individuals who joined MOSAO. The purpose of this organization was to advocate for the protection of the population's health. MOSAO also created a Technical Committee, comprised of civil society organizations and the Catholic and Presbyterian churches. It has organized protests and denounced acts of intimidation against some of its members.[147]

94. On March 17, 2004, some of the alleged victims who are members of MOSAO organized a sit-in as a protest against the extension of the PAMA. The sit-in was disrupted by some of Doe Run Peru's workers who regarded the company as a "source of employment." During the sit-in, workers from the metallurgical complex and other residents of La Oroya also burned MOSAO's "banners and pamphlets."[148] As a result, on April 28, 2004, MOSAO's representatives denounced "the crime of coercion […] because we are being subjected to different kinds of attacks on a daily basis, affecting the physical and psychological integrity of members of our movement and of the Technical Committee that advises MOSAO." This complaint was filed with the Sub-Prefect of Yauli Province,[149] without receiving any response.

95. On August 31, 2006, the Regional Executive Secretary and members of the National Environmental Council (hereinafter "CONAM"), in charge of implementing a Contingency Plan to reduce the high levels of lead at the CMLO, publicly denounced that a group of people who defended Doe Run's activities had threatened to "throw them into the Mantaro River," thereby forcing them to cancel the establishment of the Technical Committee on Air Quality.[150]

96. On November 16, 2007, several alleged victims complained to the Ministry of Justice that "the critical situation of harassment and threats already experienced in this town [had] worsened." Specifically, they reported that some of the beneficiaries of the precautionary measures issued by the Inter-American Commission had been photographed by company workers and that their homes had been marked, while the lawyers who were advising them were threatened at meetings or in public spaces.[151]

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147 *Cf.* Letter sent to the Minister of the Interior, signed by Juan Aste Daffos, Coordinator of the Technical Committee of MOSAO, dated May 14, 2004 (evidence file, folio 25987); Note sent to the General Directorate of Government Interior, signed by María 1, of April 24, 2012 (evidence file, folio .1407); Union of Metallurgical Workers Against MOSAO, Communication No. 43-S.T.M.O. of April 16, 2004 (evidence file, folio 25990); Statement of Juan 6 (evidence file, folio 28972); and, medical files of the victims regarding exposure to toxic metals (evidence file, folios 24275 to 24928), and pleadings and motions brief (merits file, folio 268).

148 *Cf.* Press release: "On historic day, the people of La Oroya endorsed the social license granted to Doe Run" March 2004 (evidence file, folio .1373).

149 *Cf.* Complaint filed by María 13 al Prosecutor of Yauli Province, La Oroya, of August 23, 2007 (evidence file, folios .1376 a .1379).

150 *Cf. La Republica* newspaper: "Environmental committee in La Oroya is blocked," August 31, 2006 (evidence file, folio .1381).

151 *Cf.* Communication of the alleged victims with the Minister of Justice of November 9, 2007 (evidence file, folios .1383 and .1384).

However, their petition received no response.

97. On August 15, 2007, Juan 2 reported to the prosecutor of the Province of Yauli–La Oroya that on that day high levels of emissions from the metallurgical complex had been detected, "which continue to contaminate […] the children in the city." On August 17, 2007 Juan 2 was dismissed from his job at the Municipal Ombudsman's Office for Children and Adolescents (hereinafter "DEMUNA"). He publicly alleged that this decision was taken in retaliation for his complaints against the mining company. Juan 2 insisted that his dismissal from DEMUNA two days after his complaint was "provoked" by "two councilmen who work for Doe Run Peru."[152]

98. On April 13, 2012, the newspaper *La República* reported that, following a majority decision by Doe Run's Board of Creditors to declare the company "in the process of liquidation," CMLO workers "threatened the people who took the initiative to openly denounce the pollution in the area."[153] On April 24, 2012, María 1, who was also a member of MOSAO, reported to the General Directorate for Internal Government of the Ministry of the Interior that she "fear[ed] for [her] life after being verbally abused." She added that "on several occasions" critics of her work as an activist had come to her house "to knock on the door." She also stated that she was forced to take "refuge" in Lima after Doe Run workers "incited violence" against her.[154] There is no record in the case file that Maria 1´s complaint was answered.

99. On July 22, 2019, the Sub-prefecture of the Province of Yauli-La Oroya ordered personal guarantees in favor of María 11 and her husband Juan 7, after she reported that the host of a radio show broadcast by "Radio Karisma" had used this platform to make "defamatory comments and threats" against María 11 and her husband, "inciting the population against [them]" and putting them "in grave danger."[155] The case file contains no evidence that these facts were subsequently investigated.

100. On September 3, 2023, the *Metalurgia Business Peru S.A*. company issued a press release in which it accused "anti-mining NGOs" such as AIDA, and "known anti-mining residents" of opposing the reactivation of activities at the CMLO, and urged the community of La Oroya to "close ranks and expel these [people]." It also accused the "anti-mining" organizations of being "one of the architects" of the closure of the metallurgical complex, which was the "main source of economic development" in La Oroya.[156]

101. Furthermore, in the live broadcast of the *Vocero Regional* news program on "Radio Karisma" on September 26, 2023, two spokespersons from *Metalúrgica Business Peru* criticized efforts by the non-governmental organizations and inhabitants of La Oroya to oppose the activities carried out at the complex, claiming that they were "serving other

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152 *Cf. Coordinadora Nacional de Radio*, "Doe Run accused over dismissal of MOSAO representative from DEMUNA in La Oroya," August 23, 2007 (evidence file, folios .1396 and .1397).

153 *Cf. La República* newspaper, "Doe Run: Reports that workers will take reprisals against local activists," April 13, 2012 (evidence file, folio .1399)

154 *Cf.* Communication sent to the General Directorate of Internal Affairs, signed by María 1, April 24, 2012 (evidence file, folios .1406 to .1408).

155 *Cf.* Sub-Prefecture of the Province of Yauli- La Oroya, Decision No. 60-2019-VOI/DGIN/SPROV of July 22, 2019 (evidence file, folios .1419 to .1420).

156 Press release by the firm *Metalúrgica Business Peru S.A.*, dated September 3, 2023.

interests."[157] The case file contains no record of any complaint filed with the State authorities regarding these events.[158]

VIII
MERITS

102. The Court will now determine whether the State complied with its obligation to respect and ensure the rights to a healthy environment, health, life, personal integrity, the rights of the child, access to information, political participation, judicial guarantees and judicial protection, in light of its response to the activities at the CMLO and their consequences for the alleged victims in this case. Thus, based on the arguments of the parties and the Commission, the Court will examine the merits of this case in two chapters. In the first chapter, it will assess the arguments regarding: a) the alleged violation of the rights to a healthy environment, health, life, personal integrity, the rights of the child, and access to information and political participation, in relation to the obligations to respect and guarantee rights and the duty to adopt provisions of domestic law. In the second chapter, the Court will analyze b) the alleged violation of the rights to judicial guarantees and judicial protection, in relation to the obligation to respect rights.

VIII-1
RIGHTS TO A HEALTHY ENVIRONMENT, HEALTH, PERSONAL INTEGRITY, LIFE, RIGHTS OF THE CHILD, ACCESS TO INFORMATION AND POLITICAL PARTICIPATION[159]

A. Arguments of the Commission and the parties

103. The ***Commission*** argued that the absence of adequate systems to monitor activities at the CMLO by means of a clear regulatory framework, the lack of constant and effective supervision, the absence of sanctions or immediate actions to address the situations of alarming environmental degradation, the State's acquiescence and facilitation in preventing the mitigation of the harmful environmental effects of metallurgical operations in La Oroya, and the lack of active transparency have allowed mining and metallurgical activities at the CMLO to generate very high levels of pollution. This has seriously impacted the health of the 80 alleged victims, affected the health of the environment, and impeded access to information and political participation. The Commission also alleged that the State failed to comply with its obligation to guarantee the health of children, and is therefore also responsible for the violation of the rights of the child to the detriment of the 23 alleged victims who were children at the time when the initial petition was filed. Consequently, it concluded that Peru violated the rights to a decent life, personal integrity, a healthy environment, health and access to information on environmental matters and public participation, and the rights of the child, established, respectively, in Articles 4(1), 5(1), 13(1), 19, 23(1)(a) and 26 of the American Convention in relation to Articles 1(1) and 2 thereof, to the detriment of the persons identified in the single Annex to the Merits Report. Finally, the Commission concluded that the Peruvian State did not comply with its obligation of progressive

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157 *Cf.* Radio Karisma La Oroya, *Noticiero Vocero Digital*, September 26, 2023.

158 According to the State, no application for personal guarantees was presented regarding *Metalúrgica Business Peru S.A.A*. *Cf.* Ministry of the Interior, Report No. 009-2023-VOI/DGIN/SROV of October 24, 2023 (evidence file, folio 30264).

159 Articles 26, 4, 5, 19, 13 and 23 of the American Convention, respectively.

development established in Article 26 in relation to the rights to health and a healthy environment, since it did not justify its failure to adapt and progressively align its domestic environmental standards and indicators with those recommended by specialized international agencies, and instead adopted specific regressive measures without justification.

104. The ***representatives*** argued that the State failed to implement appropriate measures for the monitoring and supervision of the CMLO's activities, despite the risks they entailed for the environment, health, personal integrity and the lives of the inhabitants of La Oroya. In particular, the representatives pointed out that the State did not comply with its obligation to ensure the population's enjoyment of the highest level of health, since the environmental conditions created by the lack of effective controls over the CMLO, and the absence of an epidemiological monitoring plan, have affected and will continue to affect the lives and wellbeing of the population of La Oroya. The representatives further argued that the State disregarded its obligation to respect and ensure the right to life and personal integrity of people in vulnerable situations, such as women, pregnant women, the elderly and children. In relation to children, they argued that the State failed to comply with its special duty of protection with respect to the 53 alleged victims who were children at the time when the State became aware of the environmental contamination in La Oroya, in 1986. Regarding the right to life, the representatives argued that the State's negligence in the face of the crisis in La Oroya has resulted in the deaths of two victims due to serious health problems: Juan 5 and María 14. As for the right to have access to information and political participation, the representatives indicated that the State did not provide essential information on the degree of environmental pollution in La Oroya which, in practice, also prevented the active participation of the alleged victims in the decision-making process. Therefore, the representatives argued that the State is responsible for the violation of the rights established in Articles 4, 5, 13, 19, 23 and 26 of the American Convention, in relation to Articles 1(1) and 2 of the same instrument.

105. The ***State*** emphasized that the dispute in this case revolves around compliance with the 2006 judgment of the Constitutional Court. In that regard, it pointed out that, based on that ruling, efforts were made to reduce environmental contamination, and therefore there was no acquiescence or tolerance with respect to the CMLO's polluting activities. Similarly, the State argued that it adopted remediation measures to tackle the environmental damage and also approved various environmental remediation tools. As for the arguments concerning the violation of the right to life, the State argued that there is no relationship between the environmental context of La Oroya and the deaths that occurred in the area. Regarding the alleged violation of the right to information and political participation, the State held that it had ensured that the interested persons were given opportunities for active participation in decision-making on environmental matters, and had duly informed the public about such opportunities for participation. The State argued that the Court should not consider the representatives' claims with respect to health and the environment, since they do not have a valid and effective basis to prove them. More specifically, it insisted that there is no causal relationship between the symptoms presented by the alleged victims and their exposure to heavy metals. Regarding the alleged violation of Article 19 of the Convention, the State considered that the number of children allegedly affected should be determined at the time the petition was filed, and not in 1986, as proposed by the representatives. In addition, it pointed out that the representatives and the Commission did not establish a link between the alleged harm to children and environmental pollution. Nevertheless, it emphasized that differentiated measures of protection were implemented. Consequently, the State

maintained that it was not internationally responsible for the violation of the rights cited by the Commission and the representatives.

B. Considerations of the Court

106. The arguments put forward by the Commission and the parties show that the main legal dispute in this case is whether or not the State is responsible for the violation of several rights protected by the American Convention as a result of the mining and metallurgical activities carried out at the CMLO by the state-owned company CENTROMIN, and by the private company Doe Run. In this section, the Court will rule on the obligations of States to respect and guarantee human rights in relation to actions or omissions by public and private companies; subsequently, it will discuss the content of the rights to a healthy environment, health, life, personal integrity, the rights of the child, access to information and political participation; and finally, it will examine the facts of this case to determine the violation of human rights protected by the American Convention.

B.1. The State's obligations to respect and guarantee human rights in relation to actions or omissions by public and private companies

107. Since its first judgments, the Court has emphasized that the first obligation assumed by States Parties under Article 1(1) of the Convention is to "respect the rights and freedoms" recognized therein. Thus, the exercise of public authority has certain limits which derive from the fact that human rights are inherent attributes of human dignity and are, therefore, superior to the power of the State. In this sense, the protection of human rights is based on the affirmation of certain inviolable attributes of the individual that cannot be legitimately restricted by the exercise of governmental power. There are individual domains that are beyond the reach of the State or to which the State only has limited access. Therefore, the protection of human rights must necessarily include the notion of the restriction of the exercise of state power.[160]

108. The second obligation of the States is to "guarantee" the free and full exercise of the rights recognized in the Convention to every person subject to their jurisdiction. This obligation implies the duty of States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of legally ensuring the free and full enjoyment of human rights. The Court recalls that the obligation to ensure the free and full exercise of human rights is not fulfilled by the mere existence of a legal system designed to make it possible to comply with this obligation - it also requires the government to conduct itself so as to effectively ensure the free and full exercise of human rights.[161]

109. In this regard, the Court has established that the obligation to guarantee rights extends beyond the relationships between State agents and those subject to their jurisdiction, and encompasses the duty to prevent third parties, in the private sphere, from violating the protected rights.[162] Nevertheless, the Court has indicated that a State cannot be held responsible for all human rights violations committed by private individuals subject

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160 *Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra,* para. 165, and *Case of the Miskito Divers (Lemoth Morris et al.) v. Honduras, supra*, para. 42.

161 *Cf. Case of Velásquez Rodríguez v. Honduras*, *supra*, paras. 166 and 167, and *Case of the Miskito Divers (Lemoth Morris et al.) v. Honduras, supra*, para. 43.

162 *Cf. Case of the "Mapiripán Massacre" v. Colombia, supra*, para. 111, and *Case of the Miskito Divers (Lemoth Morris et al.) v. Honduras, supra*, para. 44.

to its jurisdiction. The *erga omnes* nature of the State's conventional obligations to guarantee human rights does not imply its unlimited responsibility for any act by third parties. Thus, even if an act or omission by a private individual has the legal consequence of violating the rights of another person, this is not automatically attributable to the State; rather, it is necessary to examine the particular circumstances of the case and the specific nature of the obligations to guarantee the rights of others.[163]

110. Regarding the State's obligations with respect to business activities, the Court deems it pertinent to point out that the Human Rights Council has adopted the "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework" (hereinafter "Guiding Principles").[164] In particular, the Court highlights the three pillars of the Guiding Principles, together with the foundational principles derived from these pillars, which are fundamental in determining the scope of the human rights obligations of States and business enterprises.[165]

I. The State's duty to protect human rights

- States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.

- States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.

II. The corporate responsibility to respect human rights

- Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address the adverse human rights impacts with which they are involved.

- The responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labor Organization's Declaration on Fundamental Principles and Rights at Work.

- The responsibility to respect human rights requires that business enterprises:

  a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;

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163 *Cf. Case of the Pueblo Bello Massacre v. Colombia.* Judgment of January 31, 2006. Series C No. 140, *supra*, para. 123, and *Case of the Miskito Divers (Lemoth Morris et al.) v. Honduras, supra*, para. 44.

164 Human Rights Council. *Human Rights and Transnational Corporations and other Business Enterprises.* A/HRC/RES/17/4, July 6, 2011, operative paragraph 1.

165 *Cf. Case of the Miskito Divers (Lemoth Morris et al.) v. Honduras, supra*, para. 47, and *Case* of *Vera Rojas et al. v. Chile, supra,* para. 84. See also: Office of the United Nations High Commissioner for Human Rights (OHCHR). *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework."* HR/PUB/11/04, 2011.

b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services through their business relationships, even if they have not contributed to those impacts.

- The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure. Nevertheless, the scale and complexity of the means through which such enterprises meet that responsibility may vary according to these factors and the severity of the enterprise's adverse human rights impacts.

- In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:

  a) A policy commitment to meet their responsibility to respect human rights;

  b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;

  c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.

III. Access to remedy

- As part of their duty to protect against business-related human rights abuses, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to an effective remedy.

111. Accordingly, and in the context of the obligation to guarantee rights and the duty to adopt provisions of domestic law derived from Articles 1(1) and 2 of the American Convention, States have a duty to prevent human rights violations by private companies, and must therefore adopt legislative and other measures to prevent such violations, and to investigate, punish and provide reparation when these occur. States must therefore establish regulations requiring companies to implement actions aimed at ensuring respect for the human rights recognized in the various instruments of the Inter-American System for the Protection of Human Rights –including the American Convention and the Protocol of San Salvador. Under these regulations, businesses must ensure that their activities do not cause or contribute to human rights violations, and must adopt measures to redress such violations. The Court considers that corporate responsibility is applicable regardless of the size or sector of the company; however, their responsibilities may vary in the legislation based on their activities and the risk they pose to human rights.[166]

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[166] *Cf. Case of the Miskito Divers (Lemoth Morris et al.) v. Honduras*, *supra,* para. 48; Office of the United Nations High Commissioner for Human Rights (OHCHR). *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*. HR/PUB/11/04, 2011, Principles 1 to 14; Inter-American Commission on Human Rights. *Report on Business and Human Rights: Inter-American Standards*, REDESCA, November 1, 2019, paras. 89 and 121, and Inter-American Juridical Committee. Resolution on "Corporate Social Responsibility in the Area of Human Rights and the Environment in the Americas," CJI/RES. 205 (LXXXIV-O/14); and Inter-American Juridical Committee. *Guidelines Concerning Corporate Social Responsibility in the Area of Human Rights and the Environment in the Americas*, February 24, 2014, CJI/doc.449/14 rev.1., corr. 1, points a) and b).

112. This Court has also considered that, in pursuit of the aforementioned objectives, States should adopt measures to ensure that business enterprises have: a) appropriate policies for the protection of human rights; b) due diligence processes for the identification, prevention and redress of human rights violations, as well as to ensure decent and dignified work; and c) processes that allow businesses to remedy human rights violations that result from their activities, especially when these affect people living in poverty or belonging to vulnerable groups.[167] In this context, the Court has indicated that States should actively encourage businesses to adopt good corporate governance practices that focus on stakeholders as well as actions to guide business activities towards compliance with human rights standards. This includes promoting the participation and commitment of all the stakeholders involved, and the redress of the affected persons.[168]

113. The Court recalls that Article 25 (1) of the American Convention establishes that "everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the State concerned or by this Convention […]."[169] Therefore, States must ensure the existence of judicial or extrajudicial mechanisms that provide an effective remedy for human rights violations. In this regard, States have the obligation to eliminate existing legal and administrative barriers that limit access to justice, and adopt those aimed at achieving its effectiveness. The Court has emphasized the need for States to address cultural, social, physical or financial barriers that prevent access to judicial or extrajudicial mechanisms for individuals belonging to vulnerable groups.[170]

114. Furthermore, the Court has pointed out that companies are primarily responsible for acting responsibly in the activities they carry out, since their active participation is fundamental to ensure respect for and the enforcement of human rights. Businesses should adopt, at their own expense, preventive measures to protect the human rights of their workers, as well as measures aimed at preventing their activities from having a negative impact on the communities or on the environment in which they operate.[171] In this sense, the Court considers that the regulation of business activities does not require companies to guarantee results, but rather they should aim to ensure that they continuously assess the risks to human rights, and respond with effective and proportional measures to mitigate the risks caused by their activities, according to their resources and possibilities, and with accountability mechanisms to remedy any damage caused. This obligation must be assumed by companies and regulated by the State.[172]

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[167] *Cf. Case of the Miskito Divers (Lemoth Morris et al.) v. Honduras*, *supra*, para. 49, and Office of the United Nations High Commissioner for Human Rights (OHCHR). *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*. HR/PUB/11/04, 2011, principles 15 to 24.

[168] *Cf. Case of the Miskito Divers (Lemoth Morris et al.) v. Honduras*, *supra*, para. 49, and *Case of Vera Rojas et al. v. Chile, supra,* para. 86.

[169] *Cf. Case of Velásquez Rodríguez v. Honduras, Preliminary objections, supra*, para. 91, and *Case of Vera Rojas et al. v. Chile, supra,* para. 87.

[170] *Cf. Case of the Miskito Divers (Lemoth Morris et al.) v. Honduras*, *supra*, para. 50, and *Case Vera Rojas et al. v. Chile, supra,* para. 87.

[171] *Cf. Case of the Miskito Divers (Lemoth Morris et al.) v. Honduras*, *supra*, para. 51, and *Case of Vera Rojas et al. v. Chile, supra,* para. 88. Also see: Inter-American Juridical Committee. *Guidelines on Corporate Social Responsibility in the Area of Human Rights and the Environment in the Americas*, *supra*, point a.

[172] *Cf. Case of the Miskito Divers (Lemoth Morris et al.) v. Honduras*, *supra*, para. 51, and *Case Vera Rojas et al. v. Chile, supra,* para. 88.

B.2. Rights to a healthy environment, health, life, personal integrity, the rights of the child, access to information and political participation

B.2.1. Content of the right to a healthy environment

115. The Court has stated that the right to a healthy environment is among the rights protected by Article 26 of the American Convention, given that States have an obligation to ensure the "integral development" of their peoples, as established in Articles 30, 31, 33 and 34 of the OAS Charter.[173] Thus, the Court has considered that there is a sufficiently specific reference to determine the existence of the right to a healthy environment recognized by the OAS Charter. Consequently, the right to a healthy environment is a right protected by Article 26 of the Convention.

116. Regarding the content and scope of this right, the Court recalls that Article 11 of the Protocol of San Salvador, ratified by Peru on May 17, 1995, states 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."[174] The Court also notes that the right to a healthy environment has been recognized by many countries of the Americas: at least 16 States of this continent include it in their constitutions.[175] In particular, Article 2 of the Peruvian Constitution establishes that "*Every person has the right… to peace, tranquility, enjoyment of leisure time and rest, as well as to a balanced and appropriate environment for the development of his life*."[176]

117. Furthermore, the United Nations General Assembly has recognized the right to a clean, healthy and sustainable environment as a human right, and that this right is related to other rights and current international law.[177] For its part, the Human Rights Council has established that States must adopt policies for the enjoyment of the right to a clean, healthy and sustainable environment, particularly with respect for biodiversity and ecosystems.[178] Similarly, the Court notes that the Special Rapporteur on Human Rights and the Environment has developed the Framework Principles on Human Rights and the Environment, which recognize the obligation of States to "ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights"

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173 *Cf. Advisory Opinion OC-23/17*, *supra,* para. 57, and *Case of Indigenous Communities Members of the Lhaka Honhat (Our Land) Association v. Argentina, supra*, para. 202.

174 Peru signed the Protocol of San Salvador on November 11, 1988 and ratified it on May 17, 1995. The instrument of ratification was deposited on June 4, 1995.

175 The constitutions of the following States enshrine the right to a healthy environment: (1) Constitution of the Argentine Nation, art. 41; (2) Constitution of the State of Bolivia, art. 33; (3) Constitution of the Federative Republic of Brazil, art. 225; (4) Constitution of the Republic of Chile, art. 19.8; (5) Constitution of Colombia, art. 79; (6) Constitution of Costa Rica, art. 50; (7) Constitution of the Republic of Ecuador, art. 14; (8) Constitution of the Republic of El Salvador, art. 117; (9) Constitution of the Republic of Guatemala, art. 97; (10) Constitution of the United Mexican States, art. 4; (11) Constitution of Nicaragua, art. 60; (12) Constitution of the Republic of Panama, arts. 118 and 119; (13) Constitution of the Republic of Paraguay, arts. 7 and 8; (14) Constitution of the Dominican Republic, arts. 66 and 67, and (16) Constitution of the Bolivarian Republic of Venezuela, arts. 127 and 129.

176 *Cf.* Constitution of Peru, art. 2.22).

177 United Nations General Assembly. The human right to a clean, healthy and sustainable environment. Resolution 76/300 of the United Nations General Assembly of July 28, 2022, points 1 and 2.

178 *Cf.* United Nations. Human Rights Council. The right to a clean, healthy and sustainable environment, Resolution of October 28, 2021.

as well as to "respect, protect and fulfil human rights in order to ensure a safe, clean, healthy and sustainable environment."[179]

118. Based on the foregoing, the Court has recognized that the right to a healthy environment is of universal interest and is a fundamental right for the existence of humankind. It has also established that the right to healthy environment comprises a set of substantive and procedural obligations.[180] The former give rise to obligations relating to access to information (*infra* para. 144 to 149), political participation (*infra* para. 150 to 152) and access to justice (*infra* para. 272),[181] while the latter include air, water, food, ecosystems and the climate, etc. In this regard, the Court has stated that the right to a healthy environment "protects the components of the environment, such as forests, rivers and seas and others, as legal interests in themselves, even in the absence of certainty or evidence of risk to individuals."[182] States are therefore obliged to protect nature and the environment not only because of the benefits they provide to humanity, but also because of their importance to the other living organisms with which we share the planet. Of course, this does not prevent other human rights from being violated as a result of environmental damage.

119. The Court also points out that air and water pollution may have adverse effects on maintaining a healthy and sustainable environment, as it may damage aquatic ecosystems, flora, fauna and soil through the accumulation of pollutants and changes in their composition, and may adversely affect people's health and living conditions.[183] In this sense, air and water pollution may affect rights, such as the rights to a healthy environment, life, health, food, and a decent life when it causes significant damage to the basic assets protected by those rights.[184] These rights are recognized in the American Convention and the San Salvador Protocol, as well as in other international instruments for the protection of human rights at the regional and universal levels.[185] They have also been recognized by this Court in its case law.[186]

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179 United Nations. Human Rights Council. Report of the Special Rapporteur on the human right to a safe, clean, healthy and sustainable environment. January 24, 2018, framework principles 1 and 2.

180 *Cf. Advisory Opinion OC-23/17*, *supra,* paras. 62 and 212.

181 *Cf. Advisory Opinion OC-23/17*, *supra,* para. 212.

182 *Cf. Advisory Opinion OC-23/17*, *supra,* paras. 59, 62 and 64, and *Case of Indigenous Communities Members of the Lhaka Honhat (Our Land) Association v. Argentina*, *supra,* para. 203. Also see: Supreme Court of Justice (Mexico), amparo in review 307/2016, para. 76, and Constitutional Court (Colombia), Judgment T-614/19.

183 WHO Air Quality Guidelines: Particulate Matter (PM2.5 and PM10), Ozone, Nitrogen Sulfur Dioxide and Carbon Monoxide. Geneva: World Health Organization; 2021, page 74; WHO, "Evolution of WHO Air Quality Guidelines: Past, Present and Future," Copenhagen, Denmark: WHO Regional Office for Europe (2017), page 2; Report A/HRC/40/55 of Special Rapporteur. Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. January 8, 2019, para. 44.

184 The European Court of Human Rights has addressed the relationship between air pollution and rights violations in its rulings. See, *inter alia*: ECHR, Fadeyeva c. Russia, No. 55724/00. Judgment of June 9, 2005; ECHR, Okyay et al. v. Turkey, No. 36220/97. Judgment of July 12, 2005; ECHR, Ledyayeva et al. c. Russia Nos. 53157/99, 53247/99, 53695/00 and 56850/00. Judgment of October 26, 2006; ECHR, Cordella et al. c. Italy, No. 54413/13. Judgment of January 24, 2019; ECHR, A.A. et al. c. Italy, No. 37277/16. Judgment of May 5, 2022, and ECHR, Pavlov et al. c. Russia No 31612/09. Judgment of October 11, 2022.

185 American Convention, Articles 4 and 26; Protocol of San Salvador, Articles 10, 11, and 12; International Covenant on ESCR, Articles 11 and 12.

186 *Cf. Advisory Opinion OC-23/17, supra,* paras. 108 to 114, and *Case of Indigenous Communities Members of the Lhaka Honhat (Our Land) Association v. Argentina, supra,* paras. 202, 210 and 222.

120. Likewise, people enjoy the right to breathe air with pollution levels that do not pose a significant risk to the enjoyment of their human rights, particularly the rights to a healthy environment, health, personal integrity and life. People are entitled to the right to breathe clean air as a substantive component of the right to a healthy environment; hence, the State is obliged to: a) establish laws, regulations and policies to regulate air quality standards that do not constitute risks to health; b) monitor air quality and inform the population of potential risks to health; c) implement action plans to monitor air quality that include the identification of the main sources of air pollution and measures to enforce air quality standards.[187] In this regard, States should design their air quality standards, plans and control measures based on the best available science[188] and in accordance with the criteria of availability, accessibility, sustainability, quality and adaptability, including through international cooperation. [189]

121. Similarly, individuals have the right to water that is free from pollution levels that pose a significant risk to the enjoyment of their human rights, particularly the rights to a healthy environment, health and life. This substantive element of the right to a healthy environment imposes the obligation on States to: a) design regulations and policies to define water quality standards, particularly for treated and waste waters, that are compatible with human and ecosystem health; b) monitor the levels of contamination in bodies of water and, if necessary, report on possible risks to human health and ecosystem health; c) develop plans and, in general, adopt practices to monitor water quality, identifying the main causes of water pollution; d) implement measures to enforce water quality standards, and e) take actions to ensure the sustainable management of water resources.[190] The Court also considers that the States should design their water quality standards, plans and control measures based on the best science available, taking into account the criteria of availability, accessibility, sustainability, quality and adaptability, including through international cooperation.[191]

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[187] Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000): The right of everyone to the enjoyment of the highest attainable standard of health (Article 12, International Covenant on Economic, Social and Cultural Rights). E/C.12/2000/4, August 11, 2000, paras. 34 and 36. United Nations. Human Rights Council. Right to a clean, healthy and sustainable environment: the non-toxic environment. 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, January 12, 2022, para. 116.

[188] The right to participate and benefit from scientific progress and its applications has been recognized in various international instruments for the protection of human rights (*Cf.* Universal Declaration of Human Rights, Article 27 and International Covenant on Economic, Social and Cultural Rights, Article 15(1) (b)). In this regard, the Charter of the Organization of American States imposes on States the duty to disseminate "among themselves the benefits of science and technology" for their use (*Cf.* OAS Charter, Article 38). This presupposes that such benefits can also be used by the population and to guide the actions of governments through public policy.

[189] WGPSS, Progress Indicators for Measuring Rights under the Protocol of San Salvador: Second Group of Rights. Final document prepared by the Working Group to Examine the National Reports Envisioned in the Protocol of San Salvador, pursuant to the mandates contained in resolutions AG/RES 2582 (XL-0-10) and AG/RES 2666 (XLI-O/11), AG/RES 2713 (XLII-O/12) and A/RES 2798 (XLIII-O/13) following the period of consultations with the States and civil society, which took place from December 3, 2012 to September 30, 2013. OEA/Ser.L/XXV.2.1, GT/PSS/doc.9/13, November 5, 2013, para. 38.

[190] UN Human Rights Council. Human Rights and the Global Water Crisis: water pollution, water scarcity and water-related disasters. 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/46/28. January 19, 2021, paras. 52-55 and 59.

[191] Progress Indicators for Measuring Rights under the Protocol of San Salvador: Second Group of Rights: *supra*, para. 38, and Report A/HRC/37/59 and Annex, *supra*, paras. 61 to 77.

122. As a complement to the above, the Court recalls that in the case of the *Indigenous Communities Members of the Lhaka Honhat (our Land) Association v. Argentina,* it was established that the right to water is protected under Article 26 of the American Convention. This follows from the provisions of the OAS Charter that allow for the derivation of rights from which, in turn, the right to water is derived. The Court has also pointed out that these rights include the right to a healthy environment (*supra* para. 115), the right to adequate food, the right to health and the right to take part in cultural life, which are protected by Article 26 of the Convention. The right to water is also recognized in Article 25 of the Universal Declaration of Human Rights and in Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and is protected by the constitutions of many States in the region that recognize the rights to a healthy environment, health and food.[192]

123. Regarding the legal content of the right to water as an autonomous right, the Court has stated that "access to […] water […] includes 'consumption, sanitation, laundry, food preparation, and personal and domestic hygiene,' and for some individuals and groups it will also include 'additional water resources based on health, climate and working conditions.'" It has also stated that "access to water" involves "obligations to be realized progressively;" "however, States have immediate obligations such as ensuring [access] without discrimination and taking measures to achieve [its] full realization." Furthermore, States have a duty to provide protection against actions by private individuals, which requires them to prevent third parties from impairing the enjoyment of the right to water, as well as "ensuring an essential minimum of water" in "specific cases of individuals or groups of individuals who are unable to access water […] for reasons beyond their control."[193]

124. On this point, the Court has emphasized that a close relationship exists between the right to water as a substantive aspect of the right to a healthy environment and the right to water as an autonomous right. The first facet protects bodies of water as elements of the environment that have a value in themselves, as a universal resource, and because of their importance for other living organisms, including human beings. The second facet recognizes the essential role that water plays in the survival of human beings, and therefore protects their access to, use and enjoyment of water. Thus, the Court understands that the substantive facet of the right to a healthy environment that protects this component is based on an 'eco-centric' vision, while – for example - the right to drinking water and its treatment is based on an anthropocentric vision. Both facets are interrelated, but not in all cases does the violation of one necessarily imply the violation of the other.

125. The Court recalls that the right to a healthy environment includes the right to clean air and water. This right is covered by the obligation to respect and guarantee rights, as provided for in Article 1(1) of the Convention, and one of the ways of complying with it is by preventing violations. This obligation extends to the private sphere in order to prevent third parties from violating protected legal rights, and includes all legal, political, administrative and cultural measures that promote the safeguarding of human rights and ensure that any violations are effectively considered and treated as unlawful

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192 *Cf. Case of Indigenous Communities Members of the Lhaka Honhat (Our Land) Association v. Argentina, supra*, paras. 210, 222, 231 and 226.

193 *Cf. Advisory Opinion OC-23/17*, *supra,* paras. 111 and 121, and *Case of Indigenous Communities Members of the Lhaka Honhat (Our Land) Association v. Argentina, supra*, paras. 227 and 229.

acts.[194] In this regard, the Court has pointed out that, at times, States have the obligation to establish adequate mechanisms to monitor and supervise certain activities in order to ensure human rights, protecting them from the actions of public entities and also private individuals.[195] The obligation to prevent is an obligation "of means or conduct, and non-compliance is not proved by the mere fact that a right has been violated."[196]

126. In relation to the foregoing, the Court has stressed that the principle of prevention of environmental harm forms part of customary international law and entails the State's obligation to implement the necessary measures to address damage to the environment, taking into account that, owing to its particularities, after the damage has occurred, it will frequently not be possible to restore the previous situation. Based on this principle, States are "bound to use all the means at their disposal to prevent activities under their jurisdiction from causing significant harm to the environment."[197] This obligation must be fulfilled in keeping with the standard of due diligence, which must be appropriate and proportionate to the level of risk of environmental harm.[198] In the case of activities that are known to be more hazardous, such as the use of highly polluting substances, this obligation has a higher standard. Although the Court has stated that it is not possible to list all of the measures that States could adopt to comply with this obligation, the following are some actions that should be taken to address potentially harmful activities: a) regulate; b) supervise and monitor; c) require and approve environmental impact assessments; d) establish contingency plans, and e) mitigate, when environmental damage has occurred.[199]

127. The Court has also referred to the precautionary principle in environmental matters. This principle relates to the measures to be taken in cases where there is no scientific certainty about the environmental impact that a particular activity may have. The Court has understood that States must act in accordance with the precautionary principle in order to protect the rights to life and to personal integrity in cases where there are plausible indications that an activity could result in serious and irreversible damage to the environment, even in the absence of scientific certainty. Consequently, States must act with due caution to prevent possible harm.[200] Indeed, the Court considers that, in the context of the protection of the rights to life and personal integrity, States must act in accordance with the precautionary principle; thus, even in the absence of scientific certainty, they must adopt "effective" measures to prevent serious or irreversible harm.

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194 *Cf. Advisory Opinion OC-23/17*, *supra,* para. 118, and *Case of Indigenous Communities Members of the Lhaka Honhat (Our Land) Association v. Argentina*, *supra,* para. 207.

195 *Cf. Case of Ximenes Lopes v. Brazil. Merits, reparations and costs*. Judgment of July 4, 2006. Series C No. 149, paras. 86, 89 and 99, and *Case of Indigenous Communities Members of the Lhaka Honhat (Our Land) Association v. Argentina*, *supra,* para. 152.

196 *Cf. Advisory Opinion OC-23/17*, *supra,* para. 118, and *Case of Indigenous Communities Members of the Lhaka Honhat (Our Land) Association v. Argentina*, *supra,* para. 207.

197 *Cf. Advisory Opinion OC-23/17*, *supra,* para. 142, *Case of Indigenous Communities Members of the Lhaka Honhat (Our Land) Association v. Argentina*, *supra,* para. 208.

198 *Cf. Advisory Opinion OC-23/17*, *supra,* para. 142, *Case of Indigenous Communities Members of the Lhaka Honhat (Our Land) Association v. Argentina*, *supra,* para. 208.

199 *Cf. Advisory Opinion OC-23/17*, *supra,* para. 145, *Case of Indigenous Communities Members of the Lhaka Honhat (Our Land) Association v. Argentina*, *supra,* para. 208.

200 *Cf. Advisory Opinion OC-23/17*, *supra,* para. 180.

128. The precautionary principle in environmental matters is related to the duty of the States to preserve the environment in order to allow future generations opportunities for development and ensure the viability of human life. In this regard, the Court notes that the principle of intergenerational equity requires States to actively contribute through the creation of environmental policies aimed at ensuring that current generations leave behind a stable environment that will allow future generations similar opportunities for development. The principle of intergenerational equity is derived from various international legal instruments such as the Charter of Economic Rights and Duties of States, the Stockholm Declaration, the Rio Declaration, the United Nations Framework Convention on Climate Change, and the Paris Agreement on Climate Change.[201] It is also part of European Union law,[202] and its content has been cited by several international courts such as the International Court of Justice,[203] by this Court in its Advisory Opinion OC-23/17,[204] as well as by domestic courts in this region in countries such as Colombia[205] and Canada.[206]

129. The States have recognized the right to a healthy environment that entails an obligation of protection, which also concerns the international community as a whole.[207] It is difficult to imagine international obligations with a greater importance than those that protect the environment against unlawful or arbitrary conduct that causes serious, extensive, lasting and irreversible environmental damage, especially in the context of the climate crisis that threatens the survival of species. In view of this, international environmental protection requires the progressive recognition of the prohibition of such conduct as a peremptory norm (*jus cogens*), accepted by the international community as a whole as a norm from which no derogation is permitted.[208] This Court has pointed out the importance of the legal instruments of the international community whose

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201 *Cf.* Charter of Economic Rights and Duties of States, Resolution 3281 of the United Nations General Assembly, December 12, 1974; Stockholm Declaration on the Human Environment, United Nations Conference on the Human Environment, June 16, 1972; Rio Declaration on the Environment and Development, United Nations Conference on the Environment and Development, June 3 – 14, 1992, Principle 3, and Paris Agreement on Climate Change, United Nations Framework Convention on Climate Change, November 4, 2016, Preamble and Article 1.

202 *Cf.* Resolution 2396 (2021) of the Parliamentary Assembly of the Council of Europe: Anchoring the right to a healthy environment: the need for enhanced action by the Council of Europe, September 29, 2021.

203 *Cf.* ICJ, Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, July 8, 1996, paras. 35 and 36.

204 *Cf. Advisory Opinion OC-23/17*, *supra*, para. 59.

205 *Cf.* Constitutional Court of Colombia. Judgment STC 4360-2018 of April 4, 2018, paras. 11, 12 and 14.

206 *Cf.* Supreme Court of Canada. Case of Tsilhqot'in Nation v. British Columbia, June 26, 2014, paras. 15, 74 and 86.

207 *Cf.* AG UN A/Res/76/300. The human right to a clean, healthy and sustainable environment. July 28, 2022; Stockholm Declaration, June 16, 1972, Principle 2; World Charter for Nature, October 28, 1982, General Principles; Rio Declaration on the Environment and Development, Principle 7; Declaration of Johannesburg, September 4, 2002, para. 13. Also see: ICJ, Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, *supra*, para. 29.

208 The international community has already defined a series of behaviors that are forbidden by jus cogens, including the prohibition of the use of force in international relations, genocide, slavery, apartheid, crimes against humanity, forced disappearance of persons, and others. *Cf.* ICJ Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain), February 5, 1970, para. 33; Rome Statute of the International Criminal Court, in force since July 1, 2002, Articles 5-8; Draft conclusion on the identification and legal consequences of peremptory norms of general international law (*jus cogens*), with commentaries, International Law Commission, 2022, Conclusion 23.

superior universal value is indispensable to guarantee essential or fundamental values.[209] Consequently, safeguarding the interests of both present and future generations and preserving the environment against radical degradation is essential for the survival of humankind.[210]

B.2.2. The right to health

130. With regard to the right to health, the Court has indicated that Article 34(i) and 34(l) of the OAS Charter establish, among the basic objectives of integral development, that of the "protection of man's potential through the extension and application of modern medical science", as well as "urban conditions that offer the opportunity for a healthful, productive and full life." Article 45 emphasizes that "man can only achieve the full realization of his aspirations within a just social order," for which reason the States agree to dedicate every effort to the application of principles, including: "h) Development of an efficient social security policy." Thus, as indicated in several cases, the Court reiterates that this wording is sufficiently specific to indicate that the right to health is recognized by the OAS Charter. Consequently, the right to health is a right protected by Article 26 of the Convention.[211]

131. As regards the content and scope of this right, the Court recalls that Article XI of the American Declaration refers to the right to health by stating that "every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing, and medical care, to the extent permitted by public and community resources."[212] Similarly, Article 10 of the Protocol of San Salvador establishes that "everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social wellbeing" and indicates that health is a public good.[213] The same article establishes that, among the measures to guarantee the right to health, States must promote "universal immunization against the principal infectious diseases", "prevention and treatment of endemic, occupational and other diseases," and "the satisfaction of the health needs of the highest risk groups and of those whose poverty makes them most vulnerable."

132. The right to health is also recognized in the Peruvian Constitution, in Article 7.[214] In addition, the Court observes a broad regional consensus in the consolidation of the right to health, which is explicitly recognized in the constitutions and domestic laws of many States

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[209] *Cf. Denunciation of the American Convention on Human Rights and of the Charter of the Organization of American States and Consequences for State Human Rights Obligations (Interpretation and scope of Articles 1, 2, 27, 29, 30, 31, 32, 33 to 65 and 78 of the American Convention on Human Rights and 3(l), 17, 45, 53, 106 and 143 of the Charter of the Organization of American States).* Advisory Opinion OC-26/20 of November 9, 2020. Series A No. 26, para. 102.

[210] *Cf. Advisory Opinion OC-23/17*, *supra,* para. 59.

[211] *Cf. Case of Poblete Vilches et al. v. Chile, supra*, para. 106, and *Case of the Miskito Divers (Lemoth Morris et al.) v. Honduras*, *supra*, para. 80.

[212] Adopted at the Ninth Pan-American Conference held in Bogotá, Colombia, 1948.

[213] Article 10(1) of the Protocol of San Salvador establishes that: "Everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being. 2. In order to ensure the exercise of the right to health, the States Parties agree to recognize health as a public good and, particularly, adopt the following measures to ensure that right: a. Primary health care, that is, essential health care made available to all individuals and families in the community; [and] b. Extension of the benefits of health services to all individuals subject to the State's jurisdiction."

[214] Article 7 establishes that: "Everyone has the right to the protection of his health, his family environment and his community, just as it is his duty to contribute to their development and defense. Any individual unable to care for himself due to physical or mental disability has the right to have his dignity respected and to a regime of protection, care, rehabilitation, and security."

of the region, including Argentina, Barbados, Bolivia, Colombia, Costa Rica, Chile, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Mexico, Nicaragua, Panama, Paraguay, Suriname, Uruguay and Venezuela.[215]

133. In relation to the foregoing, the Court has defined health as a state of complete physical, mental and social wellbeing, and not merely the absence of disease or infirmity.[216] The Court has also stated that health requires certain essential preconditions that are necessary for a healthy life,[217] and is therefore directly related to access to food and water.[218] And, since environmental pollution can affect the soil, water and air, which in turn can seriously disrupt the preconditions for human health, it can also affect the right to health. Thus, guaranteeing the right to health includes protecting the environment against serious harm. On this last point, the ESCR Committee has stated that the obligation to respect the right to health means that States must refrain from "unlawfully polluting air, water and soil, e.g. through industrial waste from State-owned facilities, and from using or testing nuclear, biological or chemical weapons, if such testing results in the release of substances harmful to human health."[219]

134. The Court recalls that the latter obligation translates into the State's duty to ensure that people have access to essential health services, which guarantee quality and effective medical care, and promote the improvement of the population's health.[220] This right encompasses the provision of timely and appropriate health care in accordance with the principles of availability, accessibility, acceptability and quality, the implementation of which will depend on the conditions prevailing in each State.[221] The State's fulfilment of its obligation to respect and ensure this right must include special care for vulnerable and marginalized groups, and must be carried out progressively in accordance with available resources and applicable domestic legislation.[222]

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[215] Among the constitutional provisions established by the States Parties to the American Convention, are the following: Argentina (art. 42); Barbados (art. 17.2.A); Bolivia (art. 35); Brazil (art. 196); Chile (art. 19) Colombia (art. 49); Costa Rica (art. 21 and Judgment 1915-92 of the Constitutional Chamber of the Supreme Court of Costa Rica of July 22, 1992); Dominican Republic (art. 61); Ecuador (art. 32); El Salvador (art. 65); Guatemala (arts. 93 and 94); Haiti (art. 19); Mexico (art. 4); Nicaragua (art. 59); Panama (art. 109); Paraguay (art. 68); Peru (art. 7); Suriname (art. 36); Uruguay (art. 44), and Venezuela (art. 83).

[216] *Cf. Case of Artavia Murillo et al. (In vitro Fertilization) v. Costa Rica. Preliminary objections, merits, reparations and costs.* Judgment of November 28, 2012. Series C No. 257, para. 148, and *Case of Brítez Arce v. Argentina*, *supra*, para. 60.

[217] These elements include food and nutrition, housing, access to clean drinking water and to adequate sanitation, safe and healthy working conditions and a healthy environment. *Cf.* ESCR Committee, General Comment No. 14: The right to the enjoyment of the highest attainable level of health (Article 12 of the International Covenant on Economic, Social and Cultural Rights). UN Doc. E/C.12/2000/4, August 11, 2000, para. 4. See also, European Committee of Social Rights, *Complaint Nº 30/2005, Marangopoulos Foundation for Human Rights v. Greece* (Merits). Decision of December 6, 2006, para. 195.

[218] *Cf. Case of the Yakye Axa Indigenous Community v. Paraguay, supra*, para. 167, *Case of the Sawhoyamaxa Indigenous Community v. Paraguay, supra*, paras. 156 a 178, and *Advisory Opinion OC-23/17*, *supra,* para. 110.

[219] ESCR Committee, General Comment No. 14: The right to the enjoyment of the highest attainable level of health (Article 12 of the International Covenant on Economic, Social and Cultural Rights). UN Doc. E/C.12/2000/4, August 11, 2000, para. 34..

[220] *Cf. Case of Poblete Vilches et al. v. Chile, supra*, para. 118, and *Case Brítez Arce v. Argentina, supra, para. 61.*

[221] *Cf. Case of Poblete Vilches et al. v. Chile, supra*, paras. 120 and 121, and *Case of Valencia Campos et al. v. Bolivia, supra, para.* 234.

[222] *Cf. Case of Cuscul Pivaral et al. v. Guatemala, supra*, para. 107, and *Case Valencia Campos et al. v. Bolivia, supra, para. 234.*

B.2.3. The right to life and personal integrity

135. The Court has reiterated that the right to life in the American Convention is essential because the realization of the other rights depends on its protection.[223] Accordingly, States are obliged to ensure the creation of the necessary conditions for the full enjoyment and exercise of this right.[224] In its consistent case law, the Court has indicated that compliance with the obligations imposed by Article 4 of the American Convention, related to Article 1(1) of this instrument, not only presupposes that no person may be deprived of his or her life arbitrarily (negative obligation) but also, in light of the obligation to ensure the free and full exercise of human rights, it requires States to take all appropriate measures to protect and preserve the right to life (positive obligation)[225] of all persons subject to their jurisdiction.[226]

136. In addition, States must take the necessary steps to create an appropriate legal framework to deter any threat to the right to life; establish an effective system of justice capable of investigating, punishing and providing redress for any deprivation of life by State agents or private individuals;[227] and safeguard the right of access to the conditions that ensure a decent life,[228] which includes adopting positive measures to prevent the violation of this right.[229] Based on the foregoing, exceptional circumstances have arisen that have allowed the Court to establish and examine the violation of Article 4 of the Convention in relation to individuals who did not die as a result of the actions that violated this instrument. Among the conditions required for a decent life, the Court has mentioned access to, and the quality of, water, food and health, indicating that these conditions have a significant impact on the right to a decent existence and the basic conditions for the exercise of other human rights.[230] The Court has also included environmental protection as a requirement for a decent life.[231]

137. Regarding the right to personal integrity, the Court reiterates that the violation of an individual's right to physical and mental integrity has various connotations of degree and ranges from torture to other types of ill-treatment or cruel, inhuman or degrading treatment, the physical and mental effects of which vary in intensity according

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223 *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits.* Judgment of November 19, 1999, Series C No. 63, para. 144, and *Advisory Opinion OC-23/17*, *supra,* para. 108.

224 *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala, supra*, para. 144, and *Advisory Opinion OC-23/17*, *supra,* para. 108.

225 *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala, supra*, para. 144, and *Advisory Opinion OC-23/17, supra, para.* 108.

226 *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala, supra,* para. 139, *and Advisory Opinion OC-23/17, supra, para.* 108.

227 *Cf. Case of the Pueblo Bello Massacre, supra*, para. 120, and *Advisory Opinion OC-23/17, supra, para.* 109.

228 *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala, supra*, para. 144, and *Case of Cuscul Pivaral et al. v. Guatemala, supra, para. 155*.

229 *Cf. Case of the Sawhoyamaxa Indigenous Community v. Paraguay, supra*, para. 153, and *Case of Members and Militants of the Patriotic Union v. Colombia, supra*, para. 264.

230 *Cf. Case of the Yakye Axa Indigenous Community v. Paraguay, supra,* para. 167 and *Advisory Opinion OC-23/17*, *supra,* para. 110.

231 *Cf. Advisory Opinion OC-23/17*, *supra,* para. 109.

to endogenous and exogenous factors (such as the duration of the treatment, age, sex, health, context and vulnerability) that must be examined in each specific situation.[232]

138. The Court has also indicated that although each right contained in the Convention has its own sphere, meaning and scope,[233] there is a close relationship between the right to life and the right to personal integrity. Indeed, there are times when the lack of access to conditions that ensure a decent life may also constitute a violation of the right to personal integrity,[234] for example, in cases involving human health.[235] Similarly, the Court has recognized that certain types of projects or interventions in the environment may represent a risk to the life and personal integrity of individuals.[236]

B.2.4. The rights of the child

139. The Court has stated that, in accordance with Article 19 of the American Convention, the State is required to adopt special measures to protect children, based on the principle of the child's best interests, assuming its position as guarantor and taking greater care and responsibility in consideration of a child's special condition of vulnerability. On this matter, the Court has established that the ultimate objective of the protection of children is the development of their personality and the enjoyment of their recognized rights. Thus, children have special rights that are accompanied by specific duties on the part of the family, society, and the State. Furthermore, their condition requires special protection by the latter, which should be understood as an additional and complementary right to the other rights that the Convention affords to all persons.[237]

140. The Court has also indicated that the child's best interest is a principle that regulates the norms related to children's rights and is based on the dignity of the human being, on the particular characteristics of children, and on the need to foster their development.[238] The Committee on the Rights of the Child has stated, in General Comment No. 14, that the concept of the child's best interest "is aimed at ensuring both the full and effective enjoyment of all the rights recognized in the Convention [on the rights of the Child]."[239] The Committee, has stated that "States must take measures to address the dangers and risks that local environmental pollution poses to children's health in all settings." Similarly, the Committee has emphasized that "environmental interventions should, *inter alia*, address climate change, as this is one of the biggest threats to children's health and exacerbates

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[232] *Cf. Case of Loayza Tamayo v. Peru. Merits.* Judgment of September 17, 1997. Series C No. 33, paras. 57 and 58, and *Case of García Rodríguez et al. v. Mexico. Preliminary objections, merits, reparations and costs.* Judgment of January 25, 2023. Series C No. 482, para. 193.

[233] *Cf. Case of Manuel Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of May 26, 2010. Series C No. 213, para. 171, and *Advisory Opinion OC-23/17*, *supra,* para. 114.

[234] *Cf. Case of the "Juvenile Reeducation Institute" v. Paraguay. Preliminary objections, merits, reparations and costs.* Judgment of September 2, 2004. Series C No. 112*,* para. 170, and *Advisory Opinion OC-23/17*, *supra,* para. 114.

[235] *Cf. Case of Albán Cornejo et al. v. Ecuador. Merits, reparations and costs.* Judgment of November 22, 2007. Series C No. 171, para. 117, and *Advisory Opinion OC-23/17*, *supra,* para. 114.

[236] *Cf. Case of the Kichwa Indigenous People of Sarayaku v. Ecuador.* Merits and reparations. Judgment of June 27, 2012. Series C No. 245, para. 249, and *Advisory Opinion OC-23/17*, *supra,* para. 114.

[237] *Cf. Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02, August 28, 2002*. Series A No. 17, paras. 53, 54, 60, 86, 91, and 93, and *Case of María et al. v. Argentina, supra*, para. 84.

[238] *Cf. Advisory Opinion OC-17/02*, *supra*, para. 56.

[239] Committee on the Rights of the Child, General Comment No. 14. The right of the child to have his or her best interest taken as a primary consideration (Article 3, paragraph 1), May 29, 2013, para. 4.

health disparities. States should, therefore, put children's health concerns at the forefront of their climate change adaptation and mitigation strategies."[240]

141. The Court considers that the special protection of children as a group that is particularly vulnerable to the effects of environmental pollution,[241] is of special importance bearing in mind the principle of intergenerational equity.[242] Under this principle, the right to a healthy environment is of universal interest for both present and future generations. Therefore, protecting the rights of future generations requires States to "respect and ensure the full enjoyment of children's human rights in the present as well as ensuring that their human rights in the future are not jeopardized."[243] In General Comment No. 26, the Committee on the Rights of the Child has also recognized the concept of "intergenerational equity" whereby States must consider the needs of future generations, together with the short, medium and long-term impact of measures aimed at addressing children's development.[244]

142. Thus, the Court believes that the principle of the child's best interest constitutes a mandate to prioritize the rights of the child in any decision that may affect them (positively or negatively), in the judicial, administrative and legislative spheres. Therefore, and by virtue of the principle of intergenerational equity, the State must ensure that the polluting activities of companies do not affect children's rights and must adopt special measures of protection to mitigate the effects of environmental pollution when it poses a significant risk for children, implement measures to assist those who have been affected by such pollution, and prevent these risks from continuing. In particular, where the type of pollution produced by corporate operations constitutes a high risk to children's rights, "States must demand a stricter process of due diligence and an effective monitoring system."[245]

143. The Court also highlights the relationship between the protection of children and actions to address the climate emergency. Since the Paris Agreement, ratified by Peru on July 22, 2016, climate change has been recognized as "a common concern of humankind."[246] The United Nations has stated that mining and other industrial processes involving the burning of carbon, oil or gas, produces greenhouse gases that contribute to climate change and, to that extent, constitute a risk to human health.[247] In this regard,

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240 Committee on the Rights of the Child, General Comment No. 15. The right of the child to the enjoyment of the highest attainable standards of health (Article 24), 17 April 2013, para. 49 and 50.

241 *Cf. Advisory Opinion OC-23/17*, *supra,* para. 67.

242 United Nations Conference on the Human Environment, June 16, 1972. Preamble; Rio Declaration on the Environment and Development, 1992, Principle 3, and United Nations General Assembly, Resolution adopted by the General Assembly on September 25, 2015, 70/1. "Transforming our world: The 2030 Agenda for Sustainable Development," Preamble. See also: United Nations Report of the World Commission on Environment and Development, of August 4, 1987, p. 23 and Resolution 3/2021 of the IACHR and REDESCA on "Climate Emergency: Scope of Inter-American Human Rights Obligations," para. 21, available at: http://www.oas.org/es/cidh/decisiones/pdf/2021/Resolucion_3-21_SPA.pdf.

243 Maastricht Principles on the Human Rights of Future Generations. July 2023, Principle 7.

244 Committee on the Rights of the Child, General Comment No. 26, CRC/G/GC/26. August 22, 2023, para. 11.

245 Committee on the Rights of the Child, General Comment No. 16. CRC/C/GC/16. April 17, 2013, para. 62

246 The Paris Agreement, signed on December 12, 2015. Preamble.

247 United Nations, "Causes and Effects of Climate Change," available at: https://www.un.org/es/climatechange/science/causes-effects-climate-change

the Committee on the Rights of the Child has warned that children are especially affected by climate change, "both in the way in which they experience its effects and by the possibility that climate change will affect them throughout their lives."[248] Therefore, the Court finds that States have an increased duty to protect children from health risks caused by the emission of polluting gases that contribute to climate change.

B.2.5. The right of access to information and political participation

B.2.5.1. The right of access to information

144. The Court has pointed out that Article 13 of the Convention, by expressly stipulating the right to "seek" and "receive" "information," protects the right of all individuals to request access to State-held information, with the exceptions permitted by the restrictions established in the Convention.[249] The State's actions must be governed by the principles of disclosure and transparency in public administration, which makes it possible for the people under its jurisdiction to exercise democratic control over those actions, and to question, investigate and consider whether public functions are being adequately fulfilled.[250] Access to State-held information of public interest allows citizens to participate in public administration by means of the social control that can be exercised through such access.[251] It also fosters transparency in the State's activities and promotes the accountability of public officials in the performance of their duties.[252]

145. With regard to activities that could adversely affect the environment, the Court has emphasized that access to information on activities and projects that could have such an impact is a matter of evident public interest. Likewise, the Court has considered that information relating to exploration and exploitation of natural resources in the territories of indigenous communities,[253] and the implementation of a forestry exploitation project is also of public interest.[254] As to the scope and content of the State's obligation to ensure access to information, the Court has indicated that information must be provided without the need to prove a direct interest or personal involvement in order to obtain it, except in cases where a legitimate restriction applies.[255] With respect to the

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[248] Committee on the Rights of the Child. Decision adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, concerning communication No. 104/2019, para. 10.13.

[249] *Cf. Case of Claude Reyes et al. v. Chile. Merits, reparations and costs.* Judgment of September 19, 2006. Series C No. 151, para. 77, and *Case of Tabares Toro et al. v. Colombia. Merits, reparations and costs.* Judgment of May 23, 2023. Series C No. 491, para. 90. See also: *Advisory Opinion OC-23/17, supra*, para. 213.

[250] *Cf. Case of Claude Reyes et al. v. Chile*, *supra*, para. 86, and *Case of Baraona Bray v. Chile, supra*, para. 90. See also: *Advisory Opinion OC-23/17, supra*, para. 213.

[251] *Cf. Case of Claude Reyes et al. v. Chile*, *supra*, para. 86, and *Case of Baraona Bray v. Chile*, *supra*, para. 90. See also: *Advisory Opinion OC-23/17, supra*, para. 213.

[252] *Cf. Case of Palamara Iribarne v. Chile. Merits, reparations and costs.* Judgment of November 22, 2005. Series C No. 135, para. 83, and *Case of Baraona Bray v. Chile*, *supra*, para. 90. See also: *Advisory Opinion OC-23/17*, *supra*, para. 213.

[253] *Cf. Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, supra*, para. 230, and Advisory Opinion OC-23/17, *supra*, para. 214.

[254] *Cf. Case of Claude Reyes et al. v. Chile*, *supra*, para. 73, and Advisory Opinion OC-23/17, *supra*, para. 214.

[255] *Cf. Case of Claude Reyes et al. v. Chile, supra*, para. 77, and *Advisory Opinion OC-23/17*, *supra,* para. 219.

characteristics of this obligation, the Bali Guidelines[256] and other international[257] and regional[258] instruments establish that environmental information must made available in an affordable, effective and timely manner.[259]

146. As the Court has indicated, the right of individuals to obtain information is complemented by a corresponding positive obligation of the State to provide it, so that individuals may have access to information in order to examine and assess it.[260] In this regard, the State obligation to provide information *ex officio* – known as the "obligation of active transparency" - imposes on States the duty to provide the necessary information for individuals to exercise other rights, which is particularly relevant in relation to the rights to life, personal integrity and health. In addition, the Court has indicated that the obligation of active transparency requires States to provide as much information as possible to the public on an informal basis. Such information must be complete, understandable and current, and be provided in accessible language in a manner that is effective for the different sectors of the population.[261]

147. The Court has also reiterated that the right of access to State-held information permits restrictions, as long as they are previously established by law, serve a purpose allowed by the American Convention ("respect for the rights or reputation of others" or "the protection of national security, public order or public health or morals"), and are necessary and proportionate in a democratic society, which means that they must aim to satisfy a compelling public interest.[262] Consequently, the principle of maximum disclosure applies, based on the presumption that all information is accessible, subject to a limited system of exceptions. Thus, the burden of proof to justify any denial of

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256 Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters (Bali Guidelines), adopted in Bali on February 26, 2010, by the Governing Council of UNEP, Decision SS.XI/5, Part A, Guideline 1.

257 See, for example: Convention on the Protection and Use of Transboundary Watercourses and International Lakes, Economic Commission for Europe, entry into force October 6, 1996, art. 16.2; Convention on the Protection of the Marine Environment of the Baltic Sea Area, entry into force on January 17, 2000, art. 17.2, and Inter-American Strategy for the Promotion of Public Participation in Decision-Making on Sustainable Development, adopted in Washington in April 2000 by the Inter-American Council for Integral Development, OAS/Ser.W/II.5, CIDI/doc. 25/00 (April 20, 2000), pages 19 and 20, available at: https://www.oas.org/dsd/PDF_files/ispspanish.pdf.

258 See, North American Agreement on Environmental Cooperation, adopted on September 14, 1993, by the Governments of Canada, Mexico and the United States, entry into force on January 1, 1994, art. 4; Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention), entry into force on September 10, 1997, arts. 2.6 and 4.2; Protocol on Strategic Environmental Assessment of the Convention on Environmental Impact Assessment in a Transboundary Context, entry into force on July 11, 2010, art. 8; Framework Convention for the Protection of the Environment of the Caspian Sea, entry into force the August 12, 2006, art. 21.2; Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), Economic Commission for Europe, entry into force on October 30, 2001, art. 1; Convention on the Protection and Use of Transboundary Watercourses and International Lakes, Economic Commission for Europe, entry into force on October 6, 1996, Art. 16, and African Convention on the Conservation of Nature and Natural Resources (revision of the 1968 Convention), entry into force in July 2016, art. XVI.

259 *Cf. Advisory Opinion OC-23/17*, supra, para. 220.

260 *Cf. Case of Claude Reyes et al. v. Chile, supra*, para. 77, and *Advisory Opinion OC-23/17*, *supra*, para. 221.

261 *Cf. Case of Furlan and Family v. Argentina, supra*, para. 294, and *Advisory Opinion OC-23/17, supra*, para. 221.

262 *Cf. Case of Claude Reyes et al. v. Chile*, *supra*, paras. 88 to 91, and *Case of Baraona Bray v. Chile*, *supra*, para. 104. See also: *Advisory Opinion OC-23/17*, *supra*, para. 224.

access to information falls on the entity from which the information was requested.[263] If the refusal to provide such information is justified, the State must provide a reasoned response that makes it possible to know the reasons and rules upon which it bases its refusal to provide the information.[264] "In the absence of a reasoned response from the State, the decision is arbitrary."[265]

148. Regarding the above, the Escazú Agreement - which has not yet been ratified by Peru, and is therefore not binding for the State - establishes that each State Party "shall ensure the public's right of access to environmental information in its possession, control or custody, in accordance with the principle of maximum disclosure."[266] For its part, the European Court of Human Rights has stated that authorities engaged in hazardous activities that may involve risks to human health, have a positive obligation to establish an effective and accessible procedure to allow individuals to have access to all relevant and appropriate information, so that they can assess the risks to which they are exposed.[267] For its part, the African Commission on Human and Peoples' Rights has also recognized the obligation to provide access to information on activities that are hazardous to health and the environment, on the understanding that this gives communities exposed to a specific risk the opportunity to participate in making decisions that affect them.[268]

149. Furthermore, the Court has stated that public participation is one of the fundamental pillars of instrumental or procedural rights, because it is through such participation that an individual may exercise democratic control over the State's activities and is able to question, investigate and assess the discharge of public duties. In this regard, public participation allows individuals to become part of the decision-making process and to have their opinions heard. In particular, public participation enables communities to demand accountability from public authorities when taking decisions and, in addition, improves the efficiency and credibility of government processes. As mentioned on previous occasions, public participation requires the application of the principles of disclosure and transparency and, above all, it must be supported by access to information that allows for social control through effective and responsible participation.[269]

B.2.5.2. The right to political participation

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263 *Cf. Case of the Kaliña and Lokono Peoples v. Suriname, supra*, para. 262, and *Advisory Opinion OC-23/17, supra*, para. 224.

264 *Cf. Case of Claude Reyes et al. v. Chile, supra*, para. 77, and *Case of Flores Bedregal et al. v. Bolivia. Preliminary objections, merits, reparations and costs.* Judgment of October 17, 2022. Series C No. 467, para. 132. See also: *Advisory Opinion OC-23/17*, *supra*, para. 240.

265 *Cf. Case of Claude Reyes et al. v. Chile, supra*, paras. 98 and 120, and *Advisory Opinion OC-23/17*, *supra*, para. 224.

266 Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean, entry into force on April 22, 2021, art. 5.

267 ECHR, Case of Guerra et al. v. Italy [GS], No. 14967/89. Judgment of February 19, 1998, para. 60; ECHR, Case of McGinLaw and Egan v. United Kingdom, No. 21825/93 and 23414/94. Judgment of July 9, 1998, para. 101; ECHR, Case of Taşkin et al. v. Turkey, No. 46117/99. Judgment of November 10, 2004, para. 119, and ECHR, Case of Roche v. United Kingdom, No. 32555/96. Judgment of October 19, 2005, para. 162.

268 African Commission on Human and Peoples' Rights, *Case of the Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria*. Communication 155/96. Judgment of October 27, 2001, para. 53 and operative paragraphs.

269 *Cf. Case of Claude Reyes et al. v. Chile, supra*, para. 86, and *Advisory Opinion OC-23/17*, *supra*, para. 226.

150. The right of the public to take part in the conduct of public affairs is established in Article 23(1)(a) of the American Convention.[270] In the context of environmental matters, the Court has determined that participation is a mechanism for integrating public concerns and knowledge into public policy decisions affecting the environment. Moreover, participation in decision-making makes governments better able to respond promptly to public concerns and demands, build consensus, and secure increased acceptance of and compliance with environmental decisions.[271] In this regard, the Escazú Agreement states that each State Party "shall ensure the public's right to participation and, to this end, commits to implement open and inclusive participation in environmental decision-making processes based on domestic and international regulatory frameworks."[272]

151. The Court notes that the right to political participation in environmental matters is also enshrined in various instruments of international law, such as the Stockholm Declaration,[273] the Nairobi World Charter for Nature,[274] the Rio Declaration,[275] the Aarhus Convention,[276] and the Convention on Biological Diversity.[277] In this regard, the Court finds it pertinent to recall that its reference to sources, principles and criteria of the international *corpus juris* – in this case, in environmental matters – does not imply that it assumes jurisdiction over other treaties or that it considers them as binding on the State. This norm is used as an interpretative criterion for determining the scope of the rights protected by the American Convention and other instruments that are binding on the State and over which the Court has jurisdiction, pursuant to Article 29 of the Convention.[278]

152. The Court has held that the right to participate in public affairs enshrined in Article 23(1) (a) of the American Convention establishes the obligation of States to ensure the participation of people under their jurisdiction in decision-making and policies that may affect the environment, without discrimination and in an equitable, meaningful and transparent manner, for which purpose they must have previously guaranteed access to relevant information. Also, with regard to public participation, the State must guarantee opportunities for effective participation from the initial stages of the decision-making process, and inform the public about such opportunities for participation. Finally, the

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[270] Article 23(1) (a) of the American Convention establishes that "Every citizen shall enjoy the following rights and opportunities: a) to take part in the conduct of public affairs, directly or through freely chosen representatives."

[271] *Cf.* Advisory Opinion OC-23/17, *supra*, para. 228.

[272] Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean, entry into force on April 22, 2021, art. 7.

[273] Stockholm Declaration on the Human Environment, June 5 -16, 1972, Principle 23.

[274] Nairobi World Charter for Nature, adopted and solemnly proclaimed by the United Nations General Assembly in Resolution 37/7, October 28, 1982, Principle 16.

[275] Rio Declaration on the Environment and Development, held on June 3-14 1992, Principle 10.

[276] Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters –Aarhus Convention-, of June 25, 1998.

[277] Convention on Biological Diversity, adopted in June 1992, art. 1.

[278] *Cf. Case of the Pacheco Tineo Family v. Bolivia*, *supra,* para. 143, and *Rights to freedom to organize, collective bargaining and strike, and their relation to other rights, with a gender perspective (interpretation and scope of Articles 13, 15, 16, 24, 25 and 26, in relation to Articles 1(1) and 2 of the American Convention on Human Rights, of Articles 3, 6, 7 and 8 of the Protocol of San Salvador, of Articles 2, 3, 4, 5 and 6 of the Convention of Belem do Pará, of Articles 34, 44 and 45 of the Charter of the Organization of American States, and of Articles II, IV, XIV, XXI and XXII of the American Declaration of the Rights and Duties of Man).* Advisory Opinion OC-27/21 of May 5, 2021. Series A No. 27, para. 49.

mechanisms for public participation in environmental matters are varied and include, *inter alia*, public hearings, notification and consultations, participation in the formulation and enforcement of laws, as well as mechanisms for judicial review.[279]

B.3. Analysis of the specific case

B.3.1. The right to a healthy environment

153. La Oroya is a city with a population of approximately 33,000 inhabitants (*supra* para. 67). In 1922, the La Oroya Metallurgical Complex (CMLO) was built and established in this city. Initially, the facility was operated by the private company "Cerro de Pasco Corporation." In 1974, the CMLO was nationalized and became the property of the state-owned company "CENTROMIN." In 1997, it was sold to the private company "Doe Run." The CMLO's activities have consisted of smelting and refining copper, lead and zinc concentrates, and recovering metals and products such as gold, silver, bismuth, cadmium, indium cadmium, antimony, and chemical byproducts such as copper sulfate, zinc sulfate, sulfuric acid, oleum, arsenic trioxide, zinc dust, sodium bisulfite, zinc oxide and zinc-silver concentrate. The smelting and refining of these metals produces residual and fugitive emissions of gases and suspended particles that may be released into the air, water and soil. These emissions affect the geographical area in which the inhabitants of La Oroya live.

154. Based on the arguments presented by the parties, the main dispute in this case lies in determining whether the State is responsible for the violation of the alleged victims' human rights in view of the possible harm caused by the mining and smelting activities carried out at the CMLO. Thus, it is necessary to establish whether the CMLO's activities effectively produced levels of contamination that constituted a significant risk to the environment and to the health, personal integrity and life of the alleged victims. At this point, the Court finds it pertinent to recall that in the instant case the arguments on State responsibility presented by the Commission and the representatives refer to two different situations: a) State responsibility for the human rights violations against the inhabitants of La Oroya when the complex was operated by CENTROMIN, i.e. by a state-owned company, and b) State responsibility for the human rights violations against the inhabitants of La Oroya when the CMLO was operated by a private company, Doe Run.

155. Regarding the first situation, the Court recalls that the duty to respect rights, contained in Article 1(1) of the Convention, imposes limits on State actions that are derived from the international obligations established in the Convention. To that extent, when a human rights violation is the result of actions by a state-owned enterprise, the State would be in breach of its obligations to respect rights because the international wrong is directly attributable to a state agent. As stated by the International Law Commission, "the conduct of any State organ, whether the organ exercises legislative, executive, judicial or any other functions" [280] is considered as an act of the State.

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279 *Cf. Advisory Opinion OC-23/17*, *supra*, paras. 231 to 232.

280 Report of the International Law Commission at its 56th Session, April 23 – June 1 and July 2, Official record of the General Assembly, 56th Session, Supplement No. 10. (A/56/10), Article 4. This Article establishes the following: "1. The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State. 2. An organ includes any person or entity which has that status in accordance with the internal law of the State."

Moreover, Principle 4 of the Guiding Principles on Business and Human Rights indicates that human rights violations committed by state-owned enterprises may entail a violation of the State's own international law obligations, and establishes the link between the State and businesses in the following terms:

> States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.[281]

156. As regards the second situation, the Court recalls that, under Article 1(1) of the Convention, and by virtue of the obligation to ensure rights, including the duty to prevent their violation, States have a duty to regulate, supervise and monitor the implementation of hazardous activities that entail significant risks to the life and integrity of the individuals under their jurisdiction.[282] That said, the Court emphasizes that a State cannot be held responsible for all human rights violations committed by private individuals subject to its jurisdiction. Indeed, the treaty obligations of States do not imply their unlimited liability for any act or deed by private individuals, since their duties to adopt measures of prevention and protection of individuals in their relations with each other are conditional upon their awareness of a situation of real and imminent risk for a particular individual or group of individuals and the reasonable possibilities of preventing or avoiding such risk.[283]

157. In relation to the above, the Court considers that the general obligations to respect and guarantee rights are substantiated and complemented by the specific obligations that arise with respect to the protection of the right to a healthy environment, which have been reiterated in this judgment (*supra* para. 125). In particular, the Court recalls that, in accordance with the principle of prevention of environmental damage, States have the obligation to implement the necessary measures and use all means at their disposal to prevent activities carried out within their jurisdiction from causing significant damage to the environment, based on a due diligence standard that includes the duty to regulate, monitor and oversee such activities. This due diligence standard is applicable to the actions of both public and private entities that carry out activities that could pose a potential risk to the environment.

158. In the present case, the Court notes that from the reports prepared by the National Office for Evaluation of Natural Resources in 1986, by DIGESA in 1999, by the government of Yauli Province in 2003, by the Ministry of Health in 2005, by the Commission for Andean, Amazonian and Afro-Peruvian Peoples, Environment and Ecology of the Peruvian Congress in 2007, by Dr. Fernando Serrano in 2007, by the Ministry of Environment in 2011 and 2017 (*supra* paras. 76 to 84), it is clear that: a) the smelting activities at the CMLO are the main cause of environmental contamination from arsenic, cadmium, lead and other metals in the air, soil and water in La Oroya; b) that already in 1981, the date on which Peru accepted the contentious jurisdiction of this

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281 Office of the United Nations High Commissioner for Human Rights (OHCHR). *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, HR/PUB/11/04, 2011, Principle 4.

282 *Cf. Case of the Workers of the Fireworks Factory of Santo Antônio de Jesus and their Families v. Brazil, supra*, para. 118, and *Case of the Miskito Divers (Lemoth Morris et al.) v. Honduras, supra*, para. 55.

283 *Cf. Case of the Pueblo Bello Massacre v. Colombia, supra,* para. 123, and *Case of López Soto et al. v. Venezuela. Merits, reparations and costs.* Judgment of September 26, 2018. Series C No. 362, para. 139.

Court, the State was aware of this environmental contamination, and c) that these activities had a negative impact on the air, soil and water, and on the inhabitants of La Oroya. The Court also recalls that the Constitutional Court, in its 2006 ruling, concluded that the levels of contamination from lead and other chemicals had affected the rights to health and the environment of the population of La Oroya.[284]

159. Thus, the Court considers it proven that high levels of environmental contamination were present in La Oroya; that the causes of such contamination were known; and that the State was aware that these posed a significant risk to the environment and people's health. Accordingly, the Court will proceed to analyze the facts related to the State's compliance with its obligations to regulate, supervise and inspect the metallurgical activities at the CMLO, which was operated by CENTROMIN, a state-owned company, and by Doe Run, a private company that acquired the CMLO in 1997. In this part of the analysis, the Court will refer to the relevant norms and facts to determine the State's responsibility as of 1981, the year in which the Court was able to exercise its contentious jurisdiction over Peru with respect to the environmental pollution in La Oroya and its effects on the health of its inhabitants (*supra* para. 17).

i) Regarding the duty to regulate

160. The Court will now consider whether the State complied with its obligation to regulate mining and metallurgical activities at the CMLO. In this regard, the Court recalls that the Peruvian Constitution of 1979 recognized people's right to "live in a healthy, ecologically balanced and adequate environment for the development of life and the preservation of the landscape and nature."[285] It also established that "everyone has the duty to conserve the environment" and that the State has the obligation to prevent and control environmental contamination." The Peruvian Constitution of 1993 recognizes the right "to peace, tranquility, enjoyment of leisure time, and rest, as well as to a balanced and appropriate environment for the development of life."[286] This norm forms the basis of the constitutional protection of the basic right to a sound environment, which entails: 1) the right to enjoy the environment, and 2) the right to have the environment preserved.[287]

161. Furthermore, in 1993 the Regulation for Environmental Protection in Mining and Metallurgical Activities (the "Environmental Mining Law") was enacted as a specific norm that established regulatory provisions for "environmental protection for mining and metallurgical activities." This law defined the obligations of the operators or owners of mining and smelting facilities, as well as the procedures and authorities in charge of verifying compliance with such obligations. Particularly relevant is Chapter II, which defines the obligations of mining and metallurgical operators with respect to the PAMA. As mentioned previously, the PAMA's aim was to reduce environmental pollution to the maximum permissible levels, and to establish guidelines for mining and metallurgical companies in order to identify and address the environmental impact of mining and

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[284] *Cf.* Judgment of the Constitutional Court of May 12, 2006 (evidence file, folio .836). On this point the expert witness Oscar Cabrera stated the following: "industrial processes involving the handling of metals are part of the universe of activities inherently hazardous to physical and mental health. This is because (…) the smelting and refining of metals necessarily produces undesirable industrial wastes that are toxic to health (e.g. lead, cadmium and arsenic)." See: Expert report of Oscar Cabrera (evidence file, folio 29316).

[285] Constitution of Peru, 1979, Article 123.

[286] Constitution of Peru, 1993. Article 2, 22).

[287] *Cf.* Judgment of the Constitutional Court of May 12, 2006 (evidence file, folio .825).

smelting activities.[288] The Court also notes that the environmental obligations of the mining and metallurgical sector are contained in a series of regulatory instruments that include mechanisms for monitoring and overseeing the activities of this sector.[289]

162. From the foregoing it is clear that in Peru there was no specific legislation on environmental protection with respect to mining and metallurgical activities prior to 1993, despite the fact that certain environmental regulations and general environmental obligations were incorporated into other legal instruments applicable to the mining sector. This omission constituted a violation of the duty to regulate. The Court notes that after 1993, regulations were issued requiring the reduction or elimination of emissions and/or discharges resulting from mining and smelting activities in Peru, as in the case of those carried out at the CMLO. However, the Court does not find specific claims by the Commission or the representatives regarding the unconstitutionality of such legislation, so it will focus its analysis on the State's compliance with its obligations to monitor and supervise the CMLO's activities.

ii) Regarding the duty to monitor and supervise

163. In relation to this obligation, it has been demonstrated that the State carried out multiple actions to monitor and supervise the CMLO's activities with the aim of complying with the obligations established in the PAMA for activities at the CMLO, and other monitoring actions aimed at mitigating the environmental damage caused by the polluting activities.[290] The Court also observes that compliance with these obligations was a highly complex logistical, financial and technical process, which could not be carried out immediately, but required a progressive approach. However, based on the information in the case file, the Court notes that the State adopted most of the measures after 2010, that is, decades after the State became aware of the high levels of contamination in La Oroya. Also, by 2004, i.e. eight years after the approval of the PAMA in 1996, some of the projects that represented a major investment, and which were essential to mitigate the environmental impacts, had low compliance percentages.[291] Although Doe Run had complied with some of its commitments under the PAMA, the Court finds that this occurred with respect to projects with lower amounts of investment and relatively lower impacts, than the more costly projects with a high environmental impact (*supra* para. 70).

164. In relation to the above, the project with the lowest compliance level was the Sulfuric Acid Plant Project. This, despite the fact that the construction of this plant was intended to reduce sulfur dioxide emissions from the CMLO's chimneys,[292] and was

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288 *Cf.* Supreme Decree N°016-93-EM. Regulation for Environmental Protection in Mining and Metallurgical Activities. Official Gazette *El Peruano*, of May 1, 1993, Articles 9 to 19 (evidence file, folio .59). Supreme Decree N°016-93-EM was revoked by the Supreme Decree N° 040-2014-EM of November 12, 2014 (evidence file, folios 28611-28641).

289 *Cf.* Expert report of Patricia Mercedes Gallegos Quesquén (evidence file, folio 28930) and statement of Katherine Andrea Melgar Támara (evidence file, folios 28819 to 28857).

290 *Cf.* Statement of Katherine Andrea Melgar Támara (evidence file, folios 28819 to 28857), and answering brief of the State.

291 The construction of the Sulfuric Acid Plant was 7.4% complete; the Copper Refinery's Water Treatment Plant was 44% complete; and the Copper Refinery's Industrial Liquid Effluent Treatment Plant was 35% complete.

292 *Cf.* Modifications to the PAMA for the Metallurgical Complex of La Oroya. Annex 11 to the State's brief of March 7, 2006 in the proceeding on precautionary measures (evidence file, folio .163), and Doe Run Peru.

therefore essential for compliance with environmental obligations. In this regard, the Court notes that in its 2005 request for an exceptional extension to the PAMA, Doe Run stated that the production of sulfuric acid was the most viable option to mitigate the effects of sulfur dioxide and particulate matter contained in the gas emissions generated by the CMLO's operations.[293] This conclusion was also supported by the comments on the "Action Plan for the Improvement of Air Quality and Health in La Oroya" presented in 2006, which stated that "one central element of a plan to achieve the SO_2 standard is the construction of the sulfuric acid plant, with all the stages and time limits clearly specified, to ensure the execution of this very important project."[294] Therefore, the Court considers that the State was clearly aware that the construction of the plant played a central role in maintaining sulfur dioxide emissions at levels permitted by the environmental regulations.

165. Despite this, the State allowed several modifications to Doe Run's terms of compliance with its environmental commitments under the PAMA. These included the granting of exceptional extensions for compliance with the company's environmental obligations. In this regard, the Court recalls that on May 19, 2006, and September 26, 2009, the government approved by law the modification of the deadlines for compliance with the PAMA for the CMLO in response to Doe Run's requests. The extensions granted by the State for Doe Run's compliance with its PAMA commitments occurred within the framework of the Regulations on Mining and Metallurgical Activities, which authorized changes to the PAMA for technical, financial, social, ecological and environmental reasons. The Court also observes that the State granted the extensions to the PAMA, giving special consideration to the technical and economic difficulties faced by Doe Run in complying with the programs.[295]

166. In Supreme Decree Nº 046-2004-EM, which included provisions for extending the deadlines for compliance with the PAMA, the State considered *inter alia* that "some of the environmental problems contemplated in the [PAMA] have been underestimated […],"[296] and in 2006 it considered that the extension offered "greater protection of the public interest than the application of the penalties established."[297] This, despite the fact that the authorities were aware of the environmental contamination and its effects. In this regard, the Court notes that the Ministry of Energy and Mines explicitly mentioned in Ministerial Resolution Nº 257-2006-MEM/DM, which approved the extension of the PAMA in 2006, a report prepared by ESAN University, which found that Doe Run's inability to comply with its PAMA commitments was due, in part, to the "lack of foresight and compliance with the progress that the company should have already made and the

Request for special extension of the deadline for implementation of the sulfuric acid plants project. December 2005 (evidence file, folio 19962).

293 *Cf.* Doe Run Peru. Request for exceptional extension of the deadline for implementation of the sulfuric acid plants projects. December 2005 (evidence file, folio 19991).

294 *Cf.* Anna Cederstay PhD in Chemistry, Comments on the Action Plan for the Improvement of Air Quality and Health in La Oroya, March 2006 (evidence file, folio 25427).

295 *Cf.* Ministry of Energy and Mines, Ministerial Resolution No. 257-2006- MEM/DM of May 29, 2006 (evidence file, folios .0.179 al 0.186 of the Merits Report), and Law Nº 29410 of September 26, 2009, which extended the deadline for the financing and completion of the sulfuric acid plants project and modification of the copper circuit of La Oroya Metallurgical Complex (evidence file, folio 20091).

296 *Cf.* Supreme Decree N° 046-2004-EM, establishing provisions for the special extension of the deadlines for compliance with specific environmental projects contemplated in the PAMA, December 29, 2004 (evidence file, folios 27569 to 27574)

297 *Cf.* Ministry of Energy and Mines, Ministerial Resolution No. 257-2006-MEM/DM, of May 29, 2006 (evidence file, folios .179 to .185).

economic and financial situations that have prevented the company from complying with this obligation […]."[298] In the case of the 10-month extension granted in 2009, it does not appear that there was any reason for granting it. The Court notes that, according to information provided by the State, the copper sulfuric acid plant was never completed by Doe Run, and that by 2009, only 53% of the total construction had been completed, while the copper circuit modernization project was 46% complete.[299]

167. On this point, the Court finds it pertinent to recall that, according to Advisory Opinion 23/17, "the level of monitoring and oversight necessary will depend on the level of risk involved in the activities or conduct."[300] It also recalls that due diligence in human rights matters must include an assessment of the actual and potential impact of such activities on human rights. However, "the scale and complexity of this process will vary according to the size of the enterprise, as well as its sector, operational context, ownership and structure," but especially "the severity of its [negative] human rights impact."[301] This is based on the obligation of States to monitor and supervise activities within their own jurisdiction that may cause significant harm to the environment and to implement effective laws or regulations for environmental protection.[302] The Court also recalls that, in line with their duty of prevention, States have a duty to enact laws to ensure that businesses respect human rights, including the right to a healthy environment.

168. For this reason, the Court considers that when the authorities decided to grant requests for the extension of the CMLO's PAMA, they failed to take into account both the specific level of compliance with the programs that existed at the time of said requests, and the effects that the pollution was having on the environment. The Court finds that by failing to take these aspects into consideration, or having technical arguments to justify these extensions, the State failed to comply with two central points pertaining to its duty of due diligence regarding the effective protection of the environment: it omitted to analyze whether or not the extension would allow for better compliance with the objectives set forth in the PAMA, which were supported by environmental legislation, and it ignored the evidence concerning the presence of pollutants in the air, soil and water that required immediate action on the part of the State.

169. In addition, there were reports that highlighted the inadequacy of the State's oversight actions. In particular, the Report of the Commission of Andean, Amazonian and Afro-Peruvian Peoples, of June 2007, concluded that compliance with the PAMA was insufficient.[303] This report considered that the Ministry of Energy and Mines was adopting a "permissive and ambivalent" attitude in approving the modifications to the PAMA, on

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298 *Cf.* Ministry of Energy and Mines, Ministerial Resolution No. 257-2006-MEM/DM, of May 29, 2006 (evidence file, folios 0.179 to 0.186).

299 *Cf.* Ministry of Health, Communication No. 019-2009-DGSP-ESNP/MINSA, of March 16, 2009. Annex to Report No. 34-2009-JUS/PPES, presented as part of Precautionary Measure N°271-65, March 17, 2009. Annexes to the information submitted by the State for a meeting in the context of the Court's 134th Regular Session, on March 21, 2009. (evidence file, folio .697)

300 *Cf.* American Convention on Human rights). Advisory Opinion OC-23/17, *supra*, para. 154.

301 United Nations (2012). The Corporate Responsibility to respect Human Rights. An interpretive Guide. New York and Geneva.

302 Advisory Opinion OC-23/17, *supra*, para. 154. ICJ, Case of the cellulose plants on the Río Uruguay (Argentina v. Uruguay). Judgment of April 20, 2010, paras. 197, 204 and 205.

303 *Cf.* Congress of the Republic, Commission of Andean, Amazonian and Afro-Peruvian Peoples, Environment and Ecology. "The problem of public environmental health in La Oroya," June 2007 (evidence file, folio .646).

the grounds of considering the company's financial difficulties and "without considering the risks to public health."[304] Therefore, it concluded that "the environmental management measures being implemented by the Peruvian State, as well as its attention to the environmental public health problem, will not have effective results unless there is a drastic reduction in emissions from the sources of pollution."[305]

170. Furthermore, as early as 1999, DIGESA had established that lead concentrations in the air were 17.5 times higher than the EPA quarterly standard of 1.5 μg/m^3 for lead, as of that date, and that lead concentrations in the water were up to 70 times the maximum permissible limit (0.03 mg/L, according to the Law on Water (*supra* para. 77). Also, in 2003, the local government of Yauli Province had concluded that there were high levels of toxic cadmium and arsenic pollutants in the atmosphere, and that lead levels exceeded the WHO guidelines (*supra* para. 78). Similarly, the Constitutional Court, in its 2006 ruling, had pointed out that "levels of contamination from lead and other chemical elements in the city of La Oroya have exceeded internationally accepted minimum standards, seriously compromising the population's rights to health and to a balanced and adequate environment."[306]

171. The Court also notes the constant presence of high levels of lead, particulate matter, cadmium, sulfur dioxide, arsenic and mercury in the air in La Oroya, above the levels considered permissible by national regulations and the WHO, respectively. With respect to lead levels, in 2004, the average airborne lead levels were 2.0 and 2.7 μg/m^3 in La Oroya, which is 4 to 5 times higher than the WHO recommended level of 0.5 μg/m^3 (micrograms per cubic meter) as an annual average.[307] According to information presented in the motion to enjoin enforcement, the monitoring station of Huanchán exceeded 6,000 μg/m^3 of lead, the Hotel Inca station exceeded 1,000 μg/m^{3}of lead, and the Sindicato de Obreros station (in La Oroya Antigua) exceeded 1,000 μg/m^{3}of lead in 2000,[308] levels that greatly exceeded the WHO standards. Furthermore, the 2007 report prepared by the Commission of Andean, Amazonian and Afro-Peruvian Peoples, Environment and Ecology indicated that, according to an analysis of air quality conducted over the previous five years, as of 2006 no station had complied with the ECAs (ambient air quality standards) for annual lead.[309]

172. A similar situation occurred in relation to particulate matter. In fact, data reported by the Energy and Mining Investment Oversight Agency (OSINERGMIN) when verifying compliance with the PAMA, showed that in 2007 the Huanchán monitoring station — the closest to the CMLO— exceeded the air quality standard for particulate matter of less

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304 *Cf.* Peruvian Congress, Commission for Andean, Amazonian and Afro-Peruvian Peoples, Environment and Ecology. "The problem of public environmental health in La Oroya", June 2007 (evidence file, folio .667).

305 *Cf.* Peruvian Congress, Commission for Andean, Amazonian and Afro-Peruvian Peoples, Environment and Ecology. "The problem of public environmental health in La Oroya", June 2007 (evidence file, folio .667).

306 *Cf.* Constitutional Court, Judgment of May 12, 2006 (evidence file, folio .836).

307 *Cf.* Lead concentrations in particulate matter, January to August, 2004. Provided by Doe Run Peru to the Ministry of Energy and Mines. See levels recommended by the Presidency of the Council of Ministers. Supreme Decree No. 074-2001-PCM. Published on March 24, 2001 in the Official Gazette *El Peruano* (Annex 7 of the request for precautionary measures, MC-271 05, La Oroya); and Petition of case, Community of La Oroya, December, 2006 (evidence file, folio .341).

308 *Cf.* Motion to enjoin enforcement, filed on December 6, 2002 (evidence file, folio .792).

309 *Cf.* Peruvian Congress, Commission of Andean, Amazonian and Afro-Peruvian Peoples, Environment and Ecology. "The problem of public environmental health in La Oroya", June 2007 (evidence file, folio 0.660).

than 150 µg/m3, five times out of the three times allowed. [310] This also occurred in the case of cadmium, since in 2006 the Huanchán station reported values that were 48 times higher than the WHO guidelines.[311] For their part, the Sindicato and Hotel Inca monitoring stations recorded values that were 22 and 14 times higher than the WHO guidelines, respectively.[312] With respect to sulfur dioxide (SO_2), the information provided to the Court shows that air quality standards were repeatedly exceeded, particularly from 2007 to June 4, 2009. In this regard, annual measurements showed that between 2007 and June 4, 2009 the air quality standard for sulfur dioxide was exceeded at all monitoring stations, while in 2009 the only station that did not exceed the air quality standard for sulfur dioxide was the Huari station. Similarly, on September 15, 2008, the Sindicato monitoring station in La Oroya significantly exceeded hourly sulfur dioxide levels by up to 14,000 µg/m3.[313] Thus, out of 78 measurements taken during inspections carried out between 2016 and 2022, it was determined that SO_2 levels were exceeded in 2016, 2017, 2020 and 2021 by 2, 3, 6 and 10 times, respectively.[314]

173. According to the expert witness Howard Mielke, based on an analysis of quarterly air quality data reported yearly between 1995 and 2010 to the Ministry of Energy and Mines, during that period pollutants "exceeded the air quality standards" in force in Peru for sulfur dioxide and lead in the air, as well as the guidelines for cadmium recommended by MINEM and the WHO. In the case of arsenic, "the [PAMA] target for annual emissions was also exceeded." In addition, emissions of dust contaminated with lead, cadmium and arsenic from the smelter "accumulated in the soil, and still remain in the soil samples as of the date of the report."[315] Thus, the Court notes that such breaches of environmental quality standards have continued over time.[316] The Court also notes that during the period that the CMLO was inactive there was a significant decrease in atmospheric pollutants.[317]

174. The Court observes that the contaminating materials present in La Oroya were deposited in the soil and water as a result of air pollution. In this regard, the Court also notes that studies carried out in 2002, 2004 and 2009 concluded that there was lead contamination in the surface dust inside the houses in La Oroya.[318] A study conducted in 2004 concluded that of 50 samples taken from homes, 44 (88%) were above the old

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310 *Cf.* OSINERGMIN. Verification of compliance with the PAMA extension commitments at the La Oroya Metallurgical Complex. April 2008 (evidence file, folios 21745).

311 *Cf.* Peruvian Congress, Commission of Andean, Amazonian and Afro-Peruvian Peoples, Environment and Ecology. "The problem of public environmental health in La Oroya," June 2007. (evidence file, folio .661).

312 *Cf.* Peruvian Congress, Commission of Andean, Amazonian and Afro-Peruvian Peoples, Environment and Ecology, "The problem of public environmental health in La Oroya," June 2007 (evidence file, folio .661).

313 *Cf.* OSINERGMIN, Official letter N° 813-2008-OS-GFM of November 27, 2008. Complaint regarding strong fumes and toxic gases emitted by the Doe Run company covering La Oroya Antigua and part of La Oroya Nueva on September 15, 2008 (evidence file, folio 5790).

314 *Cf.* Statement of Katherine Andrea Melgar Támara (evidence file, folios 28835 to 28839).

315 *Cf.* Expert report of Howard Mielke provided by affidavit (evidence file, folio 29232).

316 *Cf.* Statement of Katherine Andrea Melgar Támara (evidence file, folios 28835 to 28839).

317 *Cf.* Expert report of Howard Mielke (evidence file, folio 29233), and Faucher, M., Sipra, H., Wooten, N. Analysis of Air Quality and Medical Record Data. Yale School of Forestry & Environmental Studies. December 2015 (evidence file, folios 20773 to 20774)

318 *Cf.* Statement of Katherine Andrea Melgar Támara (evidence file, folios 28835 to 28839), and Arce, Siles; Calderón Marilú. Soils contaminated with lead in the city of La Oroya, Junín, and its impact on the waters of the Mantaro River. Rev. of the FIGMMG-UNMSM Research Institute Vol. 20 n° 40, 2017: pages 48–55 (evidence file, folio 20815 and 20816).

US standard at the time (40 ug/ft^2 equivalent to 431 µg/m^2).[319] In addition, a study conducted between June 2008 and March 2009 by Ground Water International for *Activos Mineros S.A.* concluded that lead, cadmium, and arsenic emissions from the La Oroya smelter had affected approximately 2,300 square kilometers of soil in the central region.[320]

175. The Court further notes that a study of 75 soil samples taken from La Oroya over a five-year period and published in 2017, indicated that "100% [of the samples] exceed[ed] the soil ECA which [was] 70 mg/kg [of lead]." In the same study, samples were taken at three points along the Mantaro River, which supplies water to various residential sectors of La Oroya. According to the study, "all samples taken from the Mantaro River […] indicated that the river [was] not suitable to sustain the aquatic ecosystem, as it breached the water quality standards of 0.001 mg/L [of lead]."[321] Based on these results, the expert witness Howard Mielke warned that at present "the residents of La Oroya are over-exposed to multiple sources and pathways of contamination from toxic substances produced by the CMLO" which "accumulate in the soil and the drinking water."[322] The expert also pointed out that a 2021 study found elevated levels of lead in the pastures of the farming community of Paccha, located 20 kilometers from the CMLO. The samples showed an average presence of 19.7 mg/kg of lead above the Peruvian ECA of 10 mg/kg.[323]

176. It has therefore been proven that the CMLO's metallurgical activities polluted the air, water and soil in La Oroya, exceeding the limits set by the environmental quality standards established by Peruvian law and the international guidelines for emissions of toxic substances, and that the State was aware of this situation. It is also clear that the State's actions resulted in damage to the environment when CENTROMIN operated the CMLO, and that its failure to supervise Doe Run's activities allowed said damage to continue after the company was privatized. This constitutes a violation of the right to a healthy environment, protected by Article 26 of the American Convention.

177. Furthermore, the Court recalls that, as stated in Advisory Opinion No. 23/17 on the environment and human rights:

> The human right to a healthy environment has been understood as a right that has both individual and also collective connotations. In its collective dimension, the right to a healthy environment constitutes a universal value that is owed to both present and future generations. That said, the right to a healthy environment also has an individual dimension, insofar as its violation may have a direct and an indirect impact on the individual owing to its connectivity to other rights, such as the rights to health, personal integrity, and life. Environmental degradation may

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319 *Cf.* Expert report of Howard Mielke (evidence file, folio 29234).

320 *Cf.* Arce, Siles; Calderón Marilú. Soils contaminated with lead in the city of La Oroya, Junín, and their impact on the waters of the Mantaro River. Rev. of the FIGMMG-UNMSM Research Institute Vol. 20 N° 40, 2017: pages 48–55 (evidence file, folio 20810). See also: *El Comercio* newspaper, "Smelting in La Oroya: 2.300 km2 of soil contaminated with minerals," November 11, 2009 (evidence file, folios 20801 and 20802).

321 *Cf.* Arce, Siles, Calderón Marilú, "Soils contaminated with lead in the city of La Oroya, Junín, and their impact on the waters of the Mantaro River", Rev. of the FIGMMG-UNMSM Research Institute Vol. 20 N° 40, 2017: pages 48–55 (evidence file, folios 20813 and 20814).

322 *Cf.* Expert report of Howard Mielke (evidence file, folios 29237 and 29238).

323 *Cf.* Expert report of Howard Mielke (evidence file, folio 29237).

> cause irreparable harm to human beings; thus, a healthy environment is a fundamental right for the existence of humankind.[324]

178. Likewise, in the aforementioned Advisory Opinion the Court established that:

> As an autonomous right, the right to a healthy environment, unlike other rights, protects the components of the environment, such as forests, rivers and seas, as legal interests in themselves, even in the absence of certainty or evidence of a risk to individuals. This means that it protects nature and the environment, not only because of the benefits they provide to humanity or the effects that their degradation may have on other human rights, such as health, life or personal integrity, but also because of their importance to the other living organisms with which we share the planet that also merit protection in their own right.[325]

179. Accordingly, the Court considers that the high levels of contamination caused by arsenic, cadmium, sulfur dioxide, lead and other polluting metals in the air, soil and water, affected the different elements of the environment in La Oroya, generating a systemic risk to the health, life and personal integrity of its inhabitants. This Court recalls that the State was aware of these high levels of contamination, but did not take the necessary steps to prevent their continuation (*supra* para. 176), nor to provide care for those who had acquired diseases related to said contamination (*infra* para. 213). Therefore, the State's omissions constituted violations of the collective dimension of the right to a healthy environment, protected by Article 26 of the Convention.

180. Similarly, the Court recalls that the expert witness Marco Orellana explained that so-called "sacrifice zones" are "areas where environmental pollution is so severe that it constitutes a systematic violation of the human rights of its residents."[326] In this sense, the Court considers that the severity and duration of the pollution produced by the CMLO over decades suggests that La Oroya was used as a "sacrifice zone," since for years it was subject to high levels of environmental contamination that affected the air, water and soil, and consequently endangered the health, integrity and lives of its inhabitants.

B.3.2. Regarding the obligations of progressive development in relation to the right to healthy environment

181. The present case also raises an issue of retrogression in the terms of Article 26 of the Convention, in relation to Article 2 of the Convention. The air quality standards established by Peruvian law in 2008 set a limit of 365 μg/m^3 of sulfur dioxide as a 24-hour average, which could not be exceeded more than once a year. Subsequently, in August 2008, the State approved Supreme Decree Nº 003-2008-MINAM on air quality standards, setting a maximum daily value of 80 μg/m^3 applicable as of January 2009, and determined that, from January 2014, the daily value should be 20 μg/m^3 in a 24-hour period. As part of its considerations, the State pointed out that the standards or parameters for environmental control and protection "should take into account those established by the World Health Organization or by international entities specialized in each of the environmental issues."[327] The Court notes that in 2005 the WHO had

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[324] *Cf. Advisory Opinion OC-23/17, supra*, para. 59.

[325] *Cf. Advisory Opinion OC-23/17, supra*, para. 62.

[326] *Cf.* Expert report of Marcos Orellana, presented at the public hearing in this case during the Court's 153rd Regular Session, held in Montevideo, Uruguay.

[327] *Cf.* Supreme Decree N° 003-2008-MINAM, August 21, 2008 (evidence file, folios .1080 to .1083). See also: Supreme Decree Nº 074-2001-PCM, Regulation of National Ambient Air Quality Standards.

established 20 μg/m^3 of sulfur dioxide in a 24-hour period as a maximum permissible level.[328]

182. However, on June 6, 2017, the State approved new Air Quality Standards through Supreme Decree Nº 003-2017-MINAM. These standards set the permitted limit for sulfur dioxide at 250 μg/m^3 in a 24-hour period, i.e. more than 12 times the maximum limit previously allowed, and established that the permitted limit could not be exceeded more than seven times a year.[329] The Commission pointed out that by approving new air quality standards the State allowed a relaxation of the permitted limits without having justified the reasons for such a decision and failed to establish how progress would be made to achieve a standard in line with international parameters. The State, for its part, argued before this Court that, in 2017, it was necessary to adapt the permitted sulfur dioxide values to the "inter-American reality," taking as a reference the values permitted by other member countries of the Organization for Economic Cooperation and Development (OECD).

183. In relation to the above, the Court has established that, under Article 26 of the Convention, it is fully competent to examine violations of the rights derived from the economic, social, educational, scientific and cultural standards contained in the OAS Charter. It has also established that two types of obligations arise from these provisions: those that are immediately enforceable and those of a progressive nature. Regarding the latter, the Court considers that the progressive development of economic, social, cultural and environmental rights cannot be achieved in the short term and, therefore, "a necessary flexibility device is required that reflects the realities of the real world and the difficulties involved for any country in ensuring their full realization."[330]

184. The Court has also established that, within the context of this flexibility regarding the time frame and methods of implementation, the State has essentially - although not exclusively - an obligation to act. In other words, it has an obligation to take measures and provide the necessary means and elements to respond to the requirements for the realization of the rights involved, always to the extent permitted by the economic and financial resources available, to comply with its respective international commitment.[331] Thus, the progressive implementation of said measures may be subject to accountability and, if appropriate, compliance with the respective commitment assumed by the State may be claimed before the courts called on to decide eventual human rights violations.[332]

185. In correlation with the above, the Court has considered that there is an obligation– albeit a conditioned obligation– of non-retrogression, which should not

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328 *Cf.* World Health Organization, Air Quality Guidelines Global Update, 2005, page 415.

329 *Cf.* Supreme Decree N°003-2017-MINAM issued on June 7, 2017 (evidence file, folios .1297 to .1299).

330 *Cf. Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Comptroller") v. Peru. Preliminary objection, merits, reparations and costs*, *supra*, para. 102, and *Case of Cuscul Pivaral et al. v. Guatemala, supra,* para. 141. See also: Committee on Economic, Social and Cultural Rights, General Comment No. 3: The nature of the obligations of the States Parties (paragraph 1 of Article 2 of the Covenant), December 14, 1990, U.N. Doc. E/1991/23, para. 9.

331 *Cf. Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Comptroller") v. Peru, supra*, para. 102, and *Case of Cuscul Pivaral et al. v. Guatemala, supra,* para. 142. See also: Committee on Economic, Social and Cultural Rights, "Evaluation of the obligation to take steps to the maximum of available resources" under an Optional Protocol to the Covenant, September 21, 2007, U.N. Doc. E/C.12/2007/1, paras. 8 and 9.

332 *Cf. Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Comptroller") v. Peru, supra*, para. 102, and *Case of Cuscul Pivaral et al. v. Guatemala, supra,* para. 142.

always be understood as a prohibition of measures that restrict the exercise of a right. In this regard, the Court has reiterated the opinion of the CESCR that "any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the [International Covenant on Economic, Social and Cultural Rights] and in the context of the full use of the maximum resources available [to the State]."[333] Similarly, the Inter-American Commission has considered that to evaluate whether a retrogressive measure is compatible with the American Convention, it is necessary "to determine whether it is justified by reasons of sufficient importance."[334]

186. In the instant case, the Court considers that the modification of the air quality standards for sulfur dioxide in 2017 was a retrogressive measure, in terms of the scope of protection of the right to a healthy environment, since it was the State itself that declared, in Supreme Decree Nº. 003-2008-MINAM, that the air quality standard set by the WHO was the guide for determining the maximum standard for establishing the environmental and health risks (*supra* para. 181). Thus, the retrogressive modification of the air quality standard required careful consideration, justified with reference to the full range of rights, in the context of the maximum use of the resources available to the State.[335] The Court also recalls that, in line with the precautionary principle, States must act with due care to prevent potentially serious and irreversible damage to the environment, even in the absence of scientific evidence.

187. Accordingly, the Court concludes that Supreme Decree Nº 003-2017-MINAM constituted a deliberately retrogressive measure in protecting the right to a healthy environment, particularly regarding the right to clean air, which had no justification in the context of the State's international obligations of progressive development of economic, social, cultural and environmental rights. Consequently, the Court concludes that the State failed to comply with its obligation to ensure the progressive development of the right to a healthy environment.

B.3.3. The right to health

188. Both the Commission and the representatives argued that the absence of adequate measures by the State to protect the right to a healthy environment resulted in an impairment of the right to health, life and personal integrity of the alleged victims. For its part, the State argued that the representatives did not present sufficient evidence to establish that the ailments and diseases supposedly suffered by the alleged victims, or that the deaths of some of them, were caused by the environmental pollution in La Oroya. This Court will now consider whether the State bears responsibility for the effects that the environmental contamination produced by the CMLO may have had on the health of the alleged victims, and for the subsequent actions taken by the State to address them.

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333 *Cf. Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Comptroller") v. Peru, supra*, para. 103, and *Case of Cuscul Pivaral et al. v. Guatemala, supra,* para. 143.

334 *Cf. Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Comptroller") v. Peru, supra*, para. 103, and *Case of Cuscul Pivaral et al. v. Guatemala, supra,* para. 143.

335 In this regard, the expert witness Christian Courtis stated the following: "if progressiveness in environmental matters means adjusting the measures adopted to the environmental risk or impact, retrogressive measures are those that unjustifiably lower the existing environmental standards, without evidence that the previous standards were inadequate in the light of validated scientific evidence, or that the environmental situation has improved and therefore other less rigorous standards are adequate." *Cf.* Expert report of Christian Courtis (evidence file, folio 28784).

189. First, the Court notes that the WHO has identified lead, cadmium, mercury and arsenic as four of the 10 metals that are most harmful to public health.[336] In this regard, there is strong evidence of the health effects of exposure to these metals. With respect to lead, its presence in the body can affect the brain, liver, kidneys and bones, as well as the nervous system, and can cause high blood pressure, kidney damage and affect the reproductive organs. Inhalation or ingestion of cadmium can cause kidney disease, severe stomach irritation and increased bone fragility, and has also been associated with lung cancer. Exposure to arsenic is associated with skin, lung, bladder, kidney, prostate and liver cancer, as well as with cardiovascular, neurological and respiratory diseases. As for sulfur dioxide, exposure to this gas can affect the eyes and skin, and its presence is inherently hazardous to human health.[337]

190. The Court recalls that, according to the WHO, the presence of lead in the body may constitute a risk to the development of a fetus during pregnancy, and affects children more acutely than adults. It has also been shown that exposure to lead can cause anemia, general weakness, high blood pressure, heart disease, reduced fertility, behavioral disorders, kidney and brain damage, gastrointestinal diseases, cancer, and even death. Furthermore, it has been established that exposure to lead poisoning can adversely affect the development of children's nervous systems, their intellectual development and physical growth, their behavior, their eyesight and their circulatory and digestive systems. Moreover, the WHO has pointed out that exposure to environmental pollution also affects people's mental health.[338]

191. Regarding the effects on the health of the inhabitants of La Oroya, the Court deems it pertinent to point out that the 1999 DIGESA report had established that the average blood lead level in children evaluated in La Oroya was 33.6 µg/dL, and in people over 10 years of age the average blood lead level was 36.5 µg/dL, when the maximum limit for both population groups was 10 µg/dL.[339] These results were mainly associated with the pollution produced by the CMLO. In addition, the "Study of Blood Lead Levels in the Population of La Oroya" published by Doe Run in 2001 concluded that blood lead levels in the children of La Oroya exceeded the WHO guidelines (10 µg/dL), and emphasized that "lead has no function within the human body and may have toxic effects on the health of a person who has had sufficient exposure to and absorption of lead."[340]

192. The Court also recalls that the reports of the local government of Yauli Province of 2003, the Ministry of Health of 2005, and the Commission of Andean, Amazonian and Afro-Peruvian Peoples, Environment and Ecology of 2007, established respectively that environmental pollution in La Oroya was high enough to: a) cause acute respiratory infections, b) cause 99% of children under 6 years of age to have blood lead levels above

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336 *Cf.* WHO. *10 Chemicals of public health concern,* June 1, 2020.

337 *Cf.* Expert report of Oscar Cabrera (evidence file, folios 29308 to 29311).

338 *Cf.* WHO. Lead Poisoning, October 11, 2021 (evidence file, folio 20978); CDC. Lead: Health Problems Caused by Lead, June 18, 2018 (evidence file, folio 20982); The LEAD Group Inc., Health Impacts of Lead Poisoning A preliminary listing of the health effects & symptoms of lead poisoning, September 27, 2020 (evidence file, folio 20985); WHO, "Don't Pollute my Future! The Impact of the Environment on Children's Health, Geneva (evidence file, folio 21643); Tort B, Choi YH, Kim EK, Jung YS, Ha M, Song KB, Lee YE. Lead exposure may affect gingival health in children, May 4, 2018 (evidence file, folio 21679).

339 *Cf.* General Directorate of Environmental Health of the Ministry of Health, Study of Lead in Blood in a Selected Population of La Oroya, November 23-30, 1999 (evidence file, folios .485 to .543).

340 *Cf.* Study of Blood Lead Levels in the Population in La Oroya 2000-2001, carried out by Doe Run Peru in 2001 (evidence file, folio 21689).

the recommended maximum, and c) cause cardiovascular problems in the population. Furthermore, the Court recalls that the 2006 judgment issued by the Constitutional Court considered proven "the existence of excessive air pollution in the city of La Oroya, and that lead contamination in the blood, especially in children, exceeded the maximum limit set by the World Health Organization (10 µg/100 ml)."[341] The Court reiterates that there is no dispute that the presence of lead and other metals in the air, soil and water was directly related to the CMLO's metallurgical activities.

193. The Court also recalls that a study carried out by the University of Yale School of Forestry and Environmental Studies on air quality in La Oroya between 2009 and 2014 concluded that the three elements that exceeded ambient air quality standards (ECAs) in La Oroya (lead, cadmium and sulfur dioxide) were "hazardous to human health." The study also found that residents of La Oroya had experienced the negative health effects associated with increased levels of these substances. Qualitatively, as the study explains, the symptoms reported by patients in La Oroya coincide with certain symptoms of poisoning with lead, cadmium and sulfur dioxide. Quantitatively, the levels of these substances in the blood of patients from La Oroya were, on average, higher during the most intense periods of the CMLO's operations.[342]

194. Regarding the levels of metals present in the blood of the alleged victims, the Court notes that a series of medical tests were carried out in 2008-2009, 2010-2011, 2013-2014, 2016 and 2019, as part of the measures implemented by the State for the medical care of the alleged victims. The first of these studies, in 2008-2009, involved taking blood and urine samples to determine metal concentrations, which were sent to the CDC. The study found lead in the blood and urine samples of 44 people (67.7%), cadmium in 48 people (73.8% of the samples) and arsenic in 49 people (75.4% of the samples).[343] The values reported by DIGESA in the context of the analyses carried out in 2008 and 2009 showed average values between 104 µg/L and 36 µg/L of arsenic in urine.[344] According to the Centers for Disease Control and Prevention (CDC), arsenic levels are considered "normal" if they are below 50 µg/L.[345]

195. Based on the information presented by the representatives, half of the people tested in 2009 had blood lead levels above 20 µg/dL.[346] Furthermore, data obtained from surveys carried out in 2013, 2017 and 2019, show that the average blood lead levels of the individuals tested were 7.36 µg/dL, 5.84 µg/dL and 5.99 µg/dL, respectively.[347] The representatives also provided information on average cadmium levels in urine for the

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341 *Cf.* Constitutional Court of Peru, Judgment of May 12, 2006 (evidence file, folio .831).

342 *Cf.* University of Yale, School of Forestry and Environmental Studies, "Analysis of Air Quality and Medical Record Data, Doe Run Metallurgical Complex, La Oroya, Peru." December 2015 (evidence file, folio 20797).

343 *Cf.* Ministry of Health, Report No. 019-2009-DGSP-ESNP/MINSA, March 16, 2009 (evidence file, folio .703).

344 *Cf.* Estimates made by the representatives based on the DIGESA reports (evidence file, audiovisual material file).

345 *Cf.* US Center for Disease Control (CDC), Medical management guidelines for inorganic arsenic compounds.

346 *Cf.* Estimates made by the representatives based on the DIGESA reports (evidence file, audiovisual material folder), and historical data on the lead, cadmium and arsenic levels of the alleged victims (evidence file, folios 25325 to 25327).

347 *Cf.* Estimates made by the representatives based on the DIGESA reports (evidence file, audiovisual material folder), and historical data on the lead, cadmium and arsenic levels of the alleged victims (evidence file, folios 25325 to 25327).

periods of June 2008, October 2008, February 2009, June 2013, and October 2016, which were higher than the reference level of 0.20 µg/L in force in the United States during this period.[348] In relation to the amounts of arsenic in urine, according to the results of tests carried out in 2019, the percentage of arsenic in urine showed minimum levels of 5.39 µg/L, and maximum levels of up to 63.55 µg/L.[349]

196. The expert witness Howard Mielke pointed out that since lead, cadmium, mercury and arsenic are present in the air, soil and water of La Oroya, it is probable that they could enter the bodies of its inhabitants, causing neurological and behavioral disorders, lung disease, heart disease, liver disease, kidney failure and shortened lifespan. With respect to lead in particular, he explained that the alleged victims' lead exposure levels from 2009 to 2019 showed an initial average blood lead level of 20.6 µg/dL, which decreased to 7.3 µg/dL in 2011 and then to 5.3 µg/dL in 2011, and finally dropped to 5.5 µg/dL in 2019. At all times, these measurements were found to be above the 3.5 µg/dL reference value set by the United States Center for Disease Control and Prevention (CDC).[350] On this point, it should be noted that the WHO has established that there is no safe level of lead intake.[351]

197. Secondly, the Court recalls that the 80 alleged victims in this case live or have lived in La Oroya since the CMLO was established in 1922, and were therefore exposed to pollution from lead, cadmium, mercury and arsenic in the air, soil and water for many years. Also, from the body of evidence it is clear that the alleged victims suffered from different health problems throughout their lives.[352] For example, with respect to bone diseases, María 30 has suffered from osteoporosis; María 1, 8, 10, 11, 12, 15, 16, 23, 30, 31, 34, 35, 36, 37, 38, and Juan 7, 10, 27, 28, 41 and 42 have suffered from bone pain; María 13, 24, 30, and Juan 26 have suffered from lower back pain; and María 1, 9, 15, 19, 28, 29, 33, 34, and Juan 2, 7, 8, 12, 15, 16, 23, 31, 33, 35, 38, and 41 have all suffered from impaired vision and tearing or irritation of the eyes.

198. Likewise, the Court notes that María 1, 6, 7, 18, 30 and 31 and Juan 11, 15, 18, 39, 41, and 42 have suffered from joint pain or loss of strength in their limbs; María 31 has suffered arthritis; Juan 12 has suffered from arthrosis, and María 12 has suffered from extra-articular rheumatism. María 10, and Juan 5, 9, 10, 12, 19, 26, 29 and 30 have experienced hearing loss or hearing impairment; María 13 has experienced tinnitus; María 4 and Juan 8, and 27 have suffered from earache or ear infections; María 8 and Juan 8 have reported nosebleeds; María 23 has suffered from sinusitis; María 2, 17, 18, 30, 31, 32, 33, 34, 37 and Juan 1, 32 and 33, have all suffered from tonsillitis; María 1, 3, 12, 20, 23, 24, 28, 29, 30, 31, 32, 34, 35, 36, 37, and Juan 2, 7, 41 and 42 have reported itching, burning or sore throats; and María 16, Juan 2, and 31 have suffered from rhinitis.

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348 *Cf.* Fernando Serrano, Study on environmental contamination in homes in La Oroya and Concepcion and its effects on the health of their residents, Report on Preliminary Biological Results, December 6, 2005 (evidence file, folios 18513, 18514 and 18515).

349 *Cf.* Ministry of Health, National Institute of Health, National Center for Occupational Health and Environmental Protection for Health (evidence file, folios 22689 to 22691).

350 *Cf.* Expert report of Howard Mielke (evidence file, folios 29242 and 29243).

351 *Cf.* WHO, Preventing disease through healthy environments. Exposure to Lead: a major public health concern, 2nd edition. October 21, 2021.

352 *Cf.* Medical files of the alleged victims, Juan 1 to 42, and María 1 to 37 (evidence file, folios 24275 to 24928), and affidavits rendered by Juan 1, 2, 6, 8, 15, 18, 25, 30, the son of Juan 12 and María 3, 9, 16, 24, 25, 32, 33 and 37 (evidence file, folios 28950 to 29112).

199. With respect to respiratory problems, María 13, 30, 33, and Juan 7, 11, 21, 26, 28, 32, 33, have suffered from pharyngitis; María 13, 21, 22, 30, 31, 32, 33, 34, and Juan 2, 3, 4, 6, 7, 25, and 30 have suffered from asthma; María 8, 10, 13, 30, 33, 34, and Juan 8 have suffered from pneumonia or bronchopneumonia; María 10, 13, 21, 22, 30, 31, 33, 34, and Juan 18, 23, 30, 32, 33, 34, 35, and 40 have suffered bronchitis; and María 1, 2, 3, 6, 7, 13, 17, 20, 21, 22, 23, 28, 29, 30, 31, 33, 34, 35, 36, 37, and 38, and Juan 1, 3, 4, 5, 6, 9, 11, 12, 16, 18, 25, 26, 27, 29, 30, 33, 39, and 40, have reported frequent coughing, and Juan 25 was diagnosed with pulmonary silicosis.

200. Regarding neuro-psychiatric disorders, María 1, 7, 9, 16, 18, 23, 29, 31, 35, 36, 37, 38, and Juan 4, 10, 11, 21, 26, 29, 41, and 42 have reported sleep disturbances; María 1, 3, 9, 11, 16, 20, 23, 30, 33, 38, and Juan 5, 10, 23, 27, and 36 have complained of tiredness or fatigue, María 2, 3, 10, 13, 16, and Juan 5, 12, 17, 19, 25, and 32 have suffered anxiety or stress; Juan 17 has suffered mood swings; María 6, 13, 18, 23, 29, 30, 31, 32, 34, 35, 37, and 38, and Juan 6, 9, 11, 17, 18, and 19 have exhibited irritability or apathy; María 21, 22, 23, and Juan 23, 26, 27, 28, and 36 have experienced learning difficulties and attention deficit; María 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 15, 16, 17, 19, 20, 21, 22, 23, 24, 26, 27, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, and Juan 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 15, 17, 18, 19, 25, 26, 28, 31, 33, 39, and 41 have all suffered from headaches; María 5, 13, 25, and Juan 21, 25 and 31 have experienced seizures; María 3, and Juan 12, and 23, have suffered from paresthesia; and finally, Juan 25 and 26 have suffered memory loss.

201. With regard to cardiovascular problems, the Court notes that María 30 has suffered from arrhythmia; María 6, 9, 31, 35, 36, 37, 38, and Juan 5, 13, 19, and 41 have suffered from high blood pressure. In addition, María 3, 5, 8, 9, 11, 16, 20, 23, 27, 29, 30, 31, and 36, and Juan 6, 8, 28, 31, 39, 40 and 42 have suffered from abdominal pain or gastrointestinal problems; María 6, 7, 8, 17, 31, 34, 35, 38, and Juan 4, 9, 14, 21, 39, 40 and 42 have reported loss of appetite; and María 4, 18, 23, 29, 30, 36, and Juan 3, 5, 8, 9, 23, 27, 28, 33, 34, and 39 have all experienced bouts of diarrhea.

202. The Court also notes that some alleged victims have developed disorders of the integumentary system (skin, hair, nails, glands): María 3, 4, 10, and Juan 19 and 22, suffered from xerosis or desquamation (dry or peeling skin); María 9, 19, 32 and Juan 10, 11, 26, and 30 have presented skin rashes or eruptions; María 15, 16, 19, 23, 31, 32, and Juan 2, 11, and 30 have suffered from skin allergies; and Juan 19, 22, 25 and 31 have suffered from dermatitis. Other alleged victims have suffered from blood, circulatory and renal system disorders: María, 4 and 36 and Juan 26, and 42 have suffered from kidney disease; and María 2, 10, 15, 16, 19, 23, and Juan 18, 21, 22, 23, 25, 27, 28, 31, 34 and 39 have suffered from anemia or hemoglobin problems.

203. Third, this Court recalls that, during the public hearing, the expert witness John Maximiliano Astete Cornejo explained that general symptoms in people exposed to certain pollutants are not sufficient to conclude that the damage to health is due to such exposure, as it is necessary to carry out an individualized analysis.[353] On this point, the State argued there was no causal nexus between the possible diseases of the alleged victims and their exposure to pollutants in La Oroya. In this regard, the Court finds that there is insufficient information to establish the levels of the aforementioned metals in

[353] *Cf.* Statement of John Maximiliano Astete Cornejo at the public hearing in this case, during the Court's 153rd Regular Session, which took place in Montevideo, Uruguay.

the alleged victims' blood throughout the period in which they were exposed to pollution, or the specific way in which said exposure caused the diseases that they acquired. This situation is due to the absence of studies conducted during the greater part of the time that the exposure to said pollutants existed, the absence of specific follow-up of the possible health impacts on each of the alleged victims, and the limitations of medical science to establish causality.

204. Nevertheless, the Court considers that, in cases such as this, where: a) it has been proven that certain types of environmental pollution pose a significant risk to human health (*supra* paras. 189 and 190); b) people were exposed to such pollution under conditions that endangered their health (*supra* paras. 191 to 202), and c) the State is responsible for the failure to fulfill its duty to prevent environmental pollution (*supra* paras.153 to 157), it is not necessary to prove a direct causal link between the victims' acquired diseases and their exposure to pollutants.[354] In these cases, in order to establish the State's responsibility for violations of the right to health, it is sufficient to show that the State allowed levels of pollution that significantly endangered human health and that people were indeed exposed to environmental contamination in such a way that their health was imperiled. In any event, in these cases it will be up to the State to prove that it was not responsible for the high levels of pollution and that this did not constitute a significant risk to people.

205. The Court also notes that there is scientific evidence that mere exposure to high levels of pollutants – such as those produced by the CMLO's activities – pose a risk to human health, even after such exposure to pollution has ceased and there are no traces of contamination in people's bodies due to the passage of time.[355] It has also been demonstrated that simultaneous exposure to different polluting agents generates cumulative risks to human health.[356] For this reason, the Court considers that the alleged victims in this case faced significant risks to their health given the many years of exposure to high levels of heavy metals and environmental pollution in La Oroya. Furthermore, there is no doubt that the main source of contamination in La Oroya was the CMLO's mining and metallurgical operations, and that the State failed in its duty to prevent high levels of pollution in the air, soil and water (*supra* para. 176).

206. In addition to the foregoing, the Court considers that the representatives have proved that the diseases caused by constant exposure to high levels of lead, cadmium, mercury and arsenic can affect the human brain, lungs, liver, kidneys, bones, reproductive system and teeth, and most acutely harm children and even fetuses during pregnancy. They have also shown that the alleged victims in this case present bone, renal, cardiovascular, respiratory and neuropsychiatric diseases, and may even suffer from tumors and cancer. In fact, even those alleged victims who initially do not present

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354 *Cf.* ECHR, Pavlov et al. v. Russia, No. 3161/09, Judgment of October 11, 2022, para. 61; see also Locascia et al. v. Italy, No. 35648/10, Judgment of October 19, 2023, para. 148. Also, several national courts in countries of the Americas, such as Canada, Ecuador, Colombia and Costa Rica have confirmed the damage to health caused by industrial pollution resulting from the activities of private companies. Decision No. 230-18-SEP-CC of the Constitutional Court of Ecuador, of June 27, 2018; Decision T-733-17 of the Plenary of the Constitutional Court of Colombia, of December 15, 2017; and Decision No. 02740-2015 of the Constitutional Chamber of the Supreme Court of Justice of Costa Rica, of February 27, 2015, and Decision No. 03870-2021 of the Constitutional Chamber of the Supreme Court of Justice of Costa Rica, of February 26, 2021.

355 *Cf.* Expert report of Hugo Villa (evidence file, folio 29151). Mr. Villa explained that in order to assess exposure to contamination of the inhabitants of La Oroya, it was not only necessary to analyze the blood and urine levels, but also to consider their history of exposure and clinical profile.

356 *Cf.* US Environmental Protection Agency (EPA), Framework for Cumulative Risk Assessment. EPA Office for Research and Development, Center for Public Health and Environmental Assessment, May 2003, p. 7.

symptoms are not exempt from becoming ill in the future due to the cumulative effects caused by exposure to pollution. Thus, although the violation of the right to health occurred due to the significant risks resulting from constant exposure to metals produced by the CMLO's activities in La Oroya, the Court finds that in the instant case, the alleged victims suffered diseases as result of such exposure.

207. This Court also reiterates that States must act in accordance with the precautionary principle in order to prevent the violation of people's rights in cases where there are plausible indications that an activity could result in severe and irreversible damage to the environment, even in the absence of scientific certainty.[357] Therefore, even in the absence of scientific certainty, where there is evidence that suggests a significant risk to human health from exposure to high levels of environmental pollution, the States must take effective measures to prevent exposure to such pollution.[358] For this reason, the Court considers that a lack of scientific certainty on the specific effects that environmental pollution may have on human health cannot be a justification for States to postpone or avoid the adoption of preventive measures, nor can it be invoked as justification for the failure to adopt general measures of protection for the population.

208. On this point, the Court deems it pertinent to emphasize that the cumulative effects of metals in the bodies of the alleged victims required the State to carry out an individualized analysis of their health situation, taking into account their prior exposure and clinical history, and providing measures for their medical care. It also required a continuous analysis over time, since diseases can manifest years after exposure. This is especially so, when it was the State itself that did not provide individualized and ongoing care to those who were suffering symptoms due to heavy metal contamination. In this regard, the Court recalls that the WHO has established that there is no safe level of lead intake.

209. As regards compliance with its health care obligations, the State implemented a number of measures for the medical attention of the population in La Oroya[359] and, in particular, for the alleged victims. With regard to the latter, as noted previously, blood tests were carried out in 2008-2009, 2010-2011, 2013-2014, 2016 and 2019, as well as medical evaluations of the beneficiaries of the precautionary measures. The State reported that in 2008, of the 65 beneficiaries of the provisional measures, 62 had blood samples taken, 61 attended medical evaluations, 56 attended psychiatric evaluations and three did not present themselves for any medical evaluation.[360] In July 2014, the Peruvian Health Ministry reported that of the original beneficiaries of the precautionary measures, 42 received medical attention through the Comprehensive Health Insurance system, 18 beneficiaries received treatment through the Social Health Insurance (*Seguro Social de Salud* - ESSALUD) and two other patients did not attend any of the public health institutions.[361]

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357 *Cf. Advisory Opinion OC-23/17*, *supra*, para. 180.

358 *Cf. Advisory Opinion OC-23/17*, *supra*, para. 180.

359 *Cf.* Statement of expert witness Hugo Villa (evidence file, folio 29146 and 29152). Mr. Villa stated that the ESSALUD hospital in La Oroya treated workers and their families, as well as other people who lived in the community. He explained the different symptoms suffered by the patients and that, in cases of lead poisoning, patients who were insured with ESSALUD received specialist treatment. Those not affiliated were treated by MINSA with the available personnel.

360 *Cf.* Ministry of Health, Report No. 019-2009-DGSP-ESNP/MINSA, March 16, 2009 (evidence file, folio .703).

361 *Cf.* Ministry of Health, Report No. 018-2014-GRJ-DRSJ-DESP-ESNMP, July 15, 2014 (evidence file, folio .675).

210. The Court also recalls that on March 29, 2019, the State adopted the "Health Action Plan for Beneficiaries of Precautionary Measure Nº 271-05, Case of La Oroya and its 2019-2022 extension,"[362] in order to "strengthen the provision of comprehensive, specialized and timely care for the beneficiaries of Precautionary Measure Nº 271-05 and its extension."[363] According to a MINSA report dated February 3, 2021, on June 21 and 22, 2019, the State took blood samples from 38 alleged victims resident in La Oroya, Chupaca, Huancayo, Jauja and Tarma, to measure their levels of heavy metals (lead, cadmium and arsenic).[364] Similarly, on June 23 and 24, 2019, the State took samples from 10 alleged victims residing in Lima to determine their heavy metal levels.[365] In addition, the report confirms that "of the 38 beneficiaries who took part in the first stage, 28 received comprehensive care in the second stage."[366] In its brief containing final written arguments, the State indicated that the alleged victims "were referred to health care institutions to receive specialist care."[367]

211. In relation to the foregoing, the Court considers that the State's actions in testing the alleged victims and the medical attention provided as part of the "Health Action Plan for the Beneficiaries of Precautionary Measure Nº 271-05 Case of La Oroya and its extension 2019-2022" were positive measures to ensure the alleged victims' right to health. However, the alleged victims' statements show that, although the aforementioned tests were performed and action plans and medical attention were provided, there was no specific treatment to address the diseases they contracted as a result of environmental pollution. Indeed, the Court notes that Juan 2 and Juan 15 stated that they never received a specialized diagnosis for diseases associated with pollution; María 3 stated that she had not received comprehensive care, while María 24 reported that she had only received "cough syrups" and "paracetamol" to treat her ailments.[368]

212. Regarding the health care provided to the alleged victims, Dr. Villa Becerra, who served as a physician at the Social Health Insurance System (ESSALUD) between 1979 and 2021, indicated in his written testimony that "La Oroya Health Center, attached to MINSA, had very limited personnel with no experience of treating health problems

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362 *Cf.* Regional Government of Junín, Regional Directorate of Health, "Technical Document: Health Action Plan for the Beneficiaries of Precautionary Measure No. 271-05-Case of La Oroya, and its extension", DESP-DAIS-ESMP/RSJAUJA/MRLO (evidence file, folios 27898 to 27922).

363 *Cf.* Regional Government of Junín, Regional Directorate of Health, "Technical Document: Health Action Plan for the Beneficiaries of Precautionary Measure No. 271-05-Case La Oroya, and its extension", DESP-DAIS-ESMP/RSJAUJA/MRLO (evidence file, folio 27901).

364 *Cf.* Report No. 014-2021-UFAPEMPyOSQ-DENOT-DGIESP/MINSA, sent to Mr. W.B.N.B., Executive Director of the Directorate for the Prevention and Control of Non-communicable, Rare and Orphan Diseases, on February 3, 2021 (evidence file, folios 28308 and 28309).

365 *Cf.* Report No. 014-2021-UFAPEMPyOSQ-DENOT-DGIESP/MINSA, sent to Mr. W.B.N.B., Executive Director of the Directorate for the Prevention and Control of Non-communicable, Rare and Orphan Diseases, on February 3, 2021 (evidence file, folios 28308 and 28309).

366 *Cf.* Report No. 014-2021-UFAPEMPyOSQ-DENOT-DGIESP/MINSA, sent to Mr. W.B.N.B., Executive Director of the Directorate for the Prevention and Control of Non-communicable, Rare and Orphan Diseases, on February 3, 2021 (evidence file, folio 28309).

367 *Cf.* Brief containing final arguments of the State, November 19, 2022, page 151 (merits file, folio 1417).

368 *Cf.* Statement of Juan 2 (evidence file, folio 28964); Statement of Juan 15 (evidence file, folio 29009); Statement of María 3 (evidence file, folio 29044); Statement of María 24 (evidence file, folio 29069). See also: Statement of Juan 1 (evidence file, folio 28953); Statement of Juan 6 (evidence file, folio 28974); Statement of Juan 8 (evidence file, folio 28986); Statement of Juan 24 (evidence file, folio 29026); Statement of Juan 30 (evidence file, folio 29035); Statement of María 16 (evidence file, folio 29063); Statement of María 24 (evidence file, folio 29069), and Statement of María 32 (evidence file, folio 29087).

caused by metal or metalloid poisoning."[369] According to the expert Marisol Yáñez, referring to the local medical infrastructure, "the only health center that the [alleged] victims could attend in La Oroya was declared uninhabitable about seven years ago."[370] As for the quality of the medical care received, Ms. Yáñez indicated that, based on the comments of the alleged victims during interviews she conducted to prepare her expert report, "the health system did not meet the basic requirements for the care and treatment of the inhabitants of La Oroya."[371]

213. Based on the foregoing, it is clear that the State's health care system did not have adequate facilities to treat the diseases contracted by the alleged victims through their exposure to environmental pollution, since La Oroya's health center did not have the necessary facilities to identify and treat diseases resulting from the environmental pollution to which they were exposed; that the medical centers that could treat these diseases were not accessible to the alleged victims, who had to travel outside La Oroya to receive proper medical care; and that the type of medical treatment they received was not appropriate for their aliments, since the medicines and care received were clearly insufficient to counteract the effects of exposure to pollution. This amounts to a breach of the State's duty to provide health care in accordance with the principles of availability, accessibility and quality, to the detriment of the alleged victims.

214. Taking all of the above into consideration, the Court considers it proven that the alleged victims' exposure to environmental pollution resulted in their being placed at significant risk of contracting diseases, and that they actually developed some of these diseases. The high levels of environmental contamination were found to be linked to the State's actions and omissions in the regulation of the CMLO's metallurgical activities, which constituted a violation of the right to a healthy environment. Thus, the environmental conditions created by the activities of CENTROMIN, and subsequently of Doe Run, the lack of sufficient measures by the State to control the effects of air pollution, and the lack of adequate medical care, make it possible to attribute international responsibility to the State for the effects that the company's activities had on the right to health of the alleged victims in this case, pursuant to Article 26 of the American Convention.

B.3.4. Regarding the rights to life and personal integrity

B.3.4.1. The right to life of Juan 5 and María 14.

215. The representatives argued that the State is responsible for the violation of the right to life owing to the death of two alleged victims: Juan 5 and María 14. Regarding Juan 5, the Court confirms that he was born on December 12, 1959, and that since childhood he suffered from a heart murmur, which was operated on in 1997 when two valves were inserted. He also had problems in the gall bladder and underwent surgery in 1996. In 2004, he suffered complications in his right ear, and throughout his life he faced other health problems, including inflammation of the liver and respiratory and gastrointestinal problems. Juan 5 died on September 19, 2008, having recently suffered a subarachnoid and pulmonary hemorrhage. The Court considers that although the toxicology samples revealed that at the time of his death he had negative results for the presence of arsenic, mercury, cadmium, ethyl alcohol and other chemical substances,

369 *Cf.* Statement of Hugo Villa Becerra (evidence file, folio 29152).

370 *Cf.* Expert report of Marisol Yáñez (evidence file, folio 29383).

371 *Cf.* Expert report of Marisol Yáñez (evidence file, folio 29383).

the tests carried out in June 2008 showed he had blood lead levels of 11.30 µg/dL, as well as 131.50 µg/dL of arsenic in urine, and 13.0 µg/dL of cadmium in urine.[372]

216. María 14, who belongs to the same family as Juan 5, was born on September 16, 1988. From the age of seven, she suffered skin problems and was diagnosed with cutaneous T-cell lymphoma when she was 14 years old. According to the case file, María 14 did not receive emergency medical care and, following her diagnosis, received chemotherapy treatment, although this was later suspended by decision of her parents. The laboratory studies handed over to them in March 2006 determined that she had 0.96 µg/L of mercury, 0.45 µg/L of cadmium and 13.0 µg/L of lead in her blood. According to the representatives, her cancer treatment was suspended due to poor treatment received at the hospital. María 14 died on April 4, 2006, at the age of 17, from a type of skin cancer known as cutaneous T-cell lymphoma.[373]

217. The Court has indicated that in order to determine the State's international responsibility in cases of death in a medical context, the following must be proved: a) that due to acts or omissions, a patient was denied access to health care in situations of medical emergency or essential medical treatment, despite the foreseeable risk that this denial signified for the patient's life, or, gross medical negligence;[374] and b) the existence of a causal nexus between the action proven and the harm suffered by the patient.[375] When the attribution of responsibility stems from an omission, it is necessary to verify the probability that the omitted conduct would have interrupted the causal process that brought about the harmful outcome. This verification must take into account the possible situation of special vulnerability of the person concerned[376] and the measures adopted to protect him or her.[377]

218. In relation to the foregoing, the Court recalls that the conclusion regarding the State's responsibility for the violation of the right to health was based on the conviction that the environmental conditions created by the CMLO's activities posed a significant risk to the alleged victims' health, due to years of exposure to high levels of environmental contamination in La Oroya (*supra* para. 205). In this regard, the Court reiterates that exposure to pollution from lead, cadmium, mercury, arsenic and sulfur dioxide causes health problems, and that exposure to arsenic in particular has been associated with skin cancer, cardiovascular problems and lung disease. Moreover, the Court notes that, as stated previously, the State did not provide adequate medical treatment to the alleged victims who acquired illnesses through their exposure to environmental pollution in La Oroya.

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372 *Cf.* Medical file of Juan 5 (evidence file, folios 24290 to 24312), and Ministry of Health Report No. 08-210-DGSP-ESNAPACMPOSQ/MINSA, of April 22, 2010 (evidence file, folio .763).

373 *Cf.* Clinical history, Guillermo Alemanara Irigoyen National Hospital (evidence file, folio .750); Laboratory results of María 14 (evidence file, folio .753), and medical file of María 14 (evidence file, folios 24720 to 24741).

374 *Cf. Case of Ximenes Lopes v. Brazil*, *supra,* paras. 120-122, 146 and 150, and *Case of Manuela et al. v. El Salvador, supra*, para. 243.

375 *Case of Poblete Vilches et al. v. Chile, supra,* para. 148, and *Case of Manuela et al. v. El Salvador, supra,* para. 243.

376 *Cf. Case of the Xákmok Kásek Indigenous Community v. Paraguay. Merits, reparations and costs.* Judgment of August 24, 2010. Series C No. 214, para. 227, and *Case of Manuela et al. v. El Salvador, supra,* para. 243.

377 *Cf. Case of Ximenes Lopes v. Brazil*, *supra,* para. 125, and *Case of Manuela et al. v. El Salvador, supra,* para. 243.

219. The Court also recalls that environmental pollution in La Oroya put the alleged victims at risk of contracting diseases such as skin cancer and lung disease, which caused the deaths of Juan 5 and María 14. In this context, since the State is responsible for the health impacts caused by environmental contamination in La Oroya, including those that resulted in the deaths of Juan 5 and María 14, the Court finds that the State is also responsible for violating the right to life of these persons, pursuant to Article 4(1) of the Convention, also taking into consideration that the State failed to provide adequate medical treatment for their illnesses, as noted previously and as is clear from the evidence presented.

B.3.4.2. The right to a decent life

220. The Court notes that the Commission and the representatives alleged that the State is also responsible for the violation of the rights to life of the 80 alleged victims due to the absence of basic conditions for a decent life as a result of environmental pollution in the city of La Oroya. With regard to this assertion, the Court considers that it has been shown that the alleged victims in this case have lived in the city of La Oroya for many years, in an environment contaminated with heavy metals which has had an impact on the quality of the soil, water and air. These living conditions have affected the alleged victims' right to a healthy environment and to health, and even their right to life in the cases of Juan 5 and María 14.

221. The Court reiterates that the right to life not only prohibits the State from arbitrarily depriving a person of life, but also imposes positive obligations to protect and preserve life. In this sense, the Court has indicated that in certain circumstances it is possible to analyze a violation of Article 4 of the Convention when people have been affected in their ability to live a decent life. Likewise, the Court recalls that Article 11 of the Convention states that every person has a right "to have his honor respected and his dignity recognized." Among the conditions necessary for a decent life, the Court has mentioned access to and quality of water, food and health, indicating that these conditions have an acute impact on the right to a decent life and the basic conditions for the exercise of other human rights. The Court has also included the protection of the environment as a condition for a decent life (*supra* para. 136).

222. In the instant case, the Court finds that exposure to environmental pollution in La Oroya resulted in changes in the alleged victims' quality of life. These included: a) not being able to leave their homes when pollution levels were very high; b) not being able to drink water safely because of the presence of contaminating particles; c) their windows had to be closed because of the presence of gases in the environment; d) people suffered from anxiety, and e) agriculture and livestock production were severely affected by the high levels of pollution in the soil, water and air.[378] In her written report, the expert witness Marisol Yáñez stated that the consequences of environmental pollution caused, in turn, a detriment to the quality of life of the alleged victims:

> Most of the victims say they feel that the situation has disrupted their life plans, drastically changing the way in which they would have liked to live, with repercussions on situations such as finding a job, doing well in their studies or

[378] *Cf.* Statement of Juan 1 (evidence file, folios 28957 to 28962); Statement of Juan 2 (evidence file, folio 28971); Statement of Juan 8 (evidence file, folio 28982); Statement of Juan 18 (evidence file, folio 29015), Expert report of Marisol Yáñez (evidence file, folios 29349 to 29577); and medical files of the alleged victims (evidence file, folios 24274 to 24929).

being able to complete them satisfactorily, or in general, being able to achieve a better quality of life, both for themselves and their families.[379]

223. As a result of this situation, the Court finds that the impact on the alleged victims' way of life caused by environmental pollution constitutes a violation of the right to a decent life, recognized in Article 4(1) of the American Convention.

B.3.4.3. The right to personal integrity

224. This Court recalls that the representatives and the Commission presented arguments regarding the alleged violation of the right to personal integrity. In its case law, the Court has indicated that the right to physical and mental integrity has various connotations of degree and ranges from torture to other types of ill-treatment or cruel, inhuman or degrading treatment, the physical and mental effects of which vary in intensity according to endogenous and exogenous factors, which will be analyzed in each specific situation (*supra* paras. 137 and 138).

225. In the instant case, the Court recalls that the alleged victims suffered intimidation and were stigmatized for their opposition to the CMLO, as is evident from the statements made by Juan 1,[380] Juan 2,[381] Juan 6,[382] Juan 8,[383] Juan 18,[384] Juan 30,[385] María 9,[386]

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379 *Cf.* Expert report of Marisol Yáñez (evidence file, folio 29418).

380 *Cf.* Statement of Juan 1 (evidence file, folio 28955) "Because of the complaints we were persecuted by the company, they accused us of being anti-mining. People demonized us saying that we were trying to have the company shut down […] We were persecuted by the company itself, mistreated psychologically by the very workers who were our neighbors […] we have been forced to escape, leave, live away [from here] and sometimes come back at night, as if we were at war."

381 *Cf.* Statement of Juan 2 (evidence file, folio 28962), "[…] I decided to work with social organizations that reported the problem of contamination in La Oroya […] that's when my life changed. The stigma against me began and it affected my livelihood and my family, because I had my own restaurant and a sauna […] the company workers used to come to my restaurant […] then they stopped coming."

382 *Cf.* Statement of Juan 6 (evidence file, folios 28972 and 28973). "That's when the problem started because the Doe Run Company found out that we were organizing ourselves to sue them. And then the worst harassment began, even against the workers themselves. They wanted to scare us. Many of us were attacked and threatened."

383 *Cf.* Statement of Juan 8 (evidence file, folio 28984). "[…] [People] always asked our family why we wanted to fight against the company, they used to hound us with this type of question, and still do, even nowadays. My dad [used to] tell me a lot about how we once sued against [sic] the State [and] people found out about it and threatened us to the point of persecuting us, threatening to kill us and burn down our house".

384 *Cf.* Statement of Juan 18 (evidence file, folio 29016). "In the proceedings initiated by MOSAO to protect health, I was afraid to demand my rights. There were indirect insults from the workers against the population of La Oroya, including threats. Personally, they tried to kill me."

385 *Cf.* Statement of Juan 30 (evidence file, folio 29035). "After we organized ourselves to denounce the pollution issue we were strongly attacked. When we met at someone's house or the business premises of one of the members […] they said we were criminals, we couldn't walk around in peace."

386 *Cf.* Statement of María 9 (evidence file, folio 29052). "There was no response from the State [to] the acts of hostility suffered by my family. We asked for guarantees, through lawyers, the National Police, […] but there was no response. On one occasion, my mother was selling food on the street and my father was walking along the road and at the same time a company truck was passing by and one of them threw a brick at him without hitting him […] They tried to burn down the houses of those who filed a complaint about the pollution with the State."

María 16,[387] and María 25.[388] The Court also notes that the intimidation prompted some of them to leave La Oroya. For example, María 1 reported that the president of the neighborhood council told her that she "had to leave" because "the workers" were going to "destroy […] and beat [her] and were going to burn down [her] home," so she had to leave La Oroya, and to this date "out of fear […she] cannot live" on her land.[389]

226. The Court also notes that the individuals from La Oroya who decided to have their blood tested for metals were also subjected to harassment by other residents of La Oroya, who referred to them as "the lead people." According to the statement made by María 13 at the public hearing, it was "normal" for people to ask other inhabitants of La Oroya about them, calling them the "lead people."[390]

227. The expert witness Marisol Yáñez confirmed that the threats made against people who opposed the contamination at the CMLO caused them "psychological and emotional" suffering that is manifested in the body and reflected in the following indicators of "post-traumatic stress disorder" (PTSD): a) difficulty in falling or staying asleep, b) irritability, c)difficulties concentrating, efforts to avoid certain thoughts, d) feelings or conversations about the traumatic event, e) efforts to avoid activities, places or people who trigger memories of the trauma, f) inability to recall an important aspect of the trauma, g) feelings of detachment or alienation towards others and h) restriction of emotional life.[391]

228. This Court considers that the environmental pollution has also caused suffering to the alleged victims resulting from the State's failure to respond to the effects of such exposure. On this point, this Court notes that the lack of access to medical care compatible with inter-American standards (*supra* para. 213) produced feelings of uncertainty in the alleged victims. In this regard, Dr. Hugo Villa stated that the alleged victims were referred to as the "lead people" and were "left to their fate, with the fear and anguish and anxiety of not knowing what it would lead to, [and] that effects it would have on their lives."[392]

229. The Court also confirms that the pollution affected the mental and emotional wellbeing of the alleged victims. María 3 stated that she suffered from "disturbed sleep"[393] and that the psychologist "prescribed [her] a sleeping pill for insomnia and for her anxiety that [was] diagnosed," and that "she was instructed to do relaxation and

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387 *Cf.* Statement of María 16 (evidence file, folio 29061). "The pollution was reported, but the response was more stigmatization and even physical attacks. One day, several of us who were making the complaints about pollution were having a meeting at the home of Mr. [G.], and even though many of us were children, and they knew it, a group of people began to throw tomatoes at our house and force the doors to enter the house and attack us."

388 *Cf.* Statement of María 25 (evidence file, folio 29079). "I remember that once my father complained and people began to harass him, to discriminate against him and even threatened him just for complaining. The State never offered us support for this situation of discrimination, and he didn't even have the intention of complaining or representing us."

389 *Cf.* Statement of María 1 rendered at the public hearing in this case during the Court's 153rd Regular Session, which took place in Montevideo, Uruguay.

390 *Cf.* Statement of María 13 rendered at the public hearing in this case during the Court's 153rd Regular Session, held in Montevideo, Uruguay.

391 *Cf.* Expert report of Marisol Yañez (evidence file, folio 29402).

392 *Cf.* Statement of Dr. Hugo Villa mentioned in the expert report of Marisol Yáñez (evidence file, folio 29384).

393 Juan 6 stated that "sometimes we can't sleep well at night." Juan 25 stated that "we can't sleep anymore at night." *Cf.* Statements of Juan 6 and Juan 25 (evidence file folios 28973 and 29025, respectively).

breathing exercises" but that "none of that [was] sufficient."[394] Juan 6 described the learning difficulties and attention deficit problems[395] that have affected his children.[396] He explained that his son, who had always lived in La Oroya, "is very irritable and has bad headaches."[397] Juan 18 said that he was diagnosed with "irritability" in 2009. [398]

230. This Court considers that environmental degradation affects people's way of life, and may even lead to displacement and forced migration.[399] In this case, the Court notes that the health problems caused by environmental pollution forced some alleged victims to leave La Oroya. For example, María 16 stated that she lived La Oroya until the age of 12, when her family "decided to leave [the area] because [her] state of health and that of [her] sisters was very bad," and because a local doctor had advised her mother that, "if she wanted to keep her daughters alive," she "must get them out of La Oroya."[400] Similarly, Juan 15 recalled that "when [he] started school […] [his] mother decided that [he] should leave La Oroya to be in a better environment" so [he] moved to Jauja for a year."[401]

231. On this point, the Court finds it pertinent to point out that the effects of environmental pollution disproportionately affect individuals, groups and communities that already bear the burden of poverty, discrimination and systemic marginalization.[402] Thus, the risk of harm is particularly high for those segments of the population that face a situation of marginalization or vulnerability, including pregnant women, children, adolescents[403] and the elderly.[404]

232. The Committee for the Elimination of Discrimination Against Women has called on States to adopt effective measures to reduce carbon emissions, soil degradation and pollution, and all the other environmental dangers and risks that contribute to climate

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394 *Cf.* Statement of María 3 (evidence file, folio 29044).

395 According to information in the case file, María 21 and María 22 suffered from learning difficulties. Juan 23 and Juan 26 also suffered from problems of concentration. *Cf.* Statements of María 21, María 22, Juan 23, Juan 26, and Juan 36 (medical files of María 21, María 22, Juan 23, and Juan 26, folios 24777; 24780; 24463; 24496; and 24577).

396 *Cf.* Statement of Juan 6 (evidence file, folio 28974).

397 *Cf.* Statement of Juan 6 (evidence file, folio 28973).

398 *Cf.* Statement of Juan 18 (evidence file, folio 29016).

399 According to figures from the United Nations Environment Program (UNEP), by "2050 there could be up to 200 million people displaced for environmental reasons. This would mean that, in a world of nine billion people, one in 45 would have been forced from home for environmental reasons." See: UNEP, "Frontiers 2017: Emerging Issues of Environmental Concern. Environmental Displacement: Human mobility in the Anthropocene," page 71.

400 *Cf.* Statement of María 16 (evidence file, folio 29061).

401 *Cf.* Statement of Juan 15 (evidence file, folio 29005).

402 Human Rights Council, Report of the Special Rapporteur: Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. December 30, 2019, paras. 31 and 32.

403 *Cf.* Resolution 3/2021 of the IACHR and REDESCA on "Climate Emergency: Scope of inter-American human rights obligations." December 31, 2021, para. 19.

404 *Cf.* The Inter-American Convention on Protecting the Human Rights of Older Persons defines an older person as "A person aged 60 or older, except where legislation has determined a minimum age that is lesser or greater, provided that it is not over 65 years." For its part, Law No. 30490, Law of the Older Adult Person, defines an older adult as "a person aged 60 or older." Regarding the differentiated impacts of pollution on older people see: Expert report of Marisol Yañez (evidence file, folios 29446 to 29452). See also: Vargas, S.; Onatra, W.; Osorno, L.; Páez, E.; Sáenz, O. Air pollution and its respiratory effects in children, pregnant women and older adults (evidence file, folios 22158 to 22173).

change, which have disproportionate negative effects on women.[405] The expert witness Caroline Weill also pointed out that the care-giving work unequally assigned to women is made more burdensome by the impacts of environmental pollution.[406] For example, María 16 stated that her mother "cared for [them] and suffered because [of her] ailments and those of [her] sisters."[407] The Court also notes that some alleged victims reported having fertility problems,[408] and, according to the statement of María 13 at the public hearing, four pregnant women suffered "severe headaches" and "lost their babies."[409]

233. The UN Human Rights Council has indicated that "age *per se* does not make people more vulnerable to climate risks, but it is accompanied by a number of physical, political, economic and social factors that can have such an effect." According to María 25: "it is traumatizing to recall all those memories because, for as long as I can remember, I would see the smoke, and how the population suffered, especially old people and children." She added that this trauma is something that "everyone [in La Oroya] carries."[410] The expert witness Marisol Yañez explained that "older adults described old age as more painful because their ailments […] entered a chronic phase, and they stated that there were no specialized institutions to take care of them, leaving them practically […] abandoned."[411]

234. Consequently, this Court considers that the suffering caused to the alleged victims as a result of their exposure to environmental pollution and acts of harassment constitute a violation of the right to personal integrity, contained in Article 5(1) of the American Convention.

B.3.5. Regarding the rights of the child

235. The Court recalls that the Commission alleged that the State had failed to comply with its duty to provide enhanced protection to ensure the health of 23 alleged victims who were children at the time when it filed the initial petition. The representatives alleged that the State disregarded the vulnerable situation of children and failed in its special obligation to protect 71 alleged victims, who were children at some point in time after the State became aware of the environmental contamination in the city of La Oroya. The State insisted that the causal nexus between air pollution and the effects on children's health had not been proven, and therefore it was not internationally responsible for any violation of Article 19 of the Convention. It also argued that it had taken special measures to protect children in the community of La Oroya.

236. In relation to the above, the Court notes that the studies submitted as evidence in these proceedings establish that a child's health and development may be particularly

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405 *Cf.* U.N. Committee for the Elimination of Discrimination against Women. General Recommendation No. 37 (2018) on gender-related dimensions of disaster risk reduction in a changing climate, March 13, 2018, para. 46.

406 *Cf.* Expert report of Caroline Weill (evidence file, folios 29170 and 29171).

407 *Cf.* Statement of María 16 (evidence file, folio 29061).

408 *Cf.* Medical files of the alleged victims (evidence file, folios 24274 to 24929).

409 *Cf.* Statement of María 13 rendered at the public hearing in this case, during the 153rd Regular Session, held in Montevideo, Uruguay.

410 *Cf.* Statement of María 25 (evidence file, folio 29079).

411 *Cf.* Expert report of Marisol Yáñez (evidence file, folio 29558).

affected by exposure to heavy metals,[412] especially lead. The Court recalls that the WHO has established that the exposure of children to air pollution can have adverse effects from birth; it also increases infant mortality, affects neuronal development, increases child obesity, affects lung function and development, produces conditions such as asthma, and can even cause cancer.[413] The Court also notes that the exposure of children to chemical compounds causes greater damage to their bodies, which in turn can affect their physical and mental development.[414] Finally, the Court observes that children are more likely to be exposed to pollution due to behavioral factors associated with their age, increasing the possibilities of introducing pollutants into their bodies.[415]

237. The Court has established (*supra* para. 76) that the State was aware of the exposure of children to environmental pollution as early 1981, the year in which Peru accepted this Court's contentious jurisdiction. The Court also recalls that the Doe Run study in 2001 concluded that the blood lead levels in children were above the levels recommended by the WHO, with the following results: from age 0 to 3 years, 26.1 µg/100 ml; from age 4 to 6 years, 23.7 µg/100 ml; from age 7 to 15 years, 20.3 µg/100 ml; and, for a group of children older than 16, 13.7 µg/100 ml. The Court also recalls that in 2005, the Ministry of Health conducted studies in which it analyzed blood samples from 788 children living in La Oroya and concluded that 99.9% of them had lead levels above the recommended values. It also stated that "in La Oroya, respiratory ailments in children constitute a health problem with an increasing trend of morbidity and mortality."[416]

238. The Court notes that, since 1981, 57 alleged victims were or are children:[417] Juan 2, Juan 3, Juan 4, Juan 6, Juan 8, Juan 9, Juan 10, Juan 14, Juan 16, Juan 20, Juan 21, Juan 22, Juan 23, Juan 24, Juan 26, Juan 27, Juan 28, Juan 30, Juan 31, Juan 32, Juan 33, Juan 34, Juan 35, Juan 36, Juan 37, Juan 38, Juan 39, Juan 40, Juan 42, María 3, María 4, María 5, María 6, María 8, María 9, María 10, María 12, María 14, María 15,

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412 *Cf.* Agency for Toxic Substances and Disease Registry (ASTDR), "Toxicological Profile of Sulfur Dioxide," December 1998, page 43 (evidence file, folio 21984); ASTDR, Toxicological profile of Arsenic, December 2003 (evidence file, folio 23169 to 23170); ATSDR, "Toxicological Profile of Cadmium," September 2012 (evidence file, folio 22215 to 22216); and U.S. Environmental Protection Agency (EPA), Health Effects of Exposure to Mercury, June 2014 (evidence file, folio 23191 to 23192).

413 *Cf.* WHO, Air Pollution and Child Health: Prescribing clean air. Summary, 2018 (evidence file, folio 21784); See also: The LEAD Group Inc., Health Impacts of Lead Poisoning: a preliminary listing of the health effects & symptoms of lead poisoning, September 2020 (evidence file, folios 20985 to 20993).

414 *Cf.* Agency for Toxic Substances and Disease Registry (ASTDR), "Toxicological Profile for Lead," August 2020, (evidence file, folio 21329), and World Health Organization, Lead poisoning and Health, August 31, 2022 https://www.who.int/es/news-room/factsheets/detail/lead-poisoning-and-health.

415 *Cf.* WHO, Air Pollution and Child Health: Prescribing clean air. Summary, 2018 (evidence file, folio 21784); EPA-United States Environmental Protection Agency. Integrated Science Assessment for Lead. https://ordspub.epa.gov/ords/eims/eimscomm.getfile?p_download_id=518908%20, 2013, pages 81-84; Expert report of Howard Mielke (evidence file, folio 29234); expert report of Oscar Cabrera (evidence file, folio 29309).

416 *Cf.* Study of Blood Lead Levels of the Population in La Oroya 2000-2001, prepared by Doe Run Peru in 2001 (evidence file, folio 21689); Ministry of Health, General Directorate of Environmental Health, "Hematological Survey of Lead and Clinical-Epidemiological Assessment in selected populations of La Oroya Antigua," 2005 (evidence file, folio .479 a .481); and Ministry of Health, "Prevalence of Respiratory Diseases in Schoolchildren aged 3-14 years and factors associated with Air Quality in La Oroya, Junín, Peru. 2002-2003," June 2005 (evidence file, folio .552).

417 In Advisory Opinion 17/02 of August 28, 2002, the Court established that the term "child" refers to persons who "have not reached 18 years of age." *Cf. Juridical condition and Human rights of the Child.* Advisory Opinion OC-17/02, August 28, 2002. Series A No. 17, para. 42.

María 16, María 17, María 18, María 19, María 21, María 22, María 23, María 24, María 25, María 26, María 27, María 28, María 29, María 32, María 33, María 34, María 35, and María 37. All these alleged victims suffered damage to their health as result of environmental pollution in La Oroya, which affected their right to a decent life and personal integrity (*supra* paras. 214, 223 and 234). The Court reiterates that, as noted previously, exposure to heavy metal contamination, especially lead, poses particular risks to children's health as their bodies are more sensitive to such pollution, which affects their development. In this regard, the Court recalls that the expert witness Marisol Yañez stated in her testimony at the public hearing in this case that exposure to pollution of the alleged victims who were children, in addition to affecting their health, limited other aspects of their lives, such as their ability to socialize and do physical exercise and also created "a high level of dissatisfaction" with their lives.[418]

239. In relation to the above, the Court refers to the statement made by María 9, who said that since childhood she has suffered from the effects of air pollution, both in her health and her social life. In particular, she stated that when the CMLO was operating, she "noticed burning in [her] throat, stinging in [her] eyes, and [she] could not breathe, and [her] skin began to get drier." She also stated that the pollution had social effects, because during her time in school she suffered a "burning [sensation] in the throat."[419] Similarly, María 32 said that during her childhood she lived five kilometers away from the CMLO, and recalled that at that time "you always had to stay inside the house because there was so much pollution" and while at school she "suffered from bronchitis, sinusitis and respiratory problems, especially when doing outdoor activities."[420] Juan 24 said he had language difficulties, low academic achievement and suffered from headaches, while Juan 39 also experienced headaches, muscular pain, dizziness, gastritis, poor appetite and frequent coughs during his childhood (See Annex 3).

240. For her part, the witness María Mercedes Lu De Lama explained that the groups at greatest risk of exposure to lead in La Oroya were children, since their main activities took place in parks and outdoors. In particular, she noted that in La Oroya "school yards, pre-school centers, soccer fields, parks and other areas are asphalted." The witness explained that the lead carried by airborne particles accumulates in these areas, and children are more likely to ingest them when they touch their mouths or their faces with their hands.[421] Similarly, the expert witness Howard Mielke noted that powdered lead is one of the most frequent forms of exposure for infants, especially those who "crawl on outdoor and indoor surfaces in their home or community." This dust can be directly ingested through contact with soil, and is also carried into their homes, where it can be ingested by others. Logically, the more lead in the air, the greater the risk of ingestion by children.[422]

241. The Court recalls that the State affirmed that it had implemented various differentiated measures of protection for children, in consideration of their vulnerability. In this regard, it emphasized the adoption of the "Practical Clinical Guide for the Care of Lead Poisoning Patients" in 2007, which established differentiated parameters based on

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418 *Cf.* Statement of Marisol Yañez rendered at in the public hearing in this case, during the 153rd Regular Session, held in Montevideo, Uruguay.

419 *Cf.* Statement of María 9 (evidence file, folio 29051)

420 *Cf.* Statement of María 32 (evidence file, folio 29086).

421 *Cf.* Statement of Mercedes Lu de Lama (evidence file, folio 29128).

422 *Cf.* Statement of the expert witness Howard Mielke (evidence file, folio 29235).

age. It pointed out that "since 2007, efforts have been made to reduce blood lead levels in the affected persons by adopting a differentiated approach based on their age."[423] It added that various guidelines had been issued in order to guide medical actions with respect to poisoning with lead and other substances. However, despite the effectiveness that such measures may have had on the healthcare of the population in La Oroya, the Court finds no evidence to demonstrate the impact that these or other measures may have had on protecting the health of alleged victims who were children, from the moment that the State became aware of the pollution levels.

242. Therefore, the Court considers that the alleged victims who were children were placed in a vulnerable situation in the face of the environmental contamination caused by the CMLO, and required special measures of protection from the differentiated impacts that such pollution would have had on their health and lives. The Court also finds that the State's failure to fulfill its duty to monitor and supervise the activities of CENTROMIN and Doe Run - which constituted a violation of the right to a healthy environment as well as the rights to health, a decent life and personal integrity of the victims in this case –was also in breach of its special duty to protect the rights of the child, pursuant to Article 19 of the American Convention.

243. Likewise, the Court finds it pertinent to point out that, under the principle of intergenerational equity, States must comply with their obligations to protect the environment taking into account the effects that environmental damage has on present and future generations. The Court believes that this obligation acquires special importance with respect to children, since they are the ones who may be most affected by the present and future consequences of environmental degradation.[424] Therefore, the Court considers that this principle imposes on the State an enhanced obligation to protect children by preventing harm to their health caused by environmental pollution, and providing subsequent care for the illnesses acquired as a result of it.

244. The Court recalls that the UN General Assembly has recognized development as a right that requires States to "formulate appropriate national development policies aimed at the constant improvement of the wellbeing of the entire population and of all individuals […]."[425] Similarly, one of the goals of the 2030 Agenda for Sustainable Development is to promote development-oriented policies that support productive activities and the creation of decent jobs."[426] It also indicates that States should "endeavor to decouple production and economic growth from environmental degradation."[427] The Court agrees that States indeed have an obligation to promote sustainable development that benefits individuals and communities in the achievement

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423 *Cf.* Answering brief of the State of July 22, 2022, para. 416 (merits file, folio 691).

424 *Cf.* Committee on the Rights of the Child, General Comment No. 26: Children's rights and the environment with a special focus on climate change, August 22, 2023, para. 24.

425 United Nations General Assembly, Declaration on the Right to Development, Resolution 41/128 of December 4, 1986; United Nations Charter of June 26, 1945, Articles 1, 55 and 56; International Covenant on Civil and Political Rights, December 16, 1966, Articles 1(1) and 1(2); International Covenant on Economic, Social and Cultural Rights; Articles 1(1) and 1(2); Universal Declaration of Human Rights, December 10, 1948, Article 22; Charter of Economic Rights and Duties of States, December 14, 1974; Rio Declaration on Environment and Development, June 3-14, 1992, Principle 2; World Conference on Human Rights, Vienna Declaration and Program of Action, June 25, 1992, Point 2.

426 The 2030 Agenda for Sustainable Development, Resolution of the United Nations General Assembly of September 25, 2015, target 8.3.

427 *Cf.* The 2030 Agenda for Sustainable Development, Resolution of the United Nations General Assembly of September 25, 2015, target 8.4.

of their economic, social, cultural and political wellbeing, but they must do so within the framework of human rights, and especially the right to a healthy environment. Sustainable development and environmental protection are fundamental for the wellbeing of the entire population, but especially for children, who –given their stage in life- could be disproportionately affected by the lack of economic opportunities and environmental degradation.

245. In short, the Court considers that the impact that environmental pollution had on the alleged victims in this case was greater when they were children, and that the State failed to adopt special and effective measures of protection that took into account their vulnerability. In view of this, the Court concludes that the State violated the rights set forth in Article 19 of the American Convention, in relation to Article 26 of the same instrument, to the detriment of the 57 alleged victims who were children as of 1981.

B.3.6. The right to information and political participation

246. The Court will now examine the arguments concerning the alleged violation of the right to information and political participation to the detriment of the alleged victims. First, this Court considers it pertinent to recall that the State was aware of the levels of environmental pollution in La Oroya, and of its potential consequences for the population's health, at least since 1981 (*supra* para.76). The Court also recalls that both the Constitutional Court in its 2006 judgment, and the Inter-American Commission in its 2007 ruling on precautionary measures, which were extended in 2014, pointed out the health risks faced by the inhabitants of La Oroya due to their exposure to pollution caused by the CMLO (*supra* paras. 86 to 91).

B.3.6.1. The right to information

247. The Court reiterates that the State's duty to provide information is an obligation of a positive nature that would have allowed the inhabitants of La Oroya, and specifically the alleged victims, to have complete and accessible information in order to exercise their rights, which could be impaired by exposure to high levels of environmental pollution. In particular, the Court recalls that, based on the "obligation of active transparency", the State must provide information *ex officio* to the interested parties and to the population in general. Compliance with this obligation is necessary for people to be able to exercise their rights, especially to a healthy environment, health, personal integrity and life (*supra* para. 146).

248. In light of the foregoing, the Court notes that the State implemented various measures with the aim of informing the population about the pollution in La Oroya. In 2003, Supreme Decree No. 009- 2003-SA: "Regulation of the National Air Pollution States of Alert Levels" was adopted with the objective of activating a set of measures to protect public health and prevent excessive exposure of the population to pollution.[428] This decree establishes that "DIGESA [shall] inform the community of the declaration of states of alert through the fastest and most appropriate means of communication for each case."[429] Regarding the declaration of states of alert, the Court observes that, as of July 2007, the Ministry of Health, through DIGESA and the Regional Government of

[428] *Cf.* Supreme Decree No. 009-2003-SA: "Regulation of the National Air Pollution States of Alert Levels," published in the Official Gazette *El Peruano* of July 25, 2002 (evidence file, folio .1301).

[429] *Cf.* Supreme Decree No. 009-2003-SA: "Regulation of the National Air Pollution States of Alert Levels," published in the Official Gazette *El Peruano* of July 25, 2002 (evidence file, folio .1301).

Junín, had activated a system of states of alert for atmospheric pollution due to particulate matter (PM10) and sulfur dioxide (SO_2), which established three alert categories: "state of caution," "state of danger" and "state of emergency."[430]

249. According to the July 2007 "Contingency Plan for Air Pollution States of Alert in the La Oroya Atmospheric Basin", in order to declare a "state of emergency," concentrations of more than 420 µg/m^3 of particulate matter in a 24-hour period, or, in the case of sulfur dioxide, more than 2500 µg/m^3 in a 3-hour period, had to be present. The data provided by Doe Run to the National Environmental Council shows that in 2006 alone there were 183 "emergency" episodes due to sulfur dioxide in the "Sindicato de La Oroya" monitoring station.[431] According to the representatives, the information on the state of alert declarations was available on the Internet, through DIGESA's website.[432]

250. The Court also notes that in 2007 the State approved the "Action Plan for the Improvement of Air Quality in La Oroya Atmospheric Basin," which established "the obligation to inform the population, through the media, of the implementation of e states of alert, prepare content for dissemination campaigns, as well as informative materials."[433] Also, in the context of the approval of the "Action Plan for the Improvement of the Air Quality and Health of La Oroya," of March 1, 2006, a "Public Information System" was created with the aim of "providing information to citizens starting in 2007; this system will be implemented through the design of a database."[434]

251. The Court also notes that in 2012, screens were installed in La Oroya to inform the population of the air quality conditions, as well as the "state of alert" declarations. The screens were color-coded to help the population better understand the information. The installation of the screens was carried out through an agreement signed between the company "Right Business" and Doe Run, together with the Provincial Municipality of La Oroya.[435] However, the representatives pointed out that the information shown on the screens "was not provided in real time" but that the moving average of the air quality status was announced to citizens "at three-hour intervals."[436] Furthermore, the representatives stated that the initiative of the screens "was not maintained over time, and only worked for a short period."

252. The Court observes that the State also took steps to disseminate information in the form of leaflets on personal hygiene, family nutrition and housing, as well as information on measures to improve health. These leaflets explained that the

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[430] *Cf.* Executive Council Decree No. 015-2007-CONAM/CD, "Contingency Plan for Air Pollution States of Alert in La Oroya Atmospheric basin," of July 18, 2007 (evidence file, folios to 25499 to 25533).

[431] *Cf.* Executive Council Decree No. 015-2007-CONAM/CD, "Contingency Plan for Air Pollution States of Alert in La Oroya Atmospheric basin," of July 18, 2007 (evidence file, folios to 25499 to 25533).

[432] *Cf.* Brief with pleadings, motions and evidence of February 4, 2022, para. 339, page 129 (merits file, folio 247), and statement of María 3 (evidence file, folio 29043).

[433] *Cf.* Action Plan for the Improvement of Air Quality of the Atmospheric basin of La Oroya, document consistent with Decree N°020-2006-CONAM/CD and Decree N°026-2006-CONAM-2006 (evidence file, folios .935 to .1018).

[434] *Cf.* Citizen Participation Plan of the Plan for the Adaptation of Mining and Metallurgical Activities to Environmental Air Quality Standards, of March 1, 2006 (evidence file, folio 28000).

[435] *Cf. El Correo* newspaper, "Population of La Oroya to monitor air quality on giant screens." December 27, 2012 (evidence file, folios 0.1321 and 0.1322).

[436] *Cf.* Representatives' brief submitted to the Inter-American Commission, MC-271-05, May 2015 (evidence file, folio 25549).

contamination in La Oroya was produced "mainly by the operation of the metallurgical complex but also by workshops for recycling batteries, welding shops, printing presses, high vehicular traffic and, above all, soil and dust that has been contaminated for more than 80 years." The leaflets stated that "the harmonious coexistence of the city" requires a series of recommendations related to personal and home hygiene, cleanliness and good nutrition. Specifically, the leaflets included information on "personal hygiene and environmental health in schools," "steps to follow for good personal hygiene," "family and home hygiene," "personal hygiene and nutrition for pregnant women," as well as care for minors.[437] The expert witness Yañez de la Cruz pointed out that the La Oroya health center also recommended certain home care practices to the population.[438]

253. On this matter, the Court finds that there is no information on the State's efforts to inform the population about environmental pollution and the health risks prior to 2003. As for the actions taken after the regulations on states of alert were adopted in 2003, it appears that information on this issue was posted on the Internet and, as of 2012, on three screens distributed in La Oroya. Moreover, the information campaigns and leaflets distributed by the State were aimed at promoting hygiene measures among the population, without warning them of the health risks caused by exposure to environmental pollution caused by the CMLO.

254. In that regard, Juan 1 commented that "the company did not provide sufficient information on the health impacts. They only gave information about taking care of ourselves: that you have to eat better, with vegetables, milk, and fruits. But a person earning a minimum wage living here [in La Oroya] could not afford these costs."[439] Similarly, Juan 6 pointed out that "the company never told us anything or explained anything […] they never told us that they were polluting; they never offered to take us to the doctor or give us medicine, nothing. They practically didn't care about us."[440] For his part, Juan 8 reported that "the State never gave us any information about the impacts of pollution, though I remember that the company published some pamphlets […] but the pamphlets did not provide information about safety, or the dangers or risks of exposure to gas or water."[441] In their statements, Juan 30, María 3, María 16 and María 25 also mentioned the lack of information provided to the population by the State or Doe Run on environmental pollution or its effects in La Oroya.[442]

255. Thus, the Court considers that the measures adopted by the State were clearly insufficient to ensure effective access to information about the status of air and water quality, which prevented the alleged victims from obtaining sufficient information to know about the risks to their health, personal integrity and life from exposure to the

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437 *Cf.* Leaflets for general distribution in La Oroya, prepared by the team of the Cooperation Agreement between the Ministry of Health – MINSA/DIGESA and Doe Run Peru. SRL. (evidence file, folios 0.1020 to 0.1070).

438 *Cf.* Expert report of Marisol Yáñez (evidence file, folio 29385). These recommendations stated the following: 1. Do not stir up dust; 2. Avoid using brushes or brooms; 3. Wet cleaning; 4. Do not keep animals, because ash remains on their fur; 5. Eat food rich in iron, zinc and calcium; 6. Make sure that young children are not exposed; 7. Wash clothes (use white clothing); 8. Wash toys; 9. Use clean water; 10. Set up a washing area inside the house.

439 *Cf.* Statement of Juan 1 (evidence file, folio 28952).

440 *Cf.* Statement of Juan 6 (evidence file, folio 28971).

441 *Cf.* Statement of Juan 8 (evidence file, folio 28983).

442 *Cf.* Statement of Juan 30 (evidence file, folio 29034); Statement of María 3 (evidence file, folio 29043); Statement of María 16 (evidence file, folio 29061); and Statement of María 25 (evidence file, folio 29079).

pollutants produced by the CMLO. Furthermore, the Court notes that this information was known to the State, and therefore it was obliged to disclose it in accordance with its obligation of active transparency, which implies the duty to provide the public with complete and clear information in an accessible language. Thus, the State impaired the right to information contained in Article 13 of the American Convention.

B.3.6.2. The right to political participation

256. The Court reiterates that the right to political participation is one of the fundamental pillars of democracy, because through its exercise, people can establish limits on the State's actions and question, investigate and consider its compliance with public duties. Participation allows citizens to take part in the decision-making process and thereby play a role in the conduct of public affairs. The Court has emphasized that this right also entails the obligation of the States to guarantee the participation of people in decisions that affect the environment, which is related to the obligation to provide relevant information on this subject. Such participation must be effective from the earliest stages of the decision-making process, which can be achieved through various mechanisms (*supra* para. 152).

257. In the instant case, the Court notes that the State introduced legislative measures for citizen participation in environmental matters. In particular, the Court confirms that the General Environment Act (Law N° 28611) of 2005, recognized the right of every person to participate in the "decision-making processes on environmental management and the policies and actions that affect it."[443] It also confirms that the Regulation of Citizen Participation in the Mining Subsector, approved through Supreme Decree N° 028-2008-EM, recognizes citizens' right to participation, their right of access to information, and the principles of citizen oversight and continuous dialogue.[444] Similarly, the Court notes the existence of norms that regulate the "Citizen Participation Process in the Mining Subsector," which aim to "develop mechanisms for citizen participation […] as well as the actions, timeframes and specific criteria for the implementation of participation processes at each stage of the mining activities."[445]

258. Among the measures to promote citizen participation, the State convened a public consultation process prior to submitting the request for an exceptional extension of the "Sulfuric Acid Plant" of the 2006 PAMA project, through Resolution Nº 257-2006-MEM/DM. [446] In this regard, the MEM reported that in the context of the exceptional extension of the aforementioned PAMA project in La Oroya, it convened a public consultation process with the aim of "presenting to the public the central aspects of this request" and so that "the MEM would have more information for the evaluation of said request."[447] In addition, the Court notes that, through Resolution Nº 272-2015-MEM-DGAAM of July 10, 2015, which approved the CMLO's Corrective Environmental Management Instrument, it was established that on June 8, 2015, the Association of

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443 *Cf.* General Law of the Environment, Articles 46-48 (evidence file, folios 19903 to 19932).

444 *Cf.* Supreme Decree No. 028-2008-EM: Regulations for Citizen Participation in the Mining Subsector, of May 27, 2008 (evidence file, folios 27927 to 27931).

445 *Cf.* Ministerial Resolution No. 304-2008-MEM/DM of June 24, 2008, published in the Official Gazette *El Peruano* on June 24, 2008 (evidence file, folios 27933 to 27941).

446 *Cf.* Ministry of Energy and Mines. Ministerial Resolution 257-2006-MEM/DM, of May 29, 2006 (evidence file, folios 20044 to 20052).

447 *Cf.* Ministry of Energy and Mines, Report N° 814-2021-MINEM/OGAJ, of September 6, 2021 (evidence file, folio 27979).

Social and Neighborhood Committees of Yauli-La Oroya appeared before the DGAAM and indicated that they had been informed about the CMLO's Adaptation Plan to the new air quality standards.[448]

259. The State also indicated that Supreme Decrees Nº003-2017-MINAM and Nº 004-2017-MINAM (concerning air and water quality standards, respectively), were published and submitted to public consultation prior to their approval. Likewise it pointed out that MINAM had organized "meetings for the presentation and technical-scientific discussion" of the draft of the Supreme Decree on Water Quality Standards in several Peruvian cities in May 2017.[449]

260. The foregoing allows this Court to confirm that the State adopted some measures to promote the participation of the population of La Oroya in decision-making related to environmental policy. However, it does not have any evidence to establish whether these measures afforded the alleged victims a real opportunity to be heard and to participate in decision-making on the matters submitted to public consultation, or how their views were taken into account by the State when deciding on its environmental policy with respect to the CMLO. On this point, the Court emphasizes that the participation of La Oroya's citizens was of special importance, given the possible effects that the pollution could have had on the exercise of other rights. Therefore, the State should have adopted positive measures to ensure the active participation by the population.

261. Accordingly, the Court finds that the State failed to comply with its obligation to adopt measures that would allow for the effective political participation of the alleged victims, and therefore impaired their right to political participation, protected by Article 23 of the American Convention.

B.4. Conclusion

262. The Court concludes that the States are obliged to use all the means at their disposal to prevent significant damage to the environment in general, and to ensure clean air and water in particular. In this sense, the Court emphasizes that the obligation of prevention in environmental matters requires the State to regulate, monitor and oversee activities that entail significant risks to the environment. Likewise, the Court recalls that the State has the obligation to prevent environmental pollution as part of its duty to ensure the right to health, a decent life and personal integrity, which in turn entails the duty to provide health services to those affected by such pollution, even more so when this could impact the life or personal integrity of the individuals concerned. The Court also emphasizes that environmental pollution may have a differentiated impact on vulnerable groups, particularly children, for which reason the State is required to adopt special measures to protect the environment and children's health, in accordance with the principles of the child's best interest and intergenerational equity. Furthermore, the Court recalls that the State is obliged to ensure access to information in accordance with the principle of active transparency in environmental matters, so that people can exercise their rights. Finally, this Court recalls the right of individuals to participate actively in public policy decisions that affect the environment, as part of their right to participate in the conduct of public affairs.

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448 *Cf.* Ministry of Energy and Mines, Ministerial Resolution N° 161-2015-MEM/DGAAM (evidence file, folio 27944).

449 *Cf.* Answering brief of July 22, 2022, para. 352 (merits file, folio 678).

263. In this specific case, there is no dispute regarding the high levels of environmental contamination in La Oroya with lead, cadmium, arsenic, sulfur dioxide and other metals in the air, soil and water. Nor is there any dispute that the main cause of said environmental contamination was the metallurgical production at the CMLO, and that the State was aware of this pollution and its effects on people. Therefore, the analysis of this case was carried out with respect to the State's compliance with its obligation to protect the rights that could have been affected by such environmental contamination, both in their individual and collective dimensions. In this regard, the State failed to comply with its duty to regulate, prior to 1993, and also failed to comply with its duty to monitor and oversee the CMLO's activities by granting extensions for compliance with the commitments established in Doe Run's PAMA. The State likewise failed to comply with its duty of prevention by granting said extensions, despite technical evidence of the presence of pollutants in La Oroya, which required immediate action by the State in accordance with its duty of due diligence to prevent significant harm to the environment, and in general for its omissions regarding the effective oversight of the CMLO's activities. The environmental impacts also constituted a violation of the right to a healthy environment during the time that CENTROMIN operated the CMLO. In addition, the Court determined that Supreme Decree Nº 0003-2017-MINAM, which in 2017 modified the maximum permissible sulfur dioxide values in the air, was a deliberately retrogressive measure that violated the obligation of progressive development with respect to the right to a healthy environment.

264. In relation to the above, the Court confirmed that exposure to lead, cadmium, arsenic and sulfur dioxide constitutes a significant risk to human health, since these metals can be deposited in the brain, liver, kidneys, bones, lungs, eyes and skin, and cause diseases as a result of such exposure. The Court also found that the 80 alleged victims in this case presented diseases that coincided with those caused by exposure to the aforementioned metals, and that they did not receive adequate medical care from the State to treat those ailments. Similarly, it noted that the exposure to environmental contamination produced a serious deterioration in the quality of life of the alleged victims, causing physical and psychological suffering that affected their right to a decent life and personal integrity. The Court further noted that this exposure had a greater impact on women and the elderly. In the case of Juan 5 and María 14, it considered that the State is responsible for the violation of their right to life, due to the absence of adequate preventive measures to protect their rights to a healthy environment and health. Furthermore, the Court determined that the alleged victims' exposure to environmental pollution when they were children had a differentiated impact due to their vulnerable situation, and that the State did not adopt special measures to protect them from exposure to contamination. Consequently, it found that the State failed to comply with its special duty to protect children.

265. The Court also determined that the State had a positive obligation to provide complete and comprehensible information about the environmental pollution to which the alleged victims were exposed by the CMLO's activities, and the risks that such pollution implied for their health. The Court found that no information on environmental contamination and its effects was available prior to 2003, and that subsequent efforts to provide such information were insufficient. This omission on the part of the State constituted a breach of its duty of active transparency, which also compromised the exercise of other rights such as health, personal integrity, life and political participation. Similarly, the Court concluded that the State failed to provide effective mechanisms of participation in decision-making on environmental matters to the detriment of the alleged victims. The opportunity for participation was especially important in relation to decisions regarding the modification of the deadlines for Doe Run's compliance with its

environmental obligations, in violation of the right to political participation. Furthermore, the Court noted that this lack of information constituted an obstacle to effective political participation by the population and a violation of the right of access to information.

266. Consequently, the Court concludes that the State is responsible for the violation of the following rights: the rights to a healthy environment, health, personal integrity, life, access to information and political participation, established in Articles 26, 5, 4(1), 13 and 23 of the American Convention, in relation to Articles 1(1) and 2 of the same instrument, to the detriment of the 80 alleged victims indicated in Annex 2 of this judgment; for the violation of the rights of the child, in relation to the rights to a healthy environment, health, personal integrity and life, established in Article 19 of the American Convention, in relation to Articles 26, 4(1), 5 and 1(1) of the same instrument, to the detriment of Juan 2, Juan 3, Juan 4, Juan 6, Juan 8, Juan 9, Juan 10, Juan 14, Juan 16, Juan 20, Juan 21, Juan 22, Juan 23, Juan 24, Juan 26, Juan 27, Juan 28, Juan 30, Juan 31, Juan 32, Juan 33, Juan 34, Juan 35, Juan 36, Juan 37, Juan 38, Juan 39, Juan 40, Juan 42, María 3, María 4, María 5, María 6, María 8, María 9, María 10, María 12, María 14, María 15, María 16, María 17, María 18, María 19, María 21, María 22, María 23, María 24, María 25, María 26, María 27, María 28, María 29, María 32, María 33, María 34, María 35, and María 37; for the violation of the right to life, established in Article 4(1) of the American Convention, in relation to Article 1(1) of the same instrument, to the detriment of Juan 5 and María 14; and for the violation of the obligation of progressive development, under Article 26 of the American Convention, in relation to Articles 1(1) and 2 of the same instrument.

VIII-2
RIGHT TO JUDICIAL PROTECTION IN RELATION TO COMPLIANCE WITH DOMESTIC RULINGS AND THE DUTY TO INVESTIGATE

A. Arguments of the Commission and the parties

267. The ***Commission*** argued that the State failed to comply with the ruling of the Constitutional Court of May 12, 2006. In this regard, it pointed out that the State did not implement, in a timely manner, the system of care for patients with lead poisoning required in said community, that the measures to improve air quality in La Oroya were late and ineffective, that no information was provided on effective measures for epidemiological and environmental monitoring, and that there is no record of any action taken by the Constitutional Court to order coercive measures to enforce the judgment. In view of this, the Commission concluded that the State is responsible for the violation of the right to judicial protection with respect to the enforcement of domestic rulings provided for in Article 25(2)(c) of the American Convention in relation to Article 1(1) of the same instrument, to the detriment of the alleged victims. Moreover, the Commission recalled that a number of alleged victims reported that they were subjected to threats, harassment or reprisals by Doe Run workers because of their complaints about the contamination affecting them in La Oroya. In particular, it noted that María 1, Juan 2 and Juan 11 reported acts of harassment or reprisals against them for having protested or denounced the high levels of contamination in La Oroya, without any investigation being conducted. Therefore, the Commission considered that the State failed to comply with its duty to investigate in accordance with the provisions Articles 8 and 25 of the Convention.

268. The ***representatives*** argued that the State violated the rights of access to justice, judicial guarantees and due process, due to: a) its belated, partial and insufficient compliance with the judgment of the Constitutional Court; b) the absence of effective

administrative actions to monitor and supervise the Metallurgical Complex of La Oroya, and c) the failure to investigate and punish those responsible for the harassment and stigmatization of environmental defenders in La Oroya. In particular, the representatives pointed out that, given the belated, partial and insufficient compliance with the ruling of the Constitutional Court, the State disregarded the right of access to justice, judicial guarantees and due process, due to the lack of effective administrative actions to monitor and oversee the activities of the CMLO. Furthermore, they argued that the State did not guarantee the right to justice because it did not investigate or punish those responsible for the harassment and stigmatization of environmental defenders in La Oroya. In this regard, they argued that the alleged victims in this case should be recognized as environmental defenders, as some of them have worked for many years to defend the rights to a healthy environment and health of the population of La Oroya, caused by the contamination produced by the CMLO's operations. Therefore, the representatives concluded that the State violated the rights of access to justice, judicial guarantees and due process enshrined in Articles 8 and 25 of the American Convention, in relation to Article 1(1).

269. The ***State*** argued that a 'motion to enjoin enforcement,' as regulated by the Peruvian State, should not be analyzed for the purpose of determining possible international responsibility for the breach of Article 25 of the Convention. Specifically, it argued that the motion to enjoin enforcement is a remedy of collective scope that is not intended to protect an individual human right and, therefore, is not a remedy that should be examined in the context of Article 25 of the Convention; rather, that the amparo action was the appropriate and effective remedy that should have been exhausted by the alleged victims. The State further argued that the delay in executing some measures did not imply an unwarranted delay in respecting the guarantee of reasonable time. In addition, the State emphasized that in the instant case, the actions denounced as threats or harassment were not sufficiently serious to be considered as such and to justify an *ex-officio* investigation by the Peruvian State. Thus, the State argued that such actions were not so dissuasive, specific or sufficiently intense to cause reasonable anxiety in the alleged victims to the point of being considered "threatening acts." Furthermore, it argued that the alleged threats and acts of intimidation denounced by the petitioners were not reported to the competent authorities, but rather were denounced to State entities without the power to investigate, as well as to private parties and to the media whose broadcasts are not necessarily known to agents of the State. Consequently, the State argued that it is not responsible for the violation of Articles 8 and 25 of the Convention.

B. Considerations of the Court

270. The State argued that the motion to enjoin enforcement is a remedy of collective scope that is not intended to protect an individual human right and, therefore, it is not a remedy that should be analyzed in the context of Article 25 of the American Convention. Hence, it argued that the action of amparo was the appropriate and effective remedy that should have been pursued by the alleged victims. However, the Court recalls that, as it established previously (*supra* para. 37), the motion to enjoin enforcement was a suitable judicial remedy to protect the alleged victims' rights, inasmuch as it was a means to protect the rights to a healthy environment and health of the inhabitants of La Oroya. Moreover, since the judgment delivered by the Constitutional Court in 2006 was intended to cover all the inhabitants of La Oroya, and the alleged victims in the instant case had that status, it was not necessary for them to be plaintiffs in said action in order to understand that they were the beneficiaries of its effects. For this reason, the Court considers that the alleged victims had the right to have the Constitutional Court's

judgment enforced by the State, in accordance with Article 25(2) (c) of the American Convention. Thus, in order to assess the State's actions in relation to compliance with its obligations under Articles 8 and 25 of the American Convention, the Court will first analyze its actions with respect to the enforcement of the Constitutional Court's judgement of May 6, 2006, and will then rule on the alleged acts of harassment suffered by the alleged victims.

271. At the same time, the Court considers that the representatives' arguments regarding the legal consequences of the absence of administrative actions for monitoring and supervision of the CMLO, and the alleged violation Article 26 of the Convention due to the failure to enforce the Constitutional Court's judgment, have already been addressed by this Court in its analysis of the State's compliance with its duty of prevention. Therefore, it does not consider it pertinent to examine those arguments separately in light of Articles 8, 25 and 26 of the Convention.

B.1. Regarding the enforcement of the judgment of the Constitutional Court

272. Article 25 of the American Convention recognizes the right to judicial protection. This Court has indicated that it is possible to identify two specific obligations of the State with respect to the protection of this right. The first is to enshrine in law and ensure the due application of effective remedies before the competent authorities to protect all persons under its jurisdiction against acts that violate their fundamental rights or that lead to the determination of their rights and obligations.[450] The second is to guarantee the means to enforce the respective decisions and final judgments issued by such competent authorities, so that the rights declared or recognized are effectively protected.[451] In this regard, Article 25(2)(c) of the Convention requires States to "ensure that the competent authorities shall enforce such remedies when granted."[452]

273. In the context of environmental protection, the Court has established that States have the obligation to guarantee access to justice, in relation to the State's obligations to protect the environment under the American Convention. States must therefore ensure that individuals have access to remedies, substantiated in accordance with due process of law, to challenge any rule, decision, act or omission by the public authorities that contravenes or may contravene environmental law obligations; and to ensure the full realization of other procedural rights, (that is, the right of access to information and public participation) and to redress any violation of their rights, as a result of non-compliance with environmental law obligations.[453]

274. In relation to compliance with judgments, this Court has indicated that the State's responsibility does not end when the competent authorities issue a decision or judgment; it also requires the State to guarantee effective means and mechanisms to execute the

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450 *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, para. 237, and *Case of the National Federation of Maritime and Port Workers (FEMAPOR) v. Peru, supra*, para. 77.

451 *Cf. Case of Baena Ricardo et al. v. Panama. Jurisdiction*. Judgment of November 28, 2003. Series C No. 104, para. 79, and *Case of the National Federation of Maritime and Port Workers (FEMAPOR) v. Peru, supra*, para. 77.

452 *Cf. Case of Muelle Flores v. Peru, supra*, para. 124, and *Case of Meza v. Ecuador. Preliminary objection, merits, reparations and costs*. Judgment of June 14, 2023. Series C No. 493, para. 59.

453 *Cf. Advisory Opinion OC-23/17*, *supra*, para. 237.

final decisions, so that the rights declared are effectively protected.[454] Likewise, the Court has established that the effectiveness of the judgments depends on their execution, a process that should lead to the materialization of the protection of the rights recognized in the judicial ruling, through the appropriate application of said ruling.[455] The Court has also indicated that to achieve the full effectiveness of a judgment, its implementation must be complete, perfect, comprehensive and timely.[456]

275. In the instant case, the Court considers that there is no dispute that the Constitutional Court's judgment of May 12, 2006, was an appropriate remedy for the protection of the alleged victims' rights. Indeed, this ruling recognized the high levels of air pollution in La Oroya and the risks this entailed for the health of the population, and ordered a series of measures aimed at protecting their legal rights. However, it is up to the Court to determine whether the State complied with the orders of the Constitutional Court's judgment, in accordance with its obligations under Article 25(2)(c) of the American Convention.

i) Regarding the order to implement an emergency system to provide health care for people contaminated with lead in La Oroya

276. The Court recalls that the first order of the Constitutional Court in its judgment of May 12, 2006, states the following:

> Orders the Ministry of Health to implement, within thirty (30) days, an emergency system to attend to the health of people contaminated with lead in the city of La Oroya, prioritizing specialized medical care for children and pregnant women, in order to ensure their immediate recovery, as set forth in paragraphs 59 to 61 of this judgment, under penalty of applying to those responsible the coercive measures established in the Code of Constitutional Procedure.[457]

277. The Court emphasizes that the Constitutional Court ordered the Ministry of Health to implement an "emergency system." The Court also notes that the Constitutional Court refers to paragraphs 59 to 61 of its judgment, where it stressed that the State, in the face of contamination that harms or endangers public health, has the following obligation:

> […] these mandates require the Ministry of Health, as the governing body of the National Health System, to protect, cure and rehabilitate people, not only through the implementation of an "ordinary system," but also through the implementation of an "emergency system" that allows for immediate actions in the event of situations that seriously affect the health of the population.[458]

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454 *Cf. Judicial guarantees in states of emergency (Arts. 27.2, 25 and 8 American Convention on Human Rights).* Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 24, and *Case of the National Federation of Maritime and Port Workers (FEMAPOR) v. Peru, supra*, para. 78.

455 *Cf. Case of Las Palmeras v. Colombia. Reparations and costs*. Judgment of November 26, 2002. Series C No. 96, para. 58, and *Case of the National Federation of Maritime and Port Workers (FEMAPOR) v. Peru, supra*, para. 78.

456 *Cf. Case of Mejía Idrovo v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of July 5, 2011. Series C No. 228, para. 105, and *Case of Meza v. Ecuador, supra,* para. 60.

457 *Cf.* Constitutional Court, Judgment of May 12, 2006 (evidence file, folio .839).

458 *Cf.* Constitutional Court, Judgment of May 12, 2006 (evidence file, folio .834).

278. The Court also points out that the Constitutional Court specified a term "of thirty (30) days" to implement said emergency system, and established that its objective should be the "immediate recovery" of people with lead poisoning in La Oroya.[459] Similarly, the Constitutional Court clearly stated that the emergency system should not be of a general nature, but should be implemented for specific purposes: "to attend to the health of people contaminated with lead in the city of La Oroya." Within this target population, the Constitutional Court defined two priority groups requiring specialized care: "children and pregnant women." The Constitutional Court stipulated, in paragraph 61 of its judgment, that the protection of the right to health "must be immediate, since the serious situation of contaminated children and pregnant women requires a concrete, dynamic and efficient intervention by the State [...]."[460]

279. Based on the foregoing, three central points can be inferred from the Constitutional Court's order to implement an emergency system: a) that the health situation of the inhabitants of La Oroya was "serious," and therefore required urgent action to address said situation; b) that the purpose of the system was restore the health of the population contaminated with lead in La Oroya; and c) that pregnant women and children should receive prioritized and specialized care. Thus, this Court considers that the Constitutional Court's order was not only aimed at implementing actions that would benefit and protect the health of the inhabitants of La Oroya in general, but also at requiring the State to provide specific emergency health care for people contaminated with lead, giving priority to children and pregnant women.

280. Taking into account the above points, the Court notes that the State reported on the following actions in compliance with the judgment: i) First, in 2006, in relation to health care for children, the Regional Government of Junín and Doe Run Peru provided specialized care[461] and reported the following: i.i) that the province of Yauli-La Oroya had one Level I-3 health center, two Level I-2 centers in Yauli and Morococha, and nine Level I-1 and I-2 health posts; i. ii) that priority had been given to "mothers and children and pregnant women" to improve social security coverage of the population (from 40% to 60%), which is why Doe Run was asked to collaborate in the construction of an Obstetric Center; i. iii) that promotional activities had been strengthened and that annual blood lead testing, pre-natal screening, psycho-prophylaxis and early fetal stimulation had been carried out; i. iv) that an agreement had been signed with Doe Run to create a system for the referral of children to specialty hospitals; and i. v) that coordinated actions were carried out to provide specialized medical care for the inhabitants of La Oroya.[462]

281. Furthermore, ii) in 2007, the Ministry of Health: ii. i) enrolled the population of La Oroya in the Comprehensive Health Insurance system (SIS);[463] ii. ii) improved the

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459 *Cf.* Constitutional Court, Judgment of May 12, 2006 (evidence file, folio .839).

460 *Cf.* Constitutional Court, Judgment of May 12, 2006 (evidence file, folios .834).

461 *Cf.* General Directorate of Health, Official letter N°4631-2006/DG/DIGESA dated August 5, 2006. Annex to the brief of the State of February 8, 2007, provided in the precautionary measures proceeding (evidence file, folio .846).

462 *Cf.* General Directorate of Health, Official letter No. 4631-2006/DG/DIGESA dated August 4, 2006 (evidence file, folio .846).

463 *Cf.* General Directorate of Health, Official letter N°4631-2006/DG/DIGESA dated August 4, 2006 (evidence file, folio .876).

infrastructure of an obstetric center;[464] ii. iii) strengthened the La Oroya Health Center team;[465] ii. iv) approved the Clinical Practice Guide for the Management of Patients with Lead Poisoning;[466] and ii. v) developed a health care system for patients with lead poisoning in the district of La Oroya.[467] Also, iii) between 2004 and 2010 the Ministry of Health increased medical care - in 2007 and 2009 from 62 to 130 - and provided 95 medical care services in 2010.[468]In 2008, it opened the Maternal and Perinatal Care Unit at the La Oroya Health Center. In this regard, the Ministry of Health reported that "the Emergency Service was improved with infrastructure and equipment," but did not provide additional details on the nature of these improvements or the beneficiaries.[469]

282. In addition, iv) in 2013, the State provided medical care to the beneficiaries of the precautionary measure at the La Oroya Health Center, as part of the National Health Strategy for Persons Affected by Contamination with Heavy Metals and Other Chemical Substances.[470] Finally, v) in 2018, MINSA published the technical document entitled "Sector Policy Guidelines for the Comprehensive Care of Persons Exposed to Heavy Metals, Metalloids and other Chemical Substances."[471] Likewise, DIRESA-Junín adopted a "Health Action Plan for the Beneficiaries of Precautionary Measure Nº 271-05: Case of La Oroya and its Extension, 2020-2024."[472]

283. The Court recognizes the importance of the actions taken by the State with respect to health care for the population of La Oroya, in compliance with the Constitutional Court's judgment, as well as the actions specifically directed at women, such as improvements to the obstetric center and the creation of the Maternal-Perinatal Unit. However, the Court considers that these actions cannot be regarded as an "emergency system" aimed at urgently addressing the needs of people with lead poisoning in La Oroya, as ordered by the Constitutional Court. Thus, the Court concludes that the State's actions did not comply with the Constitutional Court's order to provide "concrete, dynamic and efficient" assistance to the lead-contaminated population of La Oroya, with special priority care for pregnant women and children, and therefore decides that the State did not comply with the first order of the Constitutional Court.

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464 *Cf.* General Directorate of Health, Official letter N°4631-2006/DG/DIGESA dated August 4, 2006 (evidence file, folio .876).

465 *Cf.* General Directorate of Health, Official letter N°4631-2006/DG/DIGESA dated August 4, 2006 (evidence file, folio .876).

466 *Cf.* General Directorate of Health, Official letter N°4631-2006/DG/DIGESA dated August 4, 2006 (evidence file, folio .877).

467 *Cf.* General Directorate of Health, Official letter N°4631-2006/DG/DIGESA dated August 4, 2006 (evidence file, folios .877 and .878).

468 *Cf.* National Health Strategy for People Affected by Contamination with Heavy Metals and other Chemical Substances, Report N°015-2011-DGSPESNAPACMPOSQ/MINSA of March 21, 2011 (evidence file, folio .904).

469 *Cf.* National Health Strategy for People Affected by Contamination with Heavy Metals and other Chemical Substances, Report N°015-2011-DGSPESNAPACMPOSQ/MINSA of March 21, 2011 (evidence file, folio .904).

470 *Cf.* "Regional Health Strategy for the Monitoring and Control of Risks from Contamination with Heavy Metals and Other Chemical Substances," July 15, 2014 (evidence file, folio .675).

471 *Cf.* Ministerial Resolution No. 979-2018/MINSA, October 25, 2018 (evidence file, folio 27869 and 27870).

472 *Cf.* Health Action Plan for Beneficiaries of Precautionary Measure No. 271-05: Case of La Oroya and its extension, 2020-2024 and Annexes (evidence file, folio 27898).

ii) Regarding the order to issue a baseline assessment in order to implement action plans for the improvement of air quality in La Oroya

284. In the judgment of May 12, 2006, the Constitutional Court ordered the following in relation to air quality in La Oroya:

> Orders the Ministry of Health, through the General Directorate of Environmental Health (DIGESA), to carry out, within thirty (30) days, all actions aimed at issuing the baseline assessment, as prescribed in Article 11 of Supreme Decree 074-2001-PCM, Regulation of National Environmental Air Quality Standards, so that the respective action plans for the improvement of air quality in the city of La Oroya can be implemented as soon as possible.[473]

285. The Court recalls that the Constitutional Court ruling establishes that the State must implement the following actions: i) issue a baseline assessment; ii) use it as soon as possible to implement action plans; and iii) that the purpose of said plan must be to improve air quality in La Oroya. First of all, the Court notes that Article 11 of Supreme Decree 074-2001-PCM describes the purpose and manner in which the baseline assessment should be prepared, while subsequent articles describe the main aspects of said assessment: monitoring, inventory of emissions and epidemiological studies. Article 11 states the following:

> The purpose of the baseline assessment is to provide a comprehensive assessment of the air quality in the area and its impacts on health and the environment. This diagnostic study will be used to make decisions on the preparation of Action Plans and the management of air quality. Baseline assessments will be prepared by the Ministry of Health, through the General Directorate of Environmental Health - DIGESA, in coordination with other sectoral, regional and local public entities as well as the corresponding private entities, based on the following studies, which shall be performed in accordance with Articles 12, 13, 14 and 15 of this norm:
>
> a) Monitoring
> b) Inventory of emissions
> c) Epidemiological studies[474]

286. With respect to the State's actions in compliance with the Constitutional Court's order, it is recorded that on June 23, 2006, CONAM approved the "Action Plan for the Improvement of Air Quality in La Oroya Atmospheric Basin" in order to execute "strategies, policies and measures" to "control environmental pollution."[475] In its report to the Constitutional Court dated August 4, 2006, the Ministry of Health reported having monitored air quality in La Oroya in September 2001, March 2003 and September 2003, as well as 13 inventories of emissions and 13 epidemiological studies, which together

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473 *Cf.* Constitutional Court, Judgment of May 12, 2006 (evidence file, folio .839).

474 *Cf.* Supreme Decree PCM-D.S. No 074-2001, Regulation of National Environmental Quality Standards, in the Constitutional Court, Judgment of May 12, 2006 (evidence file, folios .832 and .839).

475 *Cf.* Executive Council Decree No. 020-2006-CONAM/CD "Action Plan for the Improvement of Air Quality of the Atmospheric basin of La Oroya" of June 23, 2006, published on August 2, 2006 (evidence file, folios .401 and .402); Action Plan for the Improvement of Air Quality of the Atmospheric basin of La Oroya, Document agreed with the DCD N°020-2006-CONAM/CD and DCD N°026-2006-CONAM-2006 (evidence file, folios .936 to .1018).

constituted the baseline assessment that served as the basis for the Action Plan.[476] From the foregoing, it appears that the State prepared a baseline assessment, which was used to design and approve an Action Plan, as ordered by the Constitutional Court.

287. The Action Plan defined eight objectives and 23 specific goals to protect the population's health and reduce emissions[477] and established that the population should be informed through the media, states of alert and information campaigns.[478] To accomplish this, the following legal procedures were carried out: i) on August 21, 2008, the President of the Republic approved new air quality standards through Supreme Decree N°003-2008-MINAM;[479] ii) on July 12, 2013, through Ministerial Resolution Nº 205-2013-MINAM it was decided that the atmospheric basins of La Oroya, Ilo, and Arequipa would be exempted from the new air quality standards as of January 1, 2014;[480] iii) in addition, on July 10, 2015, MINAM approved the "Corrective Environmental Management Instrument" for the La Oroya mining facility," which states that the complex would have 14 years to adapt to the new environmental standards.[481] Finally, iv) on June 6, 2017, through Supreme Decree Nº 003-2017-MINAM, new Environmental Air Quality Standards were approved.[482]

288. Now, in order to determine whether the State fully complied with the Constitutional Court's ruling, it is important to evaluate whether the State's actions were effective in implementing the baseline assessment and the action plans to improve air quality in La Oroya, as ordered. In this regard, it is clear from the civil lawsuit brief of October 4, 2017, filed by the representatives of the alleged victims before the Twentieth Civil Court, that the air quality in La Oroya, as the central element that prompted the filing of the constitutional motion, had not improved substantially. The civil action was filed considering that the Peruvian authorities had not taken effective steps to improve air quality, and therefore the inhabitants of La Oroya would continue to "suffer a situation of vulnerability."[483]

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476 *Cf.* General Directorate of Health, Official letter N°4631-2006/DG/DIGESA dated August 4, 2006 (evidence file, folios .847 to .849).

477 *Cf.* Executive Council Decree No. 020-2006-CONAM/CD "Action Plan for the Improvement of Air Quality of the Atmospheric basin of La Oroya" of June 23, 2006, published on August 2, 2006 (evidence file, folio .402).

478 This measure was preceded by the existence of several norms approved by the MEM, which regulated the maximum permissible limits (MPL) and environmental control standards (ECA). Among these norms was the National Regulation for the approval of Air Quality Standards and Maximum Permissible Limits of 1998 (Supreme Decree No. 044-98-PCM), the Regulation of Ambient Air Quality Standards of 2001 (Supreme Decree No. 074-2001-PCM), the Regulations of the Law on the National Environmental Management System (Supreme Decree No. 008-2005-PCM) of January 2005, and the General Law of the Environment (Law No. 28611 October 2005). *Cf.* Action Plan for the Improvement of Air Quality in the Atmospheric basin of La Oroya, Document agreed with the DCD Nº020-2006-CONAM/CD and DCD N°026-2006-CONAM-2006 (evidence file, folios 0.987, 0.993 to 0.994), and Ministry of Energy and Mines, Official letter No. 693-2007/JUS/CNDH-SE, June 2007 (evidence file, folio 0.84)

479 *Cf.* Supreme Decree N°003-2008-MINAM, of August 21, 2008 (evidence file, folio .1083).

480 *Cf.* Ministerial Resolution N°205-2013-MINAM, of July 12, 2013 (evidence file, folio .1086).

481 *Cf.* Ministry of Energy and Mines, Report N°581-2015-MEMDGAAM/DNAM/DGAM/CMLO of July 10, 2015 (evidence file, folio .1202).

482 *Cf.* Supreme Decree N°003-2017-MINAM, of June 6, 2017 (evidence file, folios .1297 to .1299).

483 *Cf.* Representatives of the victims. Brief submitted to the Twentieth Civil Court of Lima, of October 4, 2017(evidence file, folio 25931).

289. The Court notes that in Report N°214-2021/DCOVI/DIGESA dated February 3, 2021, DIGESA considered that it had "complied with the execution of the baseline assessment, established in Supreme Decree Nº 074-2001-PCM, in relation to air quality monitoring and emission inventories in the city of La Oroya."[484] Nevertheless, the Court recalls that from the evidence presented before this Court it is clear that, although the State adopted measures to protect the environment from the CMLO's activities, the air quality continued to be below the guidelines established by the WHO and national legislation, even until the year 2022.

290. Therefore, the Court considers that the State complied with the order to issue a baseline assessment and to approve an Action Plan, but finds that the State's actions did not comply with the Constitutional Court's order to improve air quality in La Oroya, thereby failing to implement the second order of the Constitutional Court's judgment of May 12, 2006.

iii) Regarding the order to declare a state of alert in La Oroya

291. In the judgment of May 12, 2006, the Constitutional Court ordered the following in relation to the declaration of states of alert in La Oroya:

> Orders the Ministry of Health to declare a state of alert in the city of La Oroya, within thirty (30) days, as required by Articles 23 and 25 of Supreme Decree 074-2001-PCM and Article 105 of Law 26842.[485]

292. Article 23 of Supreme Decree Nº. 074-2001-PCM defines the objective of the states of alert as follows:

> The purpose of the declaration of states of alert is to immediately activate a set of measures designed to prevent risks to health and excessive exposure of the population to air pollutants that could cause harm to human health.
>
> The Ministry of Health is the competent authority to declare states of alert, when the concentration of air pollutants is exceeded or predicted to be severely exceeded, as well as to establish and verify compliance with the immediate measures to be applied, in accordance with the legislation in force and subsection c) of Art. 25 of these regulations. Once a state of alert occurs, it will be made public and the measures envisaged will be activated in order to reduce the risk to health.[486]

293. Article 25 of Supreme Decree Nº 074-2001-PCM states that the Ministry of Health is responsible for "c) declaring the national states of alert referred to in Article 23 of the […] Regulation."[487] In this regard, the Court notes that on June 25, 2003, Peru approved the Regulation of the National Air Pollution States of Alert Levels (hereinafter "States of Alert Regulation") to regulate and establish states of alert. This decree was amended on May 10, 2005.[488] Thus, on June 23, 2006, CONAM approved public consultations on a Contingency Plan for air pollution states of alert in the atmospheric basin of La Oroya,

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484 *Cf.* DIGESA. Report N°214-2021/DCOVI/DIGESA., of February 3, 2021 (evidence file, folio 25484).

485 *Cf.* Constitutional Court, Judgment of May 12, 2006 (evidence file, folio 21848).

486 *Cf.* Supreme Decree PCM-D.S. No 074-2001, of June 22, 2001 (evidence file, folio 21851).

487 *Cf.* Supreme Decree PCM-D.S. No 074-2001, of June 22, 2001 (evidence file, folio 21851).

488 *Cf.* Supreme Decree No. 012-2005-SA that modified the Regulation of the National Air Pollution States of Alert Levels. (evidence file, folio .1306).

which was subsequently prepared by an environmental study group and approved in 2007.[489]

294. In October 2007, CONAM approved the "Contingency Plan for States of Alert for Air Pollution in the La Oroya Atmospheric Basin," which defines the actions to be taken in response to acute air pollution in the area.[490] In addition, as of August 6, 2008, DIGESA initiated the Declaration of States of Alert Levels in La Oroya.[491] The Court also confirms that the State took measures to disseminate the aforementioned regulation and installed screens to inform the population of the states of alert.[492]

295. However, it has also been demonstrated that it took more than two years after the Constitutional Court's May 2006 judgment for the states of alert to begin in La Oroya, and that the State authorities themselves expressed concern over the delay in approving the Contingency Plan.[493] According to DIGESA, this delay prevented the declaration of six states of alert in October 2006 and fifteen in November of the same year that would have been declared if the plan had been approved.[494] The Court also notes that the evidence presented shows that the measures adopted to inform the population about the states of alert were limited and insufficient to prevent the health risks and exposure of the population to pollution, as required by Supreme Decree Nº 074-2001-PCM.[495]

296. In this regard, the Court finds that although in Report N°214-2021/DCOVI/DIGESA of February 3, 2021, DIGESA considered that it "ha[d] complied with the declarations of states of alert, as established in Supreme Decree Nº 074-2001-PCM and also in Supreme Decree Nº 009-2003-SA,"[496] from the information in the case file, it is clear that this system was deficient and ineffective. Indeed, on some occasions sulfur dioxide emissions were detected that exceeded the emergency, danger and caution values, yet they did not trigger the alerts.[497] The case file also contains lawsuits that highlight the fact that

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489 *Cf.* Ministry of Energy and Mines, Official letter No. 693-2007/JUS/CNDH-SE, June 2007 (evidence file, folios .87 and .88); CONAM Executive Council Decree N° 021-2006-CONAM/CD, June 23, 2006 (evidence file, folio 27814), and Report No. 011-2009-DGCA-VMGA/MINAM, of March 10, 2009 (evidence file, folio .1311).

490 *Cf.* Report No. 011-2009-DGCA-VMGA/MINAM, of March 10, 2009 (evidence file, folio .1311).

491 *Cf.* Official Communication N° 120-2008/DG/DIGESA of August 13, 2008 (evidence file, folio .1314).

492 *Cf. El Correo* newspaper: "Population of La Oroya will monitor air quality with giant screens," press article of December 27, 2012 (evidence file, folio .1321).

493 The case file contains a letter dated December 26, 2006, from Mrs. M.C.C.R, then Director General of DIGESA, informing M.E.B.A., then president of the National Environmental Council, expressing her "concern over the delay in approving the Contingency Plan for air pollution states of alert in La Oroya." General Directorate of Environmental Health, Official letter N° 8254-2006/DG/DIGESA, December 26, 2006. (evidence file, folio .1308).

494 *Cf.* General Directorate of Environmental Health, Official letter N° 8254-2006/DG/DIGESA, dated December 26, 2006. (evidence file, folio .1308).

495 The report on sulfur dioxide measurements taken in La Oroya on August 9, 12 and 19, 2012, and published by DIGESA on the website of the Environmental Health Directorate, states that sulfur dioxide emissions were detected that exceeded the emergency, danger and caution values, yet these did not trigger the alerts. *Cf.* Moving Average - Consultations, August 10-12, 19 of 2012, published on the website of the Directorate of Environmental Health of the Ministry of Health (DIGESA) (evidence file, folios .1324, .1328, .1332, .1336).

496 *Cf.* DIGESA. Report N°214-2021/DCOVI/DIGESA, of February 3, 2021 (evidence file, folio 25484).

497 *Cf.* Report on Sulfur dioxide measurements in La Oroya on August 9, 12 and 19, 2012, according to information published by DIGESA, published on the website of the Directorate of Environmental Health of the Ministry of Health (DIGESA). Annex to the brief of the petitioners, September 12, 2012. (evidence file, folios .1323 to.1340).

these states of alert "have not operated on a regular basis and have not been effective in communicating the risks faced by the population." This shows that in "the few months that the system was able to operate, it was not effective, since the information did not reach the population and, therefore, did not accomplish its objective."[498]

297. Therefore, the Court considers that although the State issued the declarations of states of alert, they were not effective. This leads to the conclusion that the State did not comply with the third order of the Constitutional Court.

iv) Regarding the order to establish epidemiological and environmental surveillance programs in La Oroya

298. In its judgment of May 12, 2006, the Constitutional Court ordered the following measure in relation to epidemiological and environmental surveillance:

> Orders the General Directorate of Environmental Health (DIGESA) to carry out, within thirty (30) days, actions to establish epidemiological and environmental surveillance programs in the city of La Oroya.[499]

299. Regarding the actions to establish epidemiological and environmental surveillance programs, the Court notes that MINSA carried out testing and monitoring of the inhabitants of La Oroya, measuring their blood lead levels in 2004, 2005 and 2010.[500] The "Action Plan for the Improvement of Air Quality in the La Oroya Atmospheric Basin" (Executive Council Decree N° 020-2006-CONAM/CD) included measures to improve air quality and prevent its deterioration, and established "epidemiological and environmental surveillance" as "Objective 7," which included three targets: i) Target 20: epidemiological and environmental monitoring system for 100% of the population initiated in 2006; ii) Target 21: children under 16 years of age, pregnant women and elderly persons, in the La Oroya Antigua area to reach a weighted average blood lead level in the range of 15-20 µg/dL by June 2008; and iii) Target 22: independent study on the impact of contaminated flora and fauna for human consumption on the health of the population of La Oroya during 2007.[501]

300. The Court confirms that in the Cooperation Agreement of June 19, 2006, signed by the Ministry of Health, the regional government of Junín and Doe Run Peru, MINSA agreed to participate in overseeing the various epidemiological and environmental monitoring activities, prevention programs and medical treatment for special cases, in coordination with the Regional Directorate of Environmental Health (DIRESA).[502] It also notes that the Final Report on the "Request for an Exceptional Extension of the Deadline to Complete the Sulfuric Acid Plants Project" of May 25, 2006, established that Doe Run

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498 *Cf.* Representatives of the victims. Brief submitted to the Twentieth Civil Court of Lima on October 4, 2017 (evidence file, folio 25931).

499 *Cf.* Constitutional Court, Judgment of May 12, 2006 (evidence file, folio .839).

500 "Sentinel" controls were carried out to measure the blood lead levels of the inhabitants of La Oroya between 2004 and 2010. *Cf.* General Directorate of Health, Official letter N°4631-2006/DG/DIGESA dated August 4, 2006 (evidence file, folio .855), and National Health Strategy for Persons Affected by Contamination with Heavy Metals and other Chemical Substances, Report N°015-2011-DGSP-ESNAPACMPOSQ/MINSA of March 21, 2011 (evidence file, folios .909 to .910).

501 *Cf.* CONAM Executive Council Decree N° 020-2006-CONAM/CD, of June 23, 2006 (evidence file, folio 27834)

502 *Cf.* Agreement N° 029-2006-MINSA, of June 19, 2006 (evidence file, folio 27828).

would carry out "epidemiological and environmental monitoring in the entire atmospheric basin of La Oroya."[503] The Court further notes that the "Sector Policy Guidelines for the Comprehensive Care of Persons Exposed to Heavy Metals, Metalloids and other Chemical Substances" establish as Strategy 3.2: "strengthening the capacities of health personnel and social stakeholders, especially those who are close to, or in the vicinity of, risk areas to guarantee epidemiological monitoring and the analysis of the health status of the population exposed to heavy metals, metalloids and other chemical substances."[504] In 2006, the State also created the state-owned company *Activos Mineros S.A.C.* assigning it, among other tasks, the remediation of environmental liabilities in La Oroya.[505] This company carried out various projects and remediation works in rural and urban areas of La Oroya. [506]

301. In this regard, the Court considers that, although the blood tests made it possible to determine the epidemiological status of the population in La Oroya and of some alleged victims who were beneficiaries of the precautionary measures, they were not sufficient to be considered as an epidemiological surveillance program, as ordered by the Constitutional Court. Also, despite references to actions aimed at implementing epidemiological and environmental monitoring measures, similar to those ordered by the Constitutional Court, this Court lacks sufficient information to determine whether these measures actually existed and were implemented by DIGESA, or by some other agency of the Ministry of Health, or Doe Run. On this point, the Court notes that a brief filed in the civil lawsuit of October 4, 2017 by the representatives of the alleged victims before the Twentieth Civil Court, emphasized that: "there is still no epidemiological and environmental surveillance program that is constantly monitoring diseases, age groups, seasonal patterns, and other aspects, which are essential elements for this type of study."[507] Therefore, the Court concludes that the State did not comply with the fourth order of the Constitutional Court.

302. In view of the foregoing, the State of Peru failed to comply with its duty to ensure compliance with the judgment of the Constitutional Court of May 12, 2006, in violation of Article 25(2)(c) of the American Convention, in relation to Article 1(1) of the same instrument, to the detriment of the 80 individuals listed in Annex 2 of this judgment.

B.2 Alleged failure to investigate complaints of alleged harassment

303. The Court recognizes that the right to a judicial remedy implies the duty to investigate alleged human rights violations with due diligence, punish those responsible, and provide adequate reparation to the victims. With respect to the duty to investigate, the Court has emphasized that threats and attacks against the safety and life of human

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503 *Cf.* Report N° 118-2006-MEM-AAM/AA/RC/FV/AL/HS/PR/AV/FQ/CC of May 25, 2006 (evidence file, folio 27720).

504 *Cf.* Ministerial Resolution N° 979-2018/MINSA, of October 25, 2018 (evidence file, folio 27890)

505 *Cf.* Activos Mineros S.A.C., Report N°007-2013-GO, Environmental Remediation of Soils affected by Gas and Particulate Matter Emissions from the CMLO, of October 3, 2013 (evidence file, folio 0.1342).

506 *Cf. Activos Mineros S.A.C.*, Report N°007-2013-GO, Environmental Remediation of Soils Affected by Gas and Particulate Matter Emissions from the CMLO. October 3, 2013 (evidence file, folios 0.1342 to 0.1350).

507 *Cf.* Representatives of the victims. Brief submitted to the Twentieth Civil Court of Lima on October 4, 2017) (evidence file, folio 25932).

rights defenders, and the impunity of those responsible for such actions, are particularly serious because they have an impact that is not only individual, but also collective."[508]

304. The Court considers that the status of a human rights defender derives from the work carried out, regardless of whether the person who does it is a private individual or a public official,[509] or whether the defense is related to civil and political rights or economic, social, cultural and environmental rights. [510] The Court has also stated that activities for the promotion and protection of rights may be carried out intermittently or occasionally; thus, being a human rights defender is not necessarily a permanent condition.[511]

305. The definition of a "human rights defender" is broad and flexible due to the very nature of this activity. Any person who engages in efforts to promote and defend a human right, and who self-identifies or is recognized by society as a defender, should be considered as such. This category obviously includes environmental defenders, also referred to as environmental human rights defenders or human rights defenders in environmental matters.[512]

306. The Court recognizes that, given the importance of environmental work, the free and full exercise of this right imposes on the States the duty to create legal and factual conditions in which defenders can freely develop their role.[513] This is particularly important if one considers the interdependence and indivisibility between human rights and environmental protection and the difficulties associated with protecting the environment in the countries of this region, where there are increasing reports of threats, acts of violence and even murders of environmentalists because of their work.[514]

307. On this point, and prior to its analysis of the State's alleged failure to investigate alleged acts of harassment against some alleged victims, the Court finds it pertinent to point out that such acts of harassment have occurred in a context of social conflict that continues to this day in La Oroya. This situation has arisen as a result of the reactions that have followed the complaints about the contamination caused by the CMLO's activities. Indeed, many inhabitants of La Oroya, including some CMLO workers, have perceived the actions of the alleged victims as threats to the job opportunities generated by the CMLO's mining and smelting operations. In this regard, the expert witness Marisol Yáñez stated that the "large number of threats" received by the alleged victims were made "by the

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[508] *Cf. Case of Nogueira de Carvalho et al. v. Brazil. Preliminary objections and merits***.** Judgment of November 28, 2006. Series C No. 161.62, para. 76, and *Case of Sales Pimenta v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of June 30, 2022. Series C No. 454, para. 89.

[509] *Cf. Case of Luna López v. Honduras. Merits, reparations and costs.* Judgment of October 10, 2013. Series C No. 269, para. 122, and *Case of Baraona Bray v. Chile. Preliminary objections, merits, reparations and costs.* Judgment of November 24, 2022. Series C No. 481. para. 70.

[510] *Cf. Case of Kawas Fernández v. Honduras. Merits, reparations and costs.* Judgment of April 3, 2009. Series C No. 196, para. 147 and 148, and *Case of Baraona Bray v. Chile, supra,* para. 70.

[511] *Cf. Case of Human Rights Defender et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of August 28, 2014. Series C No. 283, para. 129, and *Case of Baraona Bray v. Chile, supra,* para. 70.

[512] *Cf. Case of Baraona Bray v. Chile, supra,* para. 71.

[513] *Cf. Case of Nogueira de Carvalho et al. v. Brazil, supra*, para. 77 and *Case of Baraona Bray v. Chile, supra,* para. 79.

[514] *Cf. Case of Kawas Fernández v. Honduras, supra*, para. 149 and *Case of Baraona Bray v. Chile, supra,* para. 79.

company's workers, prompted both by the fear of losing their jobs and the incitement received from within the company."[515]

308. The Court will now examine the arguments concerning the State's alleged failure to investigate acts of harassment to the detriment of the alleged victims María 11, María 13, Juan 7, Juan 12, Juan 13, Juan 17, and Juan 19,[516] María 1,[517] and Juan 7,[518] who filed complaints before the state authorities, alleging that they had been harassed in reprisal for their activities in defense of the health and environment of La Oroya. It will also analyze the alleged failure to investigate the complaint made by Juan 2[519] concerning the health and environmental impacts caused by the CMLO's activities.

309. The Court notes that María 1, María 11, María 13, Juan 7, Juan 12, Juan 13, Juan 17, and Juan 19 were members of the Health Movement of La Oroya (MOSAO), whose aim, according to the representatives, was to promote "measures to reduce environmental contamination to levels consistent with the protection of the population's health."[520] It also notes that the alleged victims enjoyed social recognition as defenders of health and the environment, for which reason they were subjected to harassment and reprisals aimed at discouraging their complaints and questions about the activities at the CMLO. At the time of the events, Juan 2 worked as an official at the Municipality of Yauli, where he had made at least one complaint about the air quality in La Oroya, in defense of the rights to health and a healthy environment.

310. Based on the above, the Court considers that at the time of the events, María 1, María 11, María 13, Juan 7, Juan 12, Juan 13, Juan 17, and Juan 19 and Juan 2 were human rights defenders who enjoyed social recognition and were actively involved in efforts to protect and promote the environment and health, either within an organization such as MOSAO, as in the cases of María 1, María 11, María 13, Juan 7, Juan 12, Juan 13, Juan 17 and Juan 19, or through the exercise of public office, as in the case of Juan 2.

311. In this regard, the Court notes that on March 17, 2004, members of MOSAO held a peaceful sit-in to protest against the granting of a "social license" to Doe Run Peru.

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515 *Cf.* Expert report of Marisol Yáñez (evidence file, folio 29401).

516 *Cf.* Complaint filed with the Sub-Prefecture of Yauli on April 28, 2004 (evidence file, folio .1377). According to the affidavit of the son of Juan 12, the latter was "fired because he entered into conflict with the interests of the company [Doe Run]" since he "[had become] a recognized political figure in the city, with a very critical view of the pollution caused by the Complex." The son of Juan 12 also stated that his father "was threatened and intimidated" and "for that reason he stopped campaigning" and "decided to return to Lima and keep a low profile." Finally he stated that his father "was afraid" that "his children or family members would be harmed."[516] The case file contains no evidence that the State investigated these complaints. *Cf.* Affidavit of C.A.M.H., son of Juan 12 (evidence file, folios 28996 to 28997).

517 *Cf.* Communication sent to the General Directorate of Internal Affairs on April 24, 2012 (evidence file, folios .1406 to .1408).

518 *Cf.* Sub-Prefecture of Yauli-La Oroya province, Resolution N°60-2019-VOI/DGIN/SPROV, of July 22, 2019 (evidence file, folio .1420).

519 *Cf.* Complaint filed with the Prosecutor of Yauli-La Oroya Province on August 15, 2007 (evidence file, folios .1386 to .1394).

520 The representatives reported that the members of MOSAO at the time of the events included Juan 7, 11, 13, and 19, and María 3, 11 and 13. *Cf.* Brief with pleadings, motions and evidence, of February 4, 2021 (merits file, folio 268). See also: Complaint filed with the Sub-Prefecture of Yauli on April 28, 2004 (evidence file, folio .1377), and Note sent to the General Directorate of Internal Affairs on April 24, 2012 (evidence file, folios .1406 to .1408), and Statement of Juan 6 (evidence file, folio 28972).

According to a news article in the local press, the sit-in was "vigorously opposed by the population and traders," while the main leaders "were almost lynched, and were saved by several police officers who were stationed outside the union building."[521] The case file shows that this incident was reported to the Sub-Prefecture of Yauli Province, in a letter in which the protesters of MOSAO alleged that they were "verbally abused," that workers "threw stones and hurled insults" and "burned the MOSAO banner." They also reported that they had "received threats" on other occasions. The complaint was presented by María 11, María 13, Juan 7, Juan 12, Juan 13, Juan 17, and Juan 19,[522] and received by the Sub Prefecture on April 29, 2004.[523]

312. The Court also recalls that on November 16, 2007, the Peruvian Environmental Law Society sent a letter to the Minister of Justice denouncing acts of harassment against the beneficiaries of the precautionary measures ordered by the Inter-American Commission on Human Rights.[524] Some beneficiaries - alleged victims in this case - reported that "obscene pictures" had appeared on their houses, while others said that threats had been made against their children who were minors.[525] Some beneficiaries also claimed to have been "photographed and accused by people who [were] known to defend the interests of the company that operate[d] the metallurgical complex."[526] Finally, some of the alleged victims, who were themselves union workers, reported that "threatening messages" had been sent to those "working to protect health and the environment."[527] The letter of complaint is stamped "received" and bears the seals of the Ministry of Justice, the Ministry of the Interior, the Ombudsman's Office, the Ministry of Health and CONAM.[528] The case file contains no evidence that the State investigated the complaints.

313. It is also on record that on August 15, 2007, Juan 2 contacted the Public Prosecutor's Office of La Oroya to report "enormous" contamination in La Oroya Antigua on that same day, "due to the effect of gases containing levels of pollutants higher than the limits set by the WHO, which emanate [from] the operations of Doe Run Peru."[529] In his complaint, Juan 2 requested *inter alia that* "the Ministry of Health (DIGESA), ESSALUD and the Municipal Environmental Commission, the Parish Dialogue Group, the Provincial Municipality of Yauli- La Oroya and the environmental NGOs that work in that jurisdiction, be required to document any actions and/or monitoring they had carried out to control the harmful contamination."[530] On August 17, 2007, i.e. two days after filing the complaint, Juan 2 was dismissed from his job at the Municipal Ombudsman's Office

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521 *Cf.* Press article: "On a historic day, the people of La Oroya endorse social license granted to Doe Run." March, 2004. Annex 40 to the initial application for precautionary measures of November 21, 2005 (evidence file, folio .1373).

522 *Cf.* Complaint filed with the Sub-Prefecture of Yauli on April 28, 2004 (evidence file, folio .1379).

523 *Cf.* Complaint filed with the Sub-Prefecture of Yauli on April 28, 2004 (evidence file, folio .1377).

524 *Cf.* Note sent to the Ministry of Justice on November 16, 2007 (evidence file, folios .1383 to .1385).

525 *Cf.* Note sent to the Ministry of Justice on November 16, 2007 (evidence file, folios .1383 to .1385).

526 *Cf.* Note sent to the Ministry of Justice on November 16, 2007 (evidence file, folios .1383 to .1385).

527 *Cf.* Note sent to the Ministry of Justice on November 16, 2007 (evidence file, folios .1383 to .1385).

528 *Cf.* Note sent to the Ministry of Justice on November 16, 2007 (evidence file, folios .1383 to .1385).

529 *Cf.* Complaint filed with the Prosecutor of Yauli-La Oroya Province on August 15, 2007 (evidence file, folios .1386 to.1394).

530 *Cf.* Complaint filed with the Prosecutor of Yauli - La Oroya Province on August 15, 2007 (evidence file, folios .1386 to .1394).

for Children and Adolescents.[531] In comments made on August 23, 2007, to the *Diálogo Directo* program, Juan 2 alleged that "two municipal officials who work[ed] for Doe Run" were the ones who "instigated [his] dismissal [from the Office of the Municipal Ombudsman for Children and Adolescents]."[532] There is no evidence in the case file that an investigation was opened into the complaint filed by Juan 2 regarding damage to health and the environment, nor his dismissal from the Municipal Ombudsman's Office for Children and Adolescents.

314. In addition, on April 24, 2012, María 1 requested personal guarantees, alleging verbal attacks and intimidation against her. In a letter to the General Directorate of Internal Government, María 1 reported "verbal aggressions" and stated that flyers, pamphlets and comments made on social media had "incited violence" against her, forcing her to flee La Oroya "to prevent these verbal attacks from becoming physical and endangering [her] life."[533] According to María 1's statement at the public hearing, the president of her neighborhood council and his secretary came to her house and told her that she had to leave La Oroya "because the workers [were going to] come over" and "they [were] going to beat [her] and burn [her] house down."[534] Given this situation, María 1 explained that she had to leave La Oroya and that "out of fear, [she] can no longer live on [her] land."[535] María 1's complaint was submitted to the General Directorate of Internal Affairs of the Ministry of the Interior with a copy to Mr. D.L.C., an assistant of the Minister of the Interior, Ms. G.V., the Human Rights Assistant at the Ombudsman's Office, Mr. J.A.P.B., a prosecutor of the Public Prosecution Service, and Ms. M.T.M., the Provincial Prosecutor for Crime Prevention of Huancayo. The complaint has been stamped "received" and bears the seals of the General Directorate for Internal Affairs, the Ombudsman's Office and the Public Prosecution Service.[536]

315. The Court also notes that María 11 filed a complaint with the Sub-prefecture of Yauli Province in June 2019, in which she requested personal guarantees, alleging that the host of the Radio Karisma program used his broadcast to "stir up and incite the population" against her husband, Juan 7, by making "defamatory comments and threats" regarding his role as an activist.[537] She also reported that people had posted a number of comments on Radio Karisma's Facebook account "inciting violence" against Juan 7.[538] On July 22, 2019, the Sub-prefecture of Yauli granted her request for personal guarantees and ordered the host of Radio Karisma to cease and desist from "making

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[531] *Cf. Coordinadora Nacional de Radio*, press release, August 23, 2007. Annex to the petitioners' brief of August 24, 2007, in the precautionary measures proceeding (evidence file, folios .1395 to .1397).

[532] *Cf. Coordinadora Nacional de Radio*, press release, August 23, 2007. Annex to the petitioners' brief of August 24, 2007, in the precautionary measures proceeding (evidence file, folios .1395 to .1397).

[533] *Cf.* Communication sent to the General Directorate of Internal Affairs on April 24, 2012 (evidence file, folios .1406 to .1408).

[534] *Cf.* Statement of alleged victim María 1 at the public hearing in this case during the 153rd Regular Session, held in Montevideo, Uruguay.

[535] *Cf.* Statement of alleged victim María 1 at the public hearing in this case during the 153rd Regular Session, held in Montevideo, Uruguay.

[536] *Cf.* Communication sent to the General Directorate of Internal Affairs on April 24, 2012 (evidence file, folios .1406 to .1408).

[537] *Cf.* Sub-Prefecture of Yauli-La Oroya Province, Resolution N°60-2019-VOI/DGIN/SPROV, July 22, 2019 (evidence file, folios .1418 to.1420).

[538] *Cf.* Sub-Prefecture of Yauli-La Oroya Province, Resolution N°60-2019-VOI/DGIN/SPROV, July 22, 2019 (evidence file, folios .1418 to.1420).

threats, intimidation and harassment," adding that he should also "refrain from any act that would endanger the integrity, peace and tranquility of the petitioner and [her] husband."[539]

316. The State argued that the incidents described by the Commission and the representatives were reported to bodies that were not competent to investigate them, and that "they were not sufficiently serious" to be considered as threats or harassment. In relation to the first point, the State explained that in Peru's institutional system, the National Police and the Public Ministry are the competent bodies that investigate actions such as those described in this case.[540] In this regard, the Court observes that the complaints filed by María 1 and Juan 2 were filed with the Public Prosecutor's Office.[541] As for the other acts of harassment, the Court notes that these were referred to the Sub-Prefecture of Yauli Province, in the case of the complaint filed by MOSAO in March 2004, and to the Ministry of Justice, in the case of the complaint filed by the Peruvian Environmental Law Society in November 2007.

317. The Court considers that, despite the fact that the aforementioned complaints were not raised with the bodies that were competent to investigate them, its jurisprudence regarding the protection of human rights defenders establishes that the State has the duty to "investigate thoroughly and effectively the violations committed against them." This means that when State authorities become aware of reports of harassment against human rights defenders they have a responsibility to decide or determine whether the person being threatened or harassed requires protection measures, or to refer the matter to the competent authority for that purpose and to offer the person at risk timely information on the measures available. This is especially important when there are indications that a failure to act could compromise the lives and personal integrity of human rights defenders. The Court has already established that the victim should not be required to "to know exactly which authority is best able to address his or her situation, since it is the State's responsibility to establish measures of coordination between its institutions and officials for that purpose."[542]

318. As regards the second point, the State argued that the situations reported by the alleged victims were not "sufficiently serious" to be considered as "threats against the life and integrity" of the individuals concerned.[543] In this instance, the alleged victims complained that they had been subjected to "verbal" and "physical" abuse that took place systematically and continuously because of their efforts to defend the health and environment of La Oroya. The Court notes that these incidents did not occur in an isolated or random manner; rather, the situations described by the alleged victims occurred as a result of a pre-existing conflict in La Oroya over the polluting activities of Doe Run and the need for the State to control them. In this regard, the expert witness Marisol Yáñez stated

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539 *Cf.* Sub-Prefecture of Yauli-La Oroya Province, Resolution N°60-2019-VOI/DGIN/SPROV, of July 22, 2019 (evidence file, folio .1420).

540 *Cf.* Answering brief of the State, July 22, 2022 (merits file, folio 701).

541 *Cf.* Communication sent to the General Directorate of Internal Affairs on April 24, 2012 (evidence file, folios 0.1406 a 0.1408), and complaint filed with the Prosecutor of Yauli – La Oroya Province on August 15, 2007 (evidence file, folios .1386 to .1394).

542 *Cf. Case of Vélez Restrepo and Family v. Colombia. Preliminary objection, merits, reparations and costs.* Judgment of September 3, 2012. Series C No. 248, para. 201 and, *Case of Human Rights Defender et al. v. Guatemala. Preliminary objections, merits, reparations and costs.* Judgment of August 28, 2014. Series C No. 283, para. 155.

543 *Cf.* Answering brief of the State, July 22, 2022 (merits file, folio 701).

at the public hearing in this case that there was a climate of "social conflict and polarization" in La Oroya. [544] The Court also recalls that Juan 1, Juan 2, Juan 6, Juan 8, Juan 18, Juan 30, María 9, María 16 and María 25 reported that as a result of their efforts to protect the environment and health, they were subjected to accusations by Doe Run and its workers (*supra* para. 225), which created an environment of stigmatization and intimidation against them.

319. The Court reiterates that, according to its case law, the State has the obligation to protect human rights defenders whenever they are subjected to threats and must investigate violations committed against them.[545] In the instant case, the Court considers that the State did not demonstrate that it had responded to the complaints made by María 11, María 13, Juan 7, Juan 12, Juan 13, Juan 17, and Juan 19, in March 2004, Juan 2, in August 2007 and María 1, in April 2012. Therefore, the Court concludes that, since these complaints concerned acts of harassment against individuals who defended the environment and/or health in La Oroya, the State failed in its duty to investigate with due diligence the facts denounced. Consequently, the State is responsible for the violation of Articles 8(1) and 25 of the American Convention, in relation to Article 1(1) of the same instrument, to the detriment of María 1, María 11, María 13, Juan 2, Juan 7, Juan 12, Juan 13, Juan 17 and Juan 19.

IX
REPARATIONS

320. Based on the provisions of Article 63(1) of the American Convention, the Court has held that any violation of an international obligation that has caused harm entails the duty to make adequate reparation, and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.[546]

321. Reparation for the harm caused by the breach of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists of reestablishing the situation prior to the violation. If this is not feasible, as occurs in the majority of cases of human rights violations, the Court may order measures to protect the rights that have been violated and to repair the harm caused.[547] Accordingly, the Court has considered the need to provide different types of reparation in order to fully redress the damage; thus, in addition to pecuniary compensation, other types of measures such as satisfaction, restitution, rehabilitation, and guarantees of non-repetition have special importance owing to the severity of the harm caused.[548]

322. The Court has also established that reparations must have a causal nexus with the

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[544] *Cf.* Statement of the expert witness Marisol Yáñez provided at the public hearing in this case, held during the Court's 153rd Regular Session in Montevideo, Uruguay.

[545] *Cf. Case of Nogueira de Carvalho et al. v. Brazil. Preliminary objections and merits*. Judgment of November 28, 2006. Series C No. 161.62, para. 76.

[546] *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of Córdoba v. Paraguay, supra,* para. 115.

[547] *Cf. Case of Velásquez Rodríguez v. Honduras*. Reparations and costs, *supra*, paras. 25 and 2, and *Case of Rodríguez Pacheco et al. v. Venezuela, supra,* para. 152.

[548] *Cf. Case of the Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of November 24, 2009. Series C No. 211, para. 226, and *Case Rodríguez Pacheco et al. v. Venezuela, supra,* para. 152.

facts of the case, the violations declared, the damage proven and the measures requested to redress the respective harm. Consequently, the Court must analyze the concurrence of these factors in order to rule appropriately and according to the law.[549]

323. Therefore, taking into account the violations of the American Convention declared in the preceding chapters, and in light of the standards established in the Court's case law regarding the nature and scope of the obligation to make reparation,[550] the Court will now examine the claims presented by the Commission and the representatives, as well as the arguments of the State, for the purpose of ordering measures to redress the harm caused by those violations.

A. Injured party

324. Pursuant to Article 63(1) of the Convention, this Court considers that an injured party is anyone who has been declared a victim of the violation of any right recognized in the Convention. Accordingly, the Court considers as "injured parties" the persons listed in Annex 2 of this judgment who, as victims of the violations declared in chapter VIII, will be the beneficiaries of the reparations ordered by the Court. Likewise, the Court considers that, given the nature of this case, the human rights violations had a collective scope (*supra* para. 179) and therefore Court will take this into account when ordering certain measures of reparation (*infra*, paras. 333, 334, and 346 to 355).

B. Obligation to investigate the facts and identify, prosecute and, if appropriate, punish those responsible

325. The ***Commission*** and the ***representatives*** requested that criminal, administrative, civil or other investigations be carried out, as appropriate, regarding the threats and acts of harassment against the victims. They also requested that the responsibilities of officials or third parties be defined with respect to the environmental pollution in La Oroya that affected the victims' health. In addition, the Commission recommended that the State "establish mechanisms to determine the company's possible liability for environmental pollution in La Oroya."

326. With regard to the investigations into the alleged threats and acts of harassment, the ***State*** pointed out that, despite the fact that "no acts of harassment to the detriment of the alleged victims have been verified," it has already coordinated with different state agencies to identify any aspect that could affect the security of the alleged victims. It added that, according to the National Police of Peru, there have been no police reports against Doe Run since 2006 and up to the present date. Finally, it reported that in communication Nº 032-2021-JUS/PGE-PPES of May 14, 2021, it had requested a coordination meeting with the representatives of the beneficiaries of the precautionary measures, without receiving a response to this request.

327. The Court recalls that the State failed to comply with its duty to investigate acts of harassment against persons defending the environment and/or health in La Oroya, as reported by María 1, María 11, María 13, Juan 7, Juan 12, Juan 13, Juan 17, and Juan 19 and Juan 2, who acted as defenders of the environment or health in La Oroya. In this

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549 *Cf. Case of Ticona Estrada v. Bolivia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of Rodríguez Pacheco et al. v. Venezuela, supra,* para. 153.

550 *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs, supra*, paras. 25 to 27, and *Case Rodríguez Pacheco et al. v. Venezuela, supra,* para. 154.

regard, given the failure to investigate such acts of harassment against the aforementioned environmental defenders, and taking into account the conclusions reached in Chapter VIII of this judgment regarding the violations declared, in accordance with its case law the Court orders[551] that the State must, within a reasonable time, initiate and continue the investigations necessary to determine, prosecute and, if applicable, establish responsibilities, as appropriate, with respect to the facts denounced by the victims in the instant case.

328. With regard to the investigations related to environmental contamination in La Oroya, the State argued that it has taken steps to investigate and punish administrative offenses and crimes related to environmental pollution and mentioned several measures aimed at advancing such investigations. On this matter, the Court notes that, according to information provided by the State, the Coordination of Specialized Environmental Prosecutors' Offices,[552] and the Criminal Investigation Unit of the Environmental Division of the Peruvian National Police[553] have brought administrative and criminal proceedings in relation to the contamination in La Oroya; however, these have been shelved or have not resulted in a direct attribution of responsibility. In view of this, the Court considers that the State must, within a reasonable time, initiate, promote and continue the necessary investigations to determine, prosecute and, if applicable, establish the responsibilities of officials or third parties, as appropriate, with respect to the environmental contamination in La Oroya.

C. Measures of restitution

329. The ***Commission*** requested remediation measures to address the environmental damage, with the participation of the victims and with a focus on the content of the right to a healthy environment and health. In particular, it requested a study to determine the actions to be undertaken in the short and long term to address environmental pollution in La Oroya and ensure their effective implementation.

330. The ***representatives*** requested that the Court order the State to prepare a baseline assessment and an environmental remediation plan aimed at evaluating the environmental damage in La Oroya, and the adoption of measures to remedy it. Specifically, they requested that the State carry out, within a maximum period of one year, a comprehensive baseline assessment or diagnosis to determine the current status

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551 *Cf. Case of Velásquez Rodríguez v. Honduras*. Merits, *supra*, para. 174, and, *Case of Members and Militants of the Patriotic Union v. Colombia*, *supra,* para. 554.

552 According to the State, in 2019 the Special Prosecutor's Office for Environmental Matters of Junín (FEMA) carried out investigations to determine criminal liability for the environmental contamination. By means of Official Communication No. 116-2021-MP-FN-CN-FEMA dated February 3, 2021, it was reported that the case was closed because the crime of environmental contamination attributed to the company DRP had not been proven, as stated in the Official Expert Report No. 0165-2020-MP-FN-GGOPERITEFOMA. In addition, the Coordinator of the Specialized Environmental Prosecutor's Offices reported that Case No. 213-2014, had been "shelved." According to the State, FEMA had determined that "the facts of the complaint do not constitute a crime of environmental contamination as defined in Article 304 of the Peruvian Criminal Code." *Cf.* Answering brief of the State, of July 22, 2022, paras. 573 to 581 (merits file, folios 735 to 737).

553 The State reported that, according to Legal Report No.1-2021-SCG-PNP-DIRNIC-DIRMEAMB UNIASJUR dated February 5, 2021, prepared by the Legal Advice Unit of the Environmental Division of the National Police of Peru, on July 4, 2019 an investigation was opened by the Special Prosecutor's Office for Environmental Matters of Junín, under Prosecution File No. 2206015200-2019-164-0. This investigation supposedly originated in a complaint made in the newspaper *El Correo* on July 4, 2019, regarding the "alleged massive intoxication due to the emission of gases from the chimney of the Doe Run Peru" company. There is no further information in the file on the status of this case. *Cf.* Answering brief of the State, of July 22, 2022, paras. 582 and 583 (merits file, folio 737).

of contamination in La Oroya. They indicated that this diagnosis should consist of a comprehensive and joint analysis of air, water and soil contamination, and that it should be used to design and implement a plan to address the situation. They also requested that the assessment include the mapping of sources and levels of pollution, so that, based on this, the State could define measures to mitigate all sources of contamination and remediate or restore the affected areas.

331. The ***State*** pointed out that a State-owned company, *Activos Mineros S.A.C.,* is already in charge of executing the PAMA. It explained that, in the case of La Oroya, this company is implementing a remediation project entitled "Remediation of Soil Areas Affected by Emissions from the Metallurgical Complex of La Oroya (CMLO)." The State also mentioned that in 2007, the consulting firm Ground Water International (GWI) carried out the "Remediation Study for Areas affected by the CMLO's Gas and Particulate Matter Emissions based on Health and Ecological Risk Analysis." It also emphasized that in 2020 it established the temporary "Multisectorial Commission" to promote a comprehensive and integrated approach to support the population exposed to heavy metals, with the aim of preparing a technical report containing strategies for prevention, remediation, mitigation and control of exposure to heavy metals.

332. The ***Court*** recalls that in the instant case the State's international responsibility was established for a breach of the duty of prevention. This international responsibility stemmed from the environmental damage caused by the State when the state-owned company CENTROMIN operated the CMLO; the absence of adequate control measures by the State over the activities of the private company Doe Run; and, for the adoption of retrogressive measures with respect to environmental protection. These breaches constituted a violation of the duty to prevent environmental damage, caused by years of exposure to pollutants found in the air, water and soil which also constituted a health risk. According to the information in the case file, which has been incorporated in this judgment, the air, soil and water in La Oroya continue to be contaminated by the pollutants emitted by the CMLO's activities. Consequently, the Court considers that it is incumbent upon the State to adopt restitution measures with respect to the environment.

333. Therefore, the Court orders the State to conduct a baseline assessment to determine the status of air, soil and water pollution in La Oroya, which must include an action plan to remediate the environmental damage. The State shall define short, medium and long-term actions required for the remediation of the contaminated areas, and begin to execute said plan within a period of no more than 18 months from the notification of this judgment. The action plan must include an assessment of the sources and levels of pollution, and of the contamination hotspots in La Oroya, in order to delimit the areas in need of priority remediation based on the risk they pose to the environment and health, and implement the necessary measures to decontaminate the air, soil and water. Decontamination efforts must include the victims' homes.

334. Remediation actions should also take into account the latest scientific information on the reparation of environmental damage caused by heavy metals, as well as other plans and programs previously developed for the remediation of environmental damage in La Oroya. Furthermore, the State shall implement effective participation mechanisms that allow victims to become aware of the action plan, make observations and have them considered before, during and after its implementation. The State shall immediately inform this Court once it has completed the baseline assessment and prepared the action plan, regardless of the one-year term to submit its first report, as stipulated in the twenty-fifth operative paragraph of this judgment.

D. Measures of rehabilitation

335. The ***Commission*** requested that the Court order comprehensive physical and mental health care measures necessary for the rehabilitation of the victims in this case, if they so wish and in agreement with them. Such care should be accessible, specialized and be provided free of charge, taking into account the location of each victim. The Commission added that the health care should be preferential in nature, given their status as victims of human rights violations, and that it should guarantee the principle of the primacy of the best interests of the child.

336. The ***representatives*** requested that comprehensive health care be provided for the victims. In particular, they requested a specialized and comprehensive medical diagnosis of each of the victims by a multidisciplinary team of specialists, including biological, radiological and psychological tests, with individual evaluations of the victims as well as joint evaluations of their family group and other persons who share their environmental conditions to determine the level of risk. They added that the diagnosis should determine the treatment required and the actions needed to prevent exposure and reduce the level of contamination. They requested that the diagnosis and medical treatment include an approach that takes into account the differentiated characteristics of the victims based on their age and gender.

337. The ***State*** pointed out that it has taken several steps to address the health care needs of the alleged victims, including: a) a "Health Action Plan for the Beneficiaries of Precautionary Measure No. 271-05-Case of La Oroya and its extension 2019-2022," which is being implemented; b) the alleged victims are now enrolled directly in the free Comprehensive Health Insurance (*Seguro Integral de Salud*, SIS) or the Social Health Insurance (ESSALUD), and c) the State has specific technical procedures to provide health care for mercury poisoning, and a comprehensive approach to the treatment of the population exposed to heavy metals, metalloids and other chemical substances.

338. The ***Court*** decides that the State has the obligation to provide free of charge, and for as long as necessary, through its specialized public health institutions or specialized health personnel, and in an immediate, timely, adequate and effective manner, medical, psychological and psychiatric treatment, if required, to the victims who have suffered violations of the right to health, personal integrity or a decent life, taking into account the community in which they live, and giving priority to those who are children or older adults, at the time when this judgment is issued. The treatment shall include, at least, the following: a) an updated medical diagnosis of each victim, which shall include any specialized studies required, such as neurological, psychometric and radiological evaluations, and additional blood and urine tests; b) the free and lifelong supply of medications or medical interventions that may be required for the treatment of the diagnosed ailments or illnesses, and c) travel expenses related to the victims' transportation from their place of residence to the place where they will receive medical treatment, if required. The State shall have six months from the date of notification of this judgment to prepare a protocol for compliance with this measure. It shall also report on the medical care provided to the victims within one year, in accordance with the provisions of the fourteenth operative paragraph of this judgment.

E. Measures of satisfaction

339. The ***representatives*** requested the following measures of satisfaction: a) the publication of the judgment and its official summary on the websites of various public

institutions and in the Official Gazette; b) the preparation of a child-friendly version of the judgment to be disseminated "in written, broadcast and virtual media at the national, regional and local level in La Oroya, and its inclusion in national public education textbooks, including, in particular, those used in public schools in the area of Yauli and La Oroya," and c) an act of acknowledgment of international responsibility and a public apology. The ***State*** expressed its willingness to publish the judgment in the Official Gazette and on the websites of the Ministries of Justice and Human Rights; however, it argued that the rest of the representatives' requests are "excessive" and do not constitute "necessary measures of satisfaction." The ***Commission*** requested full reparation for the human rights violations proven in this case.

340. As it has done in other cases,[554] the ***Court*** considers that the State must issue the following publications within six months from notification of this judgment: a) the official summary of this judgment prepared by the Court, once, in the Official Gazette in a legible and adequate font size; b) the official summary of this judgment prepared by the Court, once, in a newspaper with wide national circulation in a legible and adequate font size, c) this judgment in its entirety, available for one year on the websites of the Ministry of Mines and Energy, the Ministry of Health and the Ministry of the Environment, in a manner accessible to the public and from the home page of the website; d) an infographic or information booklet on the judgment, in language accessible to children and adolescents on the social networks of two public institutions dedicated to the promotion and protection of children and adolescents designated by the State for that purpose; and e) disseminate the judgment on the official social network accounts of the Ministry of Mines and Energy, the Ministry of Health and the Ministry of Environment. The publications shall state that the Inter-American Court has issued a judgment in this case declaring the international responsibility of the State, as well as the link whereby the full text of the judgment can be directly accessed. This publication shall be made at least five times by each institution, during business hours, and must remain on their social media profiles. The State shall immediately inform this Court once it proceeds to carry out each of the publications ordered, regardless of the one-year term to submit its first report, as ordered in twenty-fifth operative paragraph of this judgment.

341. Furthermore, the State is ordered to carry out a public act of acknowledgment of international responsibility in relation to the facts of this case, to be held in La Oroya within one year of notification of this judgment. In said act, the State shall refer to the human rights violations declared in this judgment, as well as to the reparation measures aimed at redressing the environmental and health damage caused. The aforementioned act shall be carried out in a public ceremony presided over by high-level State authorities, in the presence of the victims declared in this ruling and their representatives, if they so wish. For this purpose, the State shall cover any expenses that may be incurred. The date, location and arrangements for the ceremony, as well as the content of the message to be delivered during the event, shall be agreed previously with the victims and/or their representatives.[555] The act shall publicized in the media and the State shall have one year from notification of this judgment to comply with this measure.

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554 *Cf. Case of Cantoral Benavides v. Peru. Reparations and costs.* Judgment of December 3, 2001. Series C No. 88, para. 79, and *Case of Córdoba v. Paraguay, supra,* para. 128.

555 See, for example, the *Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs.* Judgment of November 25, 2006. Series C No. 160, para. 445, *Case of Pavez Pavez v. Chile. Merits, reparations and costs.* Judgment of February 4, 2022. Series C No. 449, para. 173, and *Case of Deras García et al. v. Honduras*. Merits, reparations and costs. Judgment of August 25, 2022. Series C No. 462, para. 109.

F. Guarantees of non-repetition

342. The ***Commission*** recommended that the State adopt the following measures to prevent a repetition of the facts of this case:

a) ensure that domestic air quality standards are compatible with international parameters and comply with State obligations to progressively protect economic, social, cultural and environmental rights (ESCER);
b) ensure that the reference values that measure levels of lead, arsenic, cadmium and other toxic metals in people are compatible with the international parameters established by the specialized authorities and the State's obligations of progressivity;
c) ensure effective monitoring and compliance with the PAMAs and, in particular, that any extensions or amendments made to them are based on criteria that are justified from a human rights perspective;
d) implement effective emergency alert systems in cases of hazardous activities and ensure that public officials take steps to prevent adverse effects on health and the environment, including the obligation to provide information to the local population;
e) ensure that the health system for the inhabitants of La Oroya offers specialized programs and services that effectively address the health problems stemming from environmental pollution and take into account the particular needs of children or patients that present some condition of vulnerability;
f) provide training for judicial and administrative authorities on environmental matters with a human rights approach to any decision, action or omission that adversely affects or may affect the environment or contravene relevant legal norms, taking into account international business and human rights instruments;
g) develop an information index necessary for the exercise or protection of human rights in the context of business activities based on this report and applicable to any equivalent case. Ensure that active transparency instruments are included in said list to make effective the right of access to information in a timely and complete manner. Establish mechanisms for requesting access to information which, for the purposes of business activities that have an impact on human rights, would require private corporations to receive, process and respond to requests for access to information, and to establish state mechanisms to follow up on negative and/or evasive responses from both public entities and private companies; and
h) adopt mechanisms and/or apply existing mechanisms in domestic law, in an effective manner, in order to guarantee the public participation of the victims in this case and the community of La Oroya in decision-making and policies on environmental issues that may have an impact on human rights.

343. The ***representatives*** requested that the Court order the following guarantees of non-repetition:

a) update the national reference values for lead, arsenic, cadmium and other toxic metals according to current WHO standards, as well as the Environmental Quality Standards and Maximum Permissible Limits related to these elements, in order to adopt measures "consistent with the national reality";
b) develop and implement medical care protocols for people affected by toxic metals with a differentiated perspective that includes quality health care for children, women and the elderly;
c) develop a national public policy to improve air quality in the country's industrial zones, including the implementation of an air quality monitoring system to monitor

and control environmental contamination;
e) create a publically accessible and timely information and data system to adequately inform and educate the public about the health risks posed by poor air quality; and
f) order the State to review and complement current plans in relation to the processes, plans and programs related to the liquidation and/or closure of the CMLO, and to consider the possible impact of these activities on the human rights of the population of La Oroya. In the event that the CMLO should resume its activities, they requested that the State be ordered to comprehensively and effectively monitor and oversee its activities.

344. The ***State*** made the following arguments with respect to the guarantees of non-repetition requested by the Commission and the representatives:

a) that the state-owned company *Activos Mineros S.A.C.* is leading the implementation of the Environmental Remediation and Management Programs, and also has a project for the "Remediation of Soils Affected by Emissions from the Metallurgical Complex of La Oroya," which is implemented by the consulting firm *Ground Water International* through a multidisciplinary study. It also reported that, through the Temporary Multisector Commission for the Comprehensive and Integrated Approach in favor of the Population Exposed to Heavy Metals, it is preparing a plan that will include "strategies for prevention, remediation, mitigation and control of exposure to heavy metals, with environmental and health aspects as its focal points;"
b) that through Supreme Decree Nº 020-2021.MINAM of July 22, 2021, an Environmental Quality Standards (ECA) and Maximum Permissible Limits (MPL) Plan was approved for 2021-2023, which incorporates the international standards adopted by the WHO as well as new parameters for heavy metals (such as cadmium, arsenic and chromium);
c) that the National Institute of Health has indicated that the reference value for clinically significant heavy metals has been progressively reduced, as there are numerous indications to suggest that "there is no threshold for toxic concentrations." In this regard, the State specified that it has taken as a reference the parameters of the United States Centers for Disease Control and Prevention (CDC);
d) that it has fifteen environmental management tools for the supervision of the La Oroya Metallurgical Complex, and that the obligations related to environmental remediation are contained in the Mine Closure Plan of the Metallurgical Complex;
e) that fourteen air quality surveys have been conducted in La Oroya to evaluate concentrations of sulfur dioxide and heavy metals, and that a Contingency Plan for Air Pollution States of Alert in the La Oroya Atmospheric Basin has also been approved. The State also reported that in 2020, the Environmental Assessment and Control Agency (*Organismo de Evaluación y Fiscalización Ambiental* (OEFA) issued 12 reports regarding compliance with the ECAs in La Oroya, which recorded 284 states of caution and six states of danger;
h) that it has designed and implemented multiple training courses on environmental law for judges and prosecutors;
i) that it has established regulations and specialized bodies to ensure transparency and access to environmental information, such as the National Environmental Information System, the National Authority for Transparency and Access to Public Information, and the Court for Transparency and Access to Public Information;
j) that, within the evaluation process of the environmental studies of the National Environmental Certification System for Sustainable Investments, the dissemination

and participation mechanisms (before and during the preparation of each study) provided for in the Citizen Participation Plan corresponding to each investment project are implemented, and the General Environment Act recognizes the right to participate in decision-making processes related to the environment and its components;
k) that it has implemented actions aimed at safeguarding the mental and physical health of the alleged victims through strategic documents such as the "Health Action Plan for the beneficiaries of Precautionary Measure Nº 271-05, Case of La Oroya and its 2019-2022 extension," for which reason said guarantee of non-repetition is unnecessary, and
l) that the representatives have not justified how the reparation measure aimed at supervising the CMLO's operations in the event that it resumes its activities would affect the restitution of the alleged victims' rights**.**

345. The ***Court*** takes note of the legislative and public policy measures reportedly implemented by the State with respect to environmental protection,[556] health care,[557] and access to information and political participation.[558] Nevertheless, the Court notes

[556] In its Answering brief, the State reported the following actions: Supreme Decree No. 058-2006-EM of October 4, 2006, creation of the company *Activos Mineros S.A.C.*, which is in charge of the "Remediation Project in Soils Affected by Emissions from the La Oroya Metallurgical Complex (CMLO)"; Supreme Decrees No. 002-2013-MINAM and 002-2014-MINAM through which the Ministry of the Environment approved the Environmental Quality Standards for Soils and supplementary provisions. In addition, Supreme Decree N° 034-2020-PCM, which created the temporary Multisector Commission for the Comprehensive and Integrated Approach in favor of the Population Exposed to Heavy Metals. Regarding air quality standards and maximum permissible limits, the State reported that through the Environmental Quality Standards and Maximum Permissible Limits Plan for 2021-2023, it has established new parameters for cadmium, arsenic and chrome based on international air quality standards adopted by the WHO regarding air quality and maximum permissible limits. As for the measures adopted to implement the emergency alert systems, the State reported that DIGESA carried out 14 spot checks of air quality between 2006 and 2019, which are published on the DIGESA website. It also indicated that through the CONAM Executive Council Decree No. 015-007-CONAM-CD the Contingency Plan for Air Pollution States of Alert in the Atmospheric Basin of La Oroya was approved. See: Answering brief of the State, of July 22, 2022, paras. 598 to 637 (merits file, folios 746 to 757).

[557] In its Answering brief, the State also reported that it has been implementing actions aimed at safeguarding the physical and mental health of the alleged victims through the creation of the "Health Action Plan for the beneficiaries of Precautionary Measure No. 271-05- Case of La Oroya and its extension, 2019-2002." As part of this plan "samples have been taken from 38 beneficiaries to measure heavy metal levels" and "comprehensive care" has been provided to 28 beneficiaries of Precautionary Measure No. 271-05-. It also referred to various technical documents issued by MINSA to provide health coverage for people affected by mining contamination, namely: i) the Practical Clinical Guide for the Diagnosis and Treatment of Mercury Poisoning; ii) a Health Policy that establishes the procedure for a comprehensive approach to treating the population exposed to heavy metals, metalloids, and other chemical substances and iii) Ministerial Resolution No. 1023-2020/MINSA of December 14, 2020. It added that Law No. 274g08 establishes a mechanism of preferential treatment for pregnant women, children, older adults and persons with disabilities. See: Answering brief of the State. July 22, 2022, paras. 547 to 561 (merits file, folios 724 to 732).

[558] In its Answering brief, the State explained that there are regulations to protect the right of access to information. It specifically referred to the Law on Transparency and Access to Public Information and noted that the Ministry of Energy and Mines has an online evaluation system, through which the current environmental impact studies can be consulted. It added that Peru has a National Environmental Information System (SINIA), a network for institutional integration that "facilitates the systematization, access and distribution of environmental information." It explained that Legislative Decree No. 1353 of 2017 created the National Authority for Transparency and Access to Public Information (ANTAIP) as the "management body for the transparency policy." Regarding efforts to ensure political participation in environmental matters, the State reported that through Law No. 29968, the National Environmental Certification Service for Sustainable Investments (SENACE) was created which reviews and approves Environmental Impact Assessments (EIA). In the evaluation processes of SENACE's environmental studies, dissemination and participation mechanisms were developed in accordance with the Citizen Participation Plan for each specific investment project. They indicated that, in the mining sector in particular, there is Supreme Decree No. 028-2008-EM and Ministerial Resolution No. 304-2008-MEM/DM. Answering brief of the State, of July 22, 2022, paras. 672 to 697 (merits file, folios 769 to 774).

the absence of evidence that would allow it to determine how these measures can prevent the repetition of events such as those that occurred in the instant case. In this regard, given the impossibility of verifying the scope or impact of such actions by the State, and taking into account the violations that occurred in this case and the obligations established in this judgment, the Court deems it appropriate to order reparation measures as well as guarantees of non-repetition. This does not prevent the State, in the monitoring compliance with judgment stage, from proving that the actions it has already taken contribute to compliance with the measures described below.

346. First, the Court considers that the State must harmonize the regulations that define air quality standards, so that the maximum permissible values in the air for lead, sulfur dioxide, cadmium, arsenic, particulate matter and mercury do not exceed the maximum values required for the protection of the environment and human health. In determining these values, the State shall take into account the most recent criteria established by the World Health Organization and the available scientific information. In complying with this measure, the State must act in accordance with its obligation of non-retrogression of the right to enjoy a healthy environment and health. The State has a period of two years from notification of this judgment to implement this measure.

347. Second, the State must guarantee the effectiveness of the alert system in La Oroya. Thus, the State shall develop a monitoring system for air, soil and water quality in La Oroya to determine with precision the status of atmospheric pollution, together with appropriate mechanisms to ensure that people have access to such information. It shall also adopt measures to ensure that the population has prompt and adequate access to information on the declaration or suspension of states of alert, together with the consequences of such declarations. The State shall also issue regulations to ensure that public officials take the necessary decisions to prevent harm to the environment and human health when a state of alert is activated, in accordance with applicable domestic standards.

348. Third, the State shall ensure, immediately, that the inhabitants of La Oroya who suffer symptoms and diseases associated with exposure to pollutants from mining and metallurgical activities have access to specialized medical care through public institutions, and access to health personnel including medical, psychological and psychiatric treatment as required. In addition, the State shall establish a health system in La Oroya with adequate facilities for medical care that meets the standards of availability, accessibility, acceptability and quality of health services (*supra* para. 120). Likewise, in complying with this measure, the State shall provide differentiated care for children, pregnant women and the elderly, and ensure that all inhabitants of La Oroya have access to the public health system. Adequate facilities must be provided for the medical care of patients in La Oroya who suffer from diseases associated with exposure to pollutants produced by the CMLO's activities. When patients cannot be treated in La Oroya, medical services must be provided at the nearest site where such treatment is available. The State has one year from notification of this judgment to implement this measure.

349. In relation to the foregoing, the Court deems it appropriate to order the creation of an Assistance Fund to cover the costs of transportation, lodging and food for those persons who need to travel outside the city of La Oroya to receive medical treatment. Therefore, the State shall adopt all administrative, legislative, financial, human resources and other measures necessary for the timely establishment of this Fund, so that the money allocated to it may be effectively invested. The Fund will be administered by a Committee to be created for this purpose, which will be composed of one person

appointed by the inhabitants of La Oroya, through a public and transparent consultation process, one person appointed by the State, and a third person appointed by mutual agreement of the first two. This Committee shall be constituted within six months from notification of this judgment, and the State shall allocate, at least, the sum of USD $200,000.00 (two hundred thousand United States dollars) to this Fund, which shall be invested in accordance with the proposed objectives, within a fixed period of no more than four years from notification of this judgment. The Fund may not contain less than USD $200,000.00 at any time after its establishment. In determining the amount allocated to the Fund, the Court considers that is must be reasonable in order to fulfill the purpose of the measure as well as the rest of the measures ordered and the complexity and costs they entail. The State shall report on the medical care provided to the inhabitants of La Oroya, as well as on the management of the Fund, within a period of one year in accordance with the twenty-fifth operative paragraph of this judgment.

350. Fourth, the State shall adopt and implement measures to ensure that the CMLO's operations are carried out in accordance with international environmental standards, preventing and mitigating damage to the environment and to the health of the inhabitants of La Oroya. In this regard, it shall monitor and oversee compliance with the environmental and social commitments derived from the environmental management instruments applicable to the CMLO and the international standards established in this judgment. The State shall ensure that the administrative permits for the operation and, if necessary, the closure of the CMLO, are granted in accordance with the applicable national regulations and international environmental standards.

351. Furthermore, the State shall design and implement an environmental compensation plan applicable to the high-Andean ecosystem of La Oroya so that the CMLO's operations include an environmental commitment to the full restoration of the ecosystem. The State shall ensure that the environmental compensation plan applicable to the CMLO includes, at a minimum: a) an analysis that allows for a zero net loss of biodiversity, achieving at least a net neutral balance; b) the identification of ecological equivalence based on an analysis of ecosystem services; and c) the search for "additionality" in the environmental compensation. The State shall monitor and oversee the execution of the environmental compensation plan until its completion, which will entail the full restoration of the ecosystem in the La Oroya area, notwithstanding the implementation of other measures related to the progressive and final closure of the CMLO.

352. Similarly, the State shall ensure that mining or metallurgical operations are carried out in accordance with the UN Guiding Principles on Business and Human Rights (*supra* para. 110) and the Framework Principles on Human Rights and the Environment (*supra* para. 117). Thus, the State must ensure that mining companies are held responsible for the consequences and provide compensation for environmental damage caused by their operations, in accordance with "the polluter pays" principle. The State shall also take the necessary steps to ensure that the approved environmental management instruments applicable to mining projects incorporate, as an explicit commitment, the protection of human rights, including the right to a healthy environment.

353. Fifth, the Court considers it necessary that the State design and implement a permanent training program on environmental matters for judicial and administrative officials working in the Judiciary and in the institutions responsible for the large and medium-scale mining sector in Peru, with an emphasis on populations in areas of direct and indirect influence of current extractive projects. The training program should cover international standards and national legislation on environmental protection, health,

access to information and political participation, particularly with respect to due diligence obligations in environmental matters, as indicated in this judgment. It should also include information on the principles of environmental protection, the obligations of States to prevent human rights violations by extractive companies, and the rights of people in the context of environmental pollution. Likewise, the State shall create a system of indicators to measure the effectiveness of the training program and to verify its impact and effectiveness. The State has one year from notification of this judgment to implement this measure.

354. Sixth, the State shall design and implement an information system containing data on air and water quality in areas of Peru where there are major mining and metallurgical operations. This system should contain information for the population on the health risks stemming from exposure to air and water pollution, the content of citizens' rights to enjoy a healthy environment and health and the means for their protection, as well as existing mechanisms to request information and to guarantee political participation in environmental matters. The information system must include a mechanism to inform people in real time, through electronic means, when data on air and water quality in any of the areas of Peru where there is a major mining and metallurgical operation reflect levels of contamination that constitute a health risk. The State shall ensure that this information is accessible and shall inform the population of its existence. The information shall be continuously updated until full compliance with this judgment has been achieved. The State has one year from notification of this judgment to implement this measure.

355. In addition, the State shall develop a plan to relocate those inhabitants of La Oroya who wish to be resettled in another city. To that end, the State shall prepare a plan that includes the following actions: a) conduct a study of the political, economic, environmental and social conditions for resettlement, prioritizing the relocation of the most affected persons; b) identify places for resettlement; c) consult the citizens to choose the best options; d) conduct a feasibility study of the approved options; e) design a financial strategy; f) execute the relocation process; and g) carry out monitoring and surveillance actions. The State has one year from notification of this judgment to prepare the plan, which will be evaluated by this Court.

G. Other measures requested

356. The ***Commission*** requested that the Court order the State to: a) create and implement, with the victims' participation, a plan to generate opportunities and alternatives for sustainable development in La Oroya, and b) order binding measures that require, encourage and guide businesses involved in mining and smelting activities to carry out due diligence on human rights matters in their processes or operations with respect to the rights to a healthy environment and health; this should include indicators to verify compliance.

357. For their part, the ***representatives*** requested that the following additional measures of reparation be ordered: a) the creation of a fund for health care and the improvement of the victims' living conditions; b) the upgrading of infrastructure to ensure the provision of health services for victims; c) the creation of the "La Oroya Chair of Environmental Law and Human Rights" as well as environmental and public health programs, and d) ensure that environmental management tools address the short, medium, long term and cumulative impacts that mining-metallurgical activities, works or projects could have on the health of individuals and communities, and incorporate measures and actions to prevent, monitor and mitigate the risks, based on best

practices**.**

358. In response to these requests, the ***State*** indicated the following: a) that the rehabilitation measure aimed at creating a health care fund and improving victims' living conditions is not justified by the violations alleged in this case; b) that the measures of satisfaction requested by the representatives, aside from the publication of the judgment, are "excessive" and unnecessary; c) that a strategy to improve the employment prospects of families in the community of La Oroya has already been drawn up, and d) that there are binding regulatory provisions that require mining companies to carry out their activities with due diligence in relation to environmental impact and that the National Action Plan on Business and Human Rights is currently being implemented**.**

359. With regard to the aforementioned requests of the Commission and the representatives, the ***Court*** considers that the latter's requests for the creation of a fund to provide health care and improve the victims' living conditions, and to upgrade the infrastructure to ensure the provision of health services for the victims, have already been addressed in the rehabilitation measures and the guarantees of non-repetition previously ordered, as well as in the orders aimed at improving medical care in La Oroya.

360. Finally, the Court considers that the issuance of this judgment, together with the other measures ordered, are sufficient and adequate to remedy the violations suffered by the victims, and therefore does not find it necessary to order the additional measures requested by the victims.

H. Compensation

H.1. Pecuniary damage

H.1 (1) Arguments of the Commission and the parties

361. The ***Commission*** requested that the State provide comprehensive reparation for human rights violations declared in the Merits Report, including the necessary measures of compensation and satisfaction with respect to the pecuniary and non-pecuniary damage suffered by the alleged victims.

362. In relation to consequential damage, the ***representatives*** stated that the alleged victims incurred a series of expenses related to: a) private medical examinations and treatment due to the effects of pollution; b) changes in their place of residence due to health problems and the situation of harassment, and c) access to justice. For example, María 3, 13, 15, 16, 34 and 36 had to seek private medical care to treat their ailments. The representatives also pointed out that four families had to leave the area due to the medical condition of some of their members, or because of the harassment they suffered. Finally, with regard to expenses related to the search for justice, they noted that the victims had to travel to meetings, communicate by telephone, coordinate with their legal representatives, and travel to receive assistance as a result of the precautionary measures ordered in this case. Therefore, they requested that the sum of USD $15,000.00 be awarded for consequential damages to each of the victims in this case, or to the heirs of the victims who have died during the processing of this case before the inter-American system.

363. In relation to loss of profits, the representatives pointed out that the victims in this case have suffered a loss of income as a result of the violations. Specifically, they

indicated that, owing to the facts of this case: a) Juan 4, 9, 11, 15, 25, and 30, and María 17 and 20 were dismissed from their jobs or ceased to receive any income; b) María 1, 2, 5, 7, 10, 11, 12, 19, 27, 29, 30, 31, 33, 36, 37, 38, and Juan 6 and 30 lost income because of the unpaid work they carried out as caregivers as a result of the violations suffered, and c) María 29, 35 and 37, and Juan 5, 26, 30 and 42 lost income as a result of the forced changes of residence. In view of this, they requested that the State be ordered to pay the sum of USD $15,000.00 (fifteen thousand United States dollars) to each of the victims for loss of earnings, or to the heirs of the victims who died during the processing of this case before the Inter-American system.

364. In addition, the representatives made specific assessments with respect to the calculation of pecuniary damage in the cases of María 14 and Juan 5. Specifically, they argued that both María 14 and Juan 5, as well as their families, "incurred various expenses for health care and funeral expenses. Regarding loss of earnings, they pointed out that María 14 was seventeen years old when she died as a result of a "deterioration in her health" that "could be attributed to the pollution to which she had been exposed all her life." They pointed out that although María 14 did not carry out any paid work, she attended high school. They argued that, according to Peruvian legislation, loss of earnings should be determined based on the minimum wage, taking into account the average life expectancy, which, in this particular case, would correspond to the sum of USD $423,579.00 (four hundred and twenty-three thousand five hundred and seventy-nine United States dollars). As for Juan 5, who was 47 years old at the time of his death and worked as a taxi driver, they requested that, taking into account the average life expectancy, the State be ordered to pay the sum of USD $73,943.00 (seventy-three thousand nine hundred and forty-three United States dollars) for loss of earnings. Accordingly, they asked that the State be ordered to pay the sum of USD $150,000.00 (one hundred and fifty thousand United States dollars) to "both victims" for pecuniary damage.

365. For its part, the ***State*** argued that there was no supporting evidence to justify the amount claimed by the representatives. Regarding the amount estimated for consequential damages in the cases of María 13 and Juan 5, the State argued that the representatives "have not presented any evidence of the expenses incurred and/or any justification for not presenting it." Thus, it concluded that it would not be appropriate to set an amount for this item. With respect to the amount calculated for María 14, for loss of profits, the State indicated that she "was not involved in any commercial activity," and that the representatives did not provide "evidence to prove the high school studies mentioned." As for the amount estimated for Juan 5 for loss of profits, they argued that the representatives "did not provide any supporting evidence."

H.1.2. Considerations of the Court

366. In its case law, the ***Court*** has established that pecuniary damage supposes the loss of or detriment to the victims' income, the expenses incurred owing to the facts and the consequences of a pecuniary nature that have a causal nexus with the facts of the case.[559]

367. In the instant case, the Court finds that, in the absence of evidentiary support, it cannot precisely quantify the amounts disbursed by the victims as a result of the facts, or the loss of income. Nevertheless, this Court considers that, based on the violations

[559] *Cf. Case of Bámaca Velásquez v. Guatemala. Reparations and costs. Judgment of February 22, 2002*. Series C No. 91, para. 43, and *Case of Baptiste et al. v. Haiti, supra,* para. 122.

declared, it is reasonable to conclude that the victims incurred various expenses and loss of income associated with the medical treatment and care resulting from the damage to their health,[560] as well as their displacement stemming from the situation of harassment and intimidation.[561] Therefore, the Court establishes, in equity, the sum of USD $15,000.00 (fifteen thousand United States dollars) as compensation for pecuniary damage, for each of the direct victims indicated in Annex 2 of this judgment, with the exception of María 14 and Juan 5.

368. With regard to María 14 and Juan 5, who died from diseases acquired as a result of their exposure to environmental contamination in La Oroya, and considering the expenses incurred and the loss of income due to this fact, the Court establishes, in equity, the sum of USD $35,000.00 (thirty-five thousand United States dollars) for each one as compensation for pecuniary damage.

369. In the case of the victims María 14, María 38, Juan 5, Juan 12, Juan 19 and Juan 40, who died, the amount for pecuniary damage shall be delivered to their heirs in accordance with the provisions established in the current inheritance laws of Peru.

H.2. Non-pecuniary damage

H.2.1. Arguments of the Commission and the parties

370. The ***Commission*** requested full reparation for the human rights violations declared in the Merits Report, including measures of compensation and satisfaction necessary to redress the pecuniary and non-pecuniary damage suffered by the alleged victims.

371. Regarding non-pecuniary damage, the ***representatives*** argued that the alleged

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[560] For illustrative purposes see the statements of Juan 1, 6, 15 and María 25, 32, and 33. In his statement, Juan 1 explained that "because of the lack of quality medical attention, [he] constantly traveled to Lima to buy prepared medicines or vitamins" which he purchased "twice a year" spending "around 600-700 soles annually." For his part, Juan 6 stated that he "had to pay for many medicines, treatments and private doctors" which "affected [his] finances." Juan 15 stated that he had to "resort to private doctors and incurred medical expenses." For example, he indicated that "to treat [his] stomach problems [he] paid 3800 soles, apart from travel expenses." He added that he also had to pay for "an emergency operation for [his] son at the clinic in Huancayo, where "he had surgery" and had to "pay 5,000 soles." María 25 declared that "the pollution together with the lack of medical attention greatly affected the family's finances" because her parents were forced to take her to "private doctors, [and] buy [her] medicines" which implied "many expenses." María 32 stated that she "always had to go to private doctors and cover the high costs of medical care." María 33 stated that she "did not have health insurance [at that time]" and that "if [you] had money they would not see you [at the health centers]." *Cf.* Statements of Juan 1, 6, 15 and María 25, 32, and 33 (evidence file, folios 28954, 28974, 29009, 29079, 29087, and 29085).

[561] For illustrative purposes, see the statements of Juan 1, Juan 2, Juan 6, Juan 18, Juan 25 and María 37. Juan 1, who was a member of MOSAO, stated that his wife "used to produce woven handicrafts," but that "she couldn't go out to sell them because they would say 'these are the people who want to shut down our company'." Juan 2 reported that, after expressing his opposition to the activities at the Complex, "the stigmatization against [him] began," which "affected [his] livelihood, because [he] had a restaurant and a sauna" but the company workers "stopped coming" because he was "seen as the enemy." Juan 6 stated that "the community also changed a lot" and that "[m]any people had to leave the province" because "they no longer had jobs and needed to earn a living." Juan 18 stated that his "three children were harmed by the smoke and can't work at the moment" so he has "to support them financially." Juan 25 stated that "the impact [of the pollution] has been enormous," causing "unemployment, depopulation, [and] displacement." María 37 recalled that "in 2007 [she] already noticed that [her] children had scaly skin and suffered from fainting spells" so she "was forced to escape from the town." *Cf.* Statements of Juan 1, 2, 6, 18 and 25 and María 37 (evidence file, folios 28955, 28962, 28974, 29016, 29026, and 29105).

victims have suffered moral damage due to the "suffering and afflictions caused by living in one of the world's most polluted cities," and the "search for justice and the harassment and accusations faced by those who defend and protect their rights." In addition, the representatives pointed out that the violations alleged in this case had caused harm to the alleged victims' life projects. They also argued that the State should provide compensation for the non-pecuniary damage caused in relation to the right to life of María 14 and Juan 5.

372. For its part, the ***State*** pointed out that the representatives had not provided evidence to support the amount claimed. In view of this, it argued that the Court "should not establish an amount for this item."

H.2.2. Considerations of the Court

373. The ***Court*** has established in its case law that non-pecuniary damage "may include both the suffering and distress caused to the direct victims and their next of kin, the impairment of values that are very significant to them, as well as changes of a non-pecuniary nature in the living conditions of the victim or his family." However, since it is not possible to assign a precise monetary value to non-pecuniary damage, this can only be compensated, for the purposes of comprehensive reparation to victims, through the payment of a sum of money or the delivery of goods or services that can be estimated in monetary terms, as prudently determined by the Court, in application of judicial discretion and the principle of equity.[562]

374. The Court recalls that it has specified in its case law that damage to a person's life plan is a notion that differs from loss of earnings and consequential damage,[563] since it has to do with the potential for full self-realization of the individuals concerned, taking into account their vocation, aptitudes, circumstances, potential and ambitions, which allow them to reasonably set specific goals for themselves, and to attain those goals.[564] Thus, an individual's life plan is expressed in expectations of personal, professional and family development, which are possible in normal conditions.[565] The Court has also pointed out that damage to the life plan "implies the loss or severe diminution, in a manner that is irreparable or reparable only with great difficulty, of a person's prospects for self-development."[566] In certain cases the Court has ordered compensation related to this type of damage, among other measures.[567]

375. Thus, the Court deems it reasonable to consider that the violations of the rights to health, a decent life and personal integrity declared in the instant case, disrupted the alleged victims' life plans. In particular, it considers that an analysis of the human rights

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562 *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala*. *Reparations and costs, supra,* para. 84, and *Case Rodríguez Pacheco et al. v. Venezuela, supra,* para. 186.

563 *Cf. Case of Loayza Tamayo v. Peru, supra*, para. 147, and *Case of Aguinaga Aillón v. Ecuador, supra,* para. 134.

564 *Cf. Case of Loayza Tamayo v. Peru, supra*, para. 147, and *Case of Baptiste et al. v. Haiti, supra,* para. 68.

565 *Cf. Case of Tibi v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 7, 2004, Series C, No. 114, para. 245, and *Case of Baptiste et al. v. Haiti, supra,* para. 68.

566 *Cf. Case of Loayza Tamayo v. Peru,* supra, para. 150, and *Case of Aguinaga Aillón v. Ecuador, supra,* para. 134.

567 *Cf. Case of the Dos Erres Massacre v. Guatemala*, supra, para. 293 and *Case of Aguinaga Aillón v. Ecuador, supra,* para. 134.

violations in this case leads to the conclusion that the environmental contamination affected the victims and had an impact on different aspects of their lives, preventing them from realizing their life plan in normal circumstances. In other words, it impacted the victims' personal, family and professional development, which merits a different assessment from the damage and suffering caused exclusively by the violations of their personal integrity and health.

376. Therefore, considering the circumstances of this case, the violations committed in the terms described in this judgment, the suffering caused and experienced to different degrees, the effects on the victims' life plans, and the time elapsed, the Court establishes, in equity, the sum of USD $15,000.00 (fifteen thousand United States dollars) as compensation for non-pecuniary damage, for each of the direct victims listed in Annex 2 of this judgment, with the exception of those who were children, women or elderly persons during the time in which the violations declared in this judgment occurred, and in the cases of María 13 and Juan 5.

377. Also, the Court decides that those victims who were children, women or elderly persons at the time of the events, based on the provisions of paragraphs 232 to 235 and 246, and in accordance with Annex 2, shall be awarded the sum of USD $25,000.00 (twenty-five thousand United States dollars) due to their special condition of vulnerability and the differentiated effects arising from this. In the case of María 14 and Juan 5, who suffered from diseases acquired through exposure to environmental contamination that resulted in their deaths, each shall be awarded the sum of USD $30,000.00 (thirty thousand United States dollars).

378. In the case of the victims María 14, María 38, Juan 5, Juan 12, Juan 19 and Juan 40, who died, the sum for non-pecuniary damage shall be delivered to their heirs in accordance with the provisions of the current inheritance laws of Peru.

I. Costs and expenses

379. The ***representatives*** explained that the non-profit organization *AIDA* has acted as representative of the alleged victims since the beginning of the proceedings before the Inter-American system, and that in the context of this representation, they have incurred expenses such as the payment of the legal team's fees, scientific support, coordination with local stakeholders, as well as travel to and from La Oroya to Lima and Washington to conduct the necessary proceedings during the processing of the case. According to *AIDA's* estimates, the aforementioned disbursements total USD $577,000.00. The representatives also pointed out that *APRODEH* has supported the processing of this case for eleven years, during which time it has incurred expenses related to the "constant and uninterrupted" travel of its staff to La Oroya and other areas of the department of Junín. Consequently, they requested that the Court establish in equity the amount that the State should pay in this regard, and that this sum be reimbursed to *APRODEH*.

380. The ***State*** argued that the expenses reported by *AIDA* have not been duly proven. As for the amount corresponding to professional expenses, it noted that this is not supported by receipts for payment.

381. The ***Court*** reiterates that, in accordance with its case law,[568] costs and expenses

[568] *Cf. Case of Garrido and Baigorria v. Argentina. Reparations and costs.* Judgment of August 27, 1998. Series C No. 39, para. 82, and *Case of Córdoba v. Paraguay, supra,* para. 155.

form part of the concept of reparation, because the efforts made by the victims to obtain justice at both the national and international level involve disbursements that should be compensated when the international responsibility of the State has been declared in a judgment. Regarding the reimbursement of costs and expenses, it is for the Court to make a prudent assessment of their scope. This includes the expenses arising from proceedings before the domestic jurisdiction and also those incurred in the course of the proceedings before the inter-American system, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment must be made taking into account the expenses indicated by the parties, provided that the quantum is reasonable.[569]

382. Therefore, taking into account the amounts requested by each of the organizations and the receipts for expenses submitted, the Court decides to award, in equity, a total of USD $80,000.00 (eighty thousand United States dollars) for costs and expenses in favor of *AIDA*, as well as the sum of USD $20,000.00 (twenty thousand United States dollars) in favor of *APRODEH*. Said amounts shall be delivered directly to those organizations. During the monitoring compliance with judgment stage, the Court may order the State to reimburse the victims or their representatives for any reasonable expenses incurred at that procedural stage.

J. Reimbursement of expenses to the Victims' Legal Assistance Fund of the Inter-American Court

383. In 2008, the General Assembly of the Organization of American States established the Legal Assistance Fund of the Inter-American Human Rights System, in order to "facilitate access to the inter-American human rights system by persons who currently lack the resources needed to bring their cases before the system."[570]

384. In a note dated August 1, 2023, the Secretariat of the Court forwarded a report to the State on the disbursements made in application of the Victims' Legal Assistance Fund in this case, which totaled USD $7,862.20 (seven thousand eight hundred and sixty-two United States dollars and twenty cents) and, in accordance with Article 5 of the Rules for the Operation of the Fund, the State of Peru was granted a period of time to submit any observations deemed pertinent. On August 10, 2023, the State submitted a brief in which it pointed out that only receipts for airline tickets and lodging expenses were presented, but that no receipts were submitted for domestic travel, food and incidental expenses incurred to attend the public hearing in this case held in the city of Montevideo, Uruguay, on October 12 and 13, 2022. In this regard, as stated in the aforementioned report of August 1, 2023, the Court emphasizes that per diem and terminal expenses were determined according to a per diem table of the Organization of American States applicable to the city of Montevideo, Uruguay, in force in August 2022. Consequently, it was not necessary to submit any additional receipts as proof of those expenses.

385. The State also noted that in this case, the exchange rate established by the Central Reserve Bank of Peru for October 5 and 6, 2022, was used as reference for the

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569 *Cf. Case of Garrido and Baigorria v. Argentina, supra,* para. 82, and *Case of Córdoba v. Paraguay, supra,* para. 155.

570 AG/RES. 2426 (XXXVIII-O/08), Resolution adopted by the OAS General Assembly during its XXXVIII Regular Session, at the fourth plenary session, held on June 3, 2008: *"Establishment of the Legal Assistance Fund of the Inter-American System of Human Rights,"* Operative paragraph 2.a), and CP/RES. 963 (1728/09), Resolution adopted on November 11, 2009 by the Permanent Council of the OAS, "*Rules for the Operation of the Victims' Legal Assistance Fund of the Inter-American Human Rights System,*" Article 1(1).

conversion of Peruvian soles to US dollars to calculate the amount to be paid for the affidavits. On this point, the State requested that the Court use the exchange rate established by the Superintendency of Banking, Insurance and Private Pension Fund Administrators. However, the Court notes that the official practice for calculating the conversion rate for foreign currency in the Victims' Legal Assistance Fund Reports has been to use as an official reference the information published by the respective Central Banks. The Court considers that in the present case, the State has not provided information to invalidate the importance of establishing currency conversion estimates using the parameters established by the Central Reserve Bank of Peru. Consequently, the Court dismisses the State's request.

386. Therefore, pursuant to Article 5 of the Rules for the Operation of the Fund, and given the violations declared in this judgment, and that the requirements to access the Fund have been met, the Court orders the State to reimburse the Fund in the amount of USD $7,862.20 (seven thousand eight hundred and sixty-two United States dollars and twenty cents) for necessary expenses. This amount shall be paid within six months of notification of this judgment.

K. Method of compliance with the payments ordered

387. The State shall pay compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses as established in this judgment directly to the persons indicated herein, within one year of notification of this judgment, or it may bring forward full payment in accordance with the following paragraphs.

388. In the event that the beneficiaries have died or die before they receive the respective compensation, this amount shall be delivered directly to their heirs, in accordance with the applicable domestic law.

389. The State shall comply with its monetary obligations by payment in United States dollars or the equivalent in Peruvian currency, using the market exchange rate published or calculated by the relevant banking or financial authority on the date closest to the day of payment to make the respective calculation.

390. If, for reasons that can be attributed to the beneficiaries of the compensation or their heirs, it is not possible to pay the amounts established within the time frame indicated, the State shall deposit said amounts in their favor in an account or certificate of deposit in a solvent Peruvian financial institution, in United States dollars, and on the most favorable financial terms permitted by banking law and practice. If the corresponding compensation is not claimed within ten years, the amounts shall be returned to the State with the accrued interest.

391. The amounts awarded in this judgment as compensation for pecuniary and non-pecuniary damage shall be paid in full directly to the persons indicated, in accordance with the terms of this judgment, without any deductions arising from possible taxes or charges.

392. If the State should fall into arrears, including in the reimbursement of expenses to the Victims' Legal Assistance Fund, it shall pay interest on the amount owed corresponding to banking interest on arrears in the Republic of Peru.

X
OPERATIVE PARAGRAPHS

393. Therefore,

THE COURT

DECIDES,

By five votes in favor and two against,

1. To dismiss the preliminary objection regarding the Court's jurisdiction *ratione materiae* and *ratione temporis* to rule on violations of Article 26 of the American Convention on Human Rights, pursuant to paragraphs 24 to 28 of this judgment.

Dissenting, Judge Humberto Antonio Sierra Porto and Judge Patricia Pérez Goldberg.

Unanimously,

2. To dismiss the preliminary objection of failure to exhaust domestic remedies, pursuant to paragraphs 32 to 43 of this judgment.

DECLARES,

By five votes in favor and two against, that:

3. The State is responsible for the violation of the right to a healthy environment, recognized in Article 26 of the American Convention on Human Rights, both in terms of its immediate enforceability and the prohibition of retrogression, and in its individual and collective dimensions, in relation to Articles 1(1) and 2 of the same instrument, to the detriment of the persons indicated in Annex 2, pursuant to paragraphs 107 to 129, 153 to 187 and 266 of this judgment.

Dissenting, Judge Humberto Antonio Sierra Porto and Judge Patricia Pérez Goldberg

By five votes in favor and two against, that:

4. The State is responsible for the violation for the right to health, recognized in Article 26 of the American Convention on Human Rights, in relation to Article 1(1) of the same instrument, to the detriment of the persons indicated in Annex 2, pursuant to paragraphs 130 to 134, 188 to 214, and 266 of this judgment.

Dissenting, Judge Humberto Antonio Sierra Porto and Judge Patricia Pérez Goldberg.

Unanimously, that:

5. The State is responsible for the violation of the right to life, recognized in Article 4(1) of the American Convention on Human Rights, in relation to Article 1(1) of the same instrument, to the detriment of Juan 5 and María 14, pursuant to paragraphs 135 to 138, 215 to 219 and 266 of this judgment.

6. The State is responsible for the violation of the rights to a decent life and personal

integrity, recognized in Articles 4(1) and 5 of the American Convention on Human Rights, in relation to Article 1(1) of the same instrument, to the detriment of the persons indicated in Annex 2, pursuant to paragraphs 136 to 138, 220 to 234 and 266 of this judgment.

7. The State is responsible for the violation of the rights of the child, established in Article 19 of the American Convention on Human Rights, in relation to Article 1(1) of the same instrument, to the detriment of 57 persons, in the terms of paragraphs 139 to 143, 235 to 245 and 266 of this judgment.

8. The State is responsible for the violation of the rights of access to information and political participation, established in Articles 13 and 23 of the American Convention on Human Rights, in relation to Article 1(1) of the same instrument, to the detriment of the persons indicated in Annex 2, pursuant to paragraphs 144 to 152, 246 to 261 and 266 of this judgment.

9. The State is responsible for the violation of the right to an effective legal remedy, recognized in Article 25(2)(c) of the American Convention on Human Rights, in relation to Article 1(1) of the same instrument, to the detriment of the persons indicated in Annex 2, pursuant to paragraphs 270 to 302 of this judgment.

10. The State is responsible for failure to comply with its duty to investigate, in violation of the rights established in Articles 8(1) and 25 of the American Convention on Human Rights, in relation to Article 1(1) of the same instrument, to the detriment of María 1, María 11, María 13, Juan 2, Juan 7, Juan 12, Juan 13, Juan 17, and Juan 19, pursuant to paragraphs 303 to 319 of this judgment.

AND ESTABLISHES:

Unanimously, that:

11. This judgment constitutes, *per se*, a form of reparation.

12. The State shall initiate and continue the investigations with respect to the acts of harassment and threats against the victims in this case, and with respect to the environmental contamination in La Oroya, in accordance with the provisions of paragraphs 327 and 328 of this judgment.

13. The State shall carry out a baseline assessment and prepare an action plan to remediate the environmental damage caused in La Oroya, in accordance with the provisions of paragraphs 333 and 334 of this judgment.

14. The State shall provide, free of charge and for as long as necessary, medical psychological and psychiatric treatment, as required, to the victims of the violations of the right to health, personal integrity and a decent life, pursuant to paragraph 338 of this judgment.

15. The State shall issue the publications indicated in paragraph 340 of this judgment, and shall organize a public act of acknowledgment of international responsibility, in accordance with the provisions of paragraph 341 of this judgment.

16. The State shall harmonize the legislation that establishes air quality standards for the protection of the environment and human health, in the terms of paragraph 346 of

this judgment.

17. The State shall ensure the effectiveness of the alert system in La Oroya, pursuant to paragraph 347 of this judgment.

18. The State shall ensure that the inhabitants of La Oroya who suffer symptoms or illnesses related to exposure to pollutants have access to specialized medical treatment and that a health system is in place to provide adequate medical care in the terms of paragraphs 348 and 349 of this judgment.

19. The State shall adopt and implement measures to ensure that the operations at La Oroya Metallurgical Complex are conducted in accordance with international environmental standards, and in conformity with national legislation. It shall also implement environmental compensation measures and ensure that mining companies carry out their activities in line with the Guiding Principles on Business and Human Rights and the Framework Principles on Human Rights and the Environment, in the terms of paragraphs 350, 351 and 352 of this judgment.

20. The State shall implement a training program for judicial and administrative officials working in the Judiciary and in the competent institutions responsible for the large and medium-scale mining sector in Peru, pursuant to paragraph 353 of this judgment.

21. The State shall develop an information system containing data on air and water quality in areas of Peru where there are major mining and metallurgical operations, pursuant to paragraph 354 of this judgment.

22. The State shall prepare a plan for the relocation of those inhabitants of La Oroya who wish to be resettled, in the terms of paragraph 355 of this judgment.

23. The State shall pay the amounts established in paragraphs 367, 368, 369, 376, 377 and 378 of this judgment, as compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses, in the terms of paragraph 382 of this judgment.

24. The State shall reimburse the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights for the amount disbursed during the processing of this case, pursuant to paragraph 386 of this judgment.

25. The State shall, within one year of notification of this judgment, provide the Court with a report on the measures adopted to comply with it.

26. The Court will monitor full compliance with this judgment, in exercise of its authority and in fulfillment of its obligations under the American Convention on Human Rights, and will close this case once the State has complied fully with its provisions.

Judges Ricardo C. Pérez Manrique, Eduardo Ferrer Mac-Gregor Poisot and Rodrigo Mudrovitsch advised the Court of their concurring opinion. Judges Humberto Antonio Sierra Porto and Patricia Pérez Goldberg advised the Court of their partially dissenting opinion.

DONE at San José, Costa Rica, on November 27, 2023, in the Spanish language.

Ricardo C. Pérez Manrique
President

Eduardo Ferrer Mac-Gregor Poisot

Humberto Antonio Sierra Porto

Nancy Hernández López

Verónica Gómez

Patricia Pérez Goldberg

Rodrigo Mudrovitsch

Pablo Saavedra Alessandri
Registrar

So ordered,

Ricardo C. Pérez Manrique
President

Pablo Saavedra Alessandri
Registrar

ANNEX 1
Alleged victims identified by the Inter-American Commission on Human Rights

No.	Name[1]	Minor at the time of filing the petition
1	**María 1**	**No**
2	**María 2**	**No**
3	**María 3**	**No**
4	**María 4**	**Yes**
5	**María 5**	**No**
6	**María 6**	**No**
7	**María 7**	**No**
8	**María 8**	**Yes**
9	**María 9**	**No**
10	**María 10**	**No**
11	**María 11**	**No**
12	**María 12**	**No**
13	**María 13**	**No**
14	**María 14**	**Yes**
15	**María 15**	**Yes**
16	**María 16**	**Yes**
17	**María 17**	**No**
18	**María 18**	**Yes**
19	**María 19**	**No**
20	**María 20**	**No**
21	**María 21**	**Yes**
22	**María 22**	**Yes**
23	**María 23**	**No**
24	**María 24**	**No**
25	**María 25**	**Yes**
26	**María 26**	**No**
27	**María 27**	**No**
28	**María 28**	**No**
29	**María 29**	**No**
30	**María 30**	**No**
31	**María 31**	**No**
32	**María 32**	**No**
33	**María 33**	**No**
34	**María 34**	**No**
35	**María 35**	**No**
36	**María 36**	**No**
37	**María 37**	**No**
38	**María 38**	**No**
39	**Juan 1**	**No**
40	**Juan 2**	**No**
41	**Juan 3**	**Yes**
42	**Juan 4**	**No**

[1] The real names of the persons identified in this document as "María" and "Juan" are referred to in the proceedings before the Inter-American Commission and have been brought to the attention of the State.

43	**Juan 5**	**No**
44	**Juan 6**	**No**
45	**Juan 7**	**No**
46	**Juan 8**	**Yes**
47	**Juan 9**	**Yes**
48	**Juan 10**	**Yes**
49	**Juan 11**	**No**
50	**Juan 12**	**No**
51	**Juan 13**	**No**
52	**Juan 14**	**Yes**
53	**Juan 15**	**No**
54	**Juan 16**	**No**
55	**Juan 17**	**No**
56	**Juan 18**	**No**
57	**Juan 19**	**No**
58	**Juan 20**	**No**
59	**Juan 21**	**Yes**
60	**Juan 22**	**No**
61	**Juan 23**	**Yes**
62	**Juan 24**	**No**
63	**Juan 25**	**No**
64	**Juan 26**	**No**
65	**Juan 27**	**Yes**
66	**Juan 28**	**Yes**
67	**Juan 29**	**No**
68	**Juan 30**	**No**
69	**Juan 31**	**Yes**
70	**Juan 32**	**No**
71	**Juan 33**	**No**
72	**Juan 34**	**Yes**
73	**Juan 35**	**Yes**
74	**Juan 36**	**No**
75	**Juan 37**	**Yes**
76	**Juan 38**	**No**
77	**Juan 39**	**No**
78	**Juan 40**	**Yes**
79	**Juan 41**	**No**
80	**Juan 42**	**No**

ANNEX 2
Victims identified by the Inter-American Court of Human Rights

No.	Name[1]	Woman /Man	Children/ Adolescents	Alive/ Deceased	Elderly Persons
1	**María 1**	**Woman**	**No**	**Alive**	**Yes**
2	**María 2**	**Woman**	**No**	**Alive**	**Yes**
3	**María 3**	**Woman**	**Yes**	**Alive**	**No**
4	**María 4**	**Woman**	**Yes**	**Alive**	**No**
5	**María 5**	**Woman**	**Yes**	**Alive**	**No**
6	**María 6**	**Woman**	**Yes**	**Alive**	**No**
7	**María 7**	**Woman**	**No**	**Alive**	**Yes**
8	**María 8**	**Woman**	**Yes**	**Alive**	**No**
9	**María 9**	**Woman**	**Yes**	**Alive**	**No**
10	**María 10**	**Woman**	**Yes**	**Alive**	**No**
11	**María 11**	**Woman**	**No**	**Alive**	**Yes**
12	**María 12**	**Woman**	**Yes**	**Alive**	**No**
13	**María 13**	**Woman**	**No**	**Alive**	**Yes**
14	**María 14**	**Woman**	**Yes**	**Deceased**	**No**
15	**María 15**	**Woman**	**Yes**	**Alive**	**No**
16	**María 16**	**Woman**	**Yes**	**Alive**	**No**
17	**María 17**	**Woman**	**Yes**	**Alive**	**No**
18	**María 18**	**Woman**	**Yes**	**Alive**	**No**
19	**María 19**	**Woman**	**Yes**	**Alive**	**No**
20	**María 20**	**Woman**	**No**	**Alive**	**Yes**
21	**María 21**	**Woman**	**Yes**	**Alive**	**No**
22	**María 22**	**Woman**	**Yes**	**Alive**	**No**
23	**María 23**	**Woman**	**Yes**	**Alive**	**No**
24	**María 24**	**Woman**	**Yes**	**Alive**	**No**
25	**María 25**	**Woman**	**Yes**	**Alive**	**No**
26	**María 26**	**Woman**	**Yes**	**Alive**	**No**
27	**María 27**	**Woman**	**Yes**	**Alive**	**No**
28	**María 28**	**Woman**	**Yes**	**Alive**	**No**

[1] The real names of the individuals identified in this document as "María" and "Juan" are known to the parties and to the Commission.

29	**María 29**	**Woman**	**Yes**	**Alive**	**No**
30	**María 30**	**Woman**	**No**	**Alive**	**Yes**
31	**María 31**	**Woman**	**No**	**Alive**	**Yes**
32	**María 32**	**Woman**	**Yes**	**Alive**	**No**
33	**María 33**	**Woman**	**Yes**	**Alive**	**No**
34	**María 34**	**Woman**	**Yes**	**Alive**	**No**
35	**María 35**	**Woman**	**Yes**	**Alive**	**No**
36	**María 36**	**Woman**	**No**	**Alive**	**Yes**
37	**María 37**	**Woman**	**Yes**	**Alive**	**No**
38	**María 38**	**Woman**	**No**	**Deceased**	**Yes**
39	**Juan 1**	**Man**	**No**	**Alive**	**Yes**
40	**Juan 2**	**Man**	**Yes**	**Alive**	**No**
41	**Juan 3**	**Man**	**Yes**	**Alive**	**No**
42	**Juan 4**	**Man**	**Yes**	**Alive**	**No**
43	**Juan 5**	**Man**	**No**	**Deceased**	**No**
44	**Juan 6**	**Man**	**Yes**	**Alive**	**No**
45	**Juan 7**	**Man**	**No**	**Alive**	**Yes**
46	**Juan 8**	**Man**	**Yes**	**Alive**	**No**
47	**Juan 9**	**Man**	**Yes**	**Alive**	**No**
48	**Juan 10**	**Man**	**Yes**	**Alive**	**No**
49	**Juan 11**	**Man**	**No**	**Alive**	**Yes**
50	**Juan 12**	**Man**	**No**	**Deceased**	**Yes**
51	**Juan 13**	**Man**	**No**	**Alive**	**Yes**
52	**Juan 14**	**Man**	**Yes**	**Alive**	**No**
53	**Juan 15**	**Man**	**No**	**Alive**	**Yes**
54	**Juan 16**	**Man**	**Yes**	**Alive**	**No**
55	**Juan 17**	**Man**	**No**	**Alive**	**Yes**
56	**Juan 18**	**Man**	**No**	**Alive**	**Yes**
57	**Juan 19**	**Man**	**No**	**Deceased**	**No**
58	**Juan 20**	**Man**	**Yes**	**Alive**	**No**
59	**Juan 21**	**Man**	**Yes**	**Alive**	**No**
60	**Juan 22**	**Man**	**Yes**	**Alive**	**No**
61	**Juan 23**	**Man**	**Yes**	**Alive**	**No**
62	**Juan 24**	**Man**	**Yes**	**Alive**	**No**

63	**Juan 25**	**Man**	**No**	**Alive**	**Yes**
64	**Juan 26**	**Man**	**Yes**	**Alive**	**No**
65	**Juan 27**	**Man**	**Yes**	**Alive**	**No**
66	**Juan 28**	**Man**	**Yes**	**Alive**	**No**
67	**Juan 29**	**Man**	**No**	**Alive**	**Yes**
68	**Juan 30**	**Man**	**Yes**	**Alive**	**No**
69	**Juan 31**	**Man**	**Yes**	**Alive**	**No**
70	**Juan 32**	**Man**	**Yes**	**Alive**	**No**
71	**Juan 33**	**Man**	**Yes**	**Alive**	**No**
72	**Juan 34**	**Man**	**Yes**	**Alive**	**No**
73	**Juan 35**	**Man**	**Yes**	**Alive**	**No**
74	**Juan 36**	**Man**	**Yes**	**Alive**	**No**
75	**Juan 37**	**Man**	**Yes**	**Alive**	**No**
76	**Juan 38**	**Man**	**Yes**	**Alive**	**No**
77	**Juan 39**	**Man**	**Yes**	**Alive**	**No**
78	**Juan 40**	**Man**	**Yes**	**Deceased**	**No**
79	**Juan 41**	**Man**	**No**	**Alive**	**Yes**
80	**Juan 42**	**Man**	**Yes**	**Alive**	**No**

ANNEX 3
Proven facts regarding the analysis of the ailments and medical treatment provided to the victims

Family Groups

A. Family 1: María 1 and Juan 11, and their sons Juan 9 and Juan 10.

1. **María 1** was born on December 18, 1948, and lived in La Oroya Antigua, approximately 100 meters from Metallurgical Complex of La Oroya (hereinafter "the Metallurgical Complex or the CMLO").[1] She currently lives in Acolla - Jauja.[2] She has suffered from "abdominal pain and chronic gastritis," "cramps," "headaches," "choking cough," "burning eyes," "itchy nose and throat," "permanent fatigue," and pains in the joints and lower abdomen.[3] The representatives reported that in 2021 she suffered from "arrhythmia" and "severe osteoarthritis" and had "great difficulty walking."[4] In addition, María 1 stated that she experienced harassment because of her activities in the Health Movement of La Oroya (hereinafter "MOSAO"). Specifically, she reported that during marches and rallies held in La Oroya, people shouted "death to MOSAO."[5] She stated that she was forced to leave La Oroya after the president of a neighborhood group warned her that the company's workers were going to "beat [her] up" and "burn [her] house down."[6]

2. **Juan 11** was born on July 22, 1943, in Acolla – Jauja.[7] He lived in La Oroya for approximately 49 years before returning to his birthplace in Acolla – Jauja. [8] He stated that he had undergone surgery for a prostate tumor[9]. He has suffered from "chronic pharyngitis, a persistent cough, insomnia, headaches, decreased strength in the limbs, sleep problems, irritability and respiratory problems."[10] He has also suffered from "skin problems" caused by an "allergy [to] smoke" as well as "rashes," "blotches on his face,"

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1 *Cf.* Medical file of María 1 (evidence file, folios 24640 to 24646); Brief with pleadings, motions and evidence, February 4, 2022, page 94 (evidence file, folio 212), and Statement provided in the public hearing del case during the Court's 153rd Regular Session held in Montevideo, Uruguay.

2 *Cf.* Medical file of María 1 (evidence file, folios 24640 to 24646); Brief with pleadings, motions and evidence of February 4, 2022, page 94 (evidence file, folio 212), and statement provided in the public hearing del case during the Court's 153rd Regular Session held in Montevideo, Uruguay.

3 *Cf.* Petition submitted to the Inter-American Commission on Human Rights by AIDA, CEDHA and Earthjustice, December 2006 (evidence file, folios 46 to 57); Medical file of María 1 (evidence file, folios 24640 to 24646), and Brief of observations of the petitioners, of December 2, 2011, (evidence file, folio 25714).

4 *Cf.* Brief with pleadings, motions and evidence of February 4, 2022, page 94 (merits file, folio 212).

5 *Cf.* Testimonial statement rendered at the public hearing held during the Court's 153rd Regular Session in Montevideo, Uruguay.

6 *Cf.* Testimonial statement rendered at the public hearing held during the Court's 153rd Regular Session in Montevideo, Uruguay.

7 *Cf. Medical file of* Juan 11 (evidence file, folios 24341 to 24345), and Brief with pleadings, motions and evidence of February 4, 2022, page 94 (merits file, folio 212).

8 *Cf.* Brief with pleadings, motions and evidence, page 94 (merits file, folio 212).

9 *Cf.* Petition submitted to the Inter-American Commission on Human Rights by AIDA, CEDHA and Earthjustice, December 2006 (evidence file, folios 46 to 57), and Medical file of Juan 11 (evidence file, folios 24341 to 24345).

10 *Cf.* Medical file of Juan 11 (evidence file, folios 24341 to 24345).

"welts on his arms and legs," and "weakened nails."[11] A blood test in 2011 showed that Juan 11 had blood lead levels of 12.37 µg/dL, when the method detection limit (MDL) was 5.00 µg /dL.[12] The representatives reported that he suffers from "mental health problems, deafness and kidney disease, fatty liver (hepatomegaly), bilateral renal microlithiasis and a simple cyst on his right kidney."[13]

3. **Juan 9** was born on December 7, 1994[14] and spent his childhood in La Oroya, living just 100 meters from the CMLO, before moving to Lima. At the age of 12, he was diagnosed with "severe irreversible hypoacusis" (bilateral deafness).[15] He also suffered from headaches, irritability, poor appetite and frequent diarrhea.[16] **Juan 10** was born on December 18, 1993, in La Oroya, 100 meters from the Metallurgical Complex.[17] He suffered from hearing problems, permanent fatigue, headaches, stomach pain, sleepiness and exhaustion.[18] As a child he suffered from "gastritis, severe colic, bone pain and skin problems."[19]

B. Family 2: María 2 and Juan 17.

4. **María 2** lives in La Oroya Antigua, 200 meters from Metallurgical Complex.[20] She has suffered from body aches, respiratory problems, cough, sore tonsils, headaches, anemia, anxiety, mild depression and nervous system problems.[21] A blood test to detect heavy metals concluded that she presented "chronic cadmium and lead poisoning" but "without specific symptoms."[22] A blood test in 2011 showed María 2 had a blood lead level of 7.59 µg/dL, when the method detection limit (MDL) was 5.00 µg/dL[23]. **Juan 17,** María 2's former partner, was born on March 16, 1960, and lives in La Oroya Antigua.[24]

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[11] *Cf.* Petition submitted to the Inter-American Commission on Human Rights by AIDA, CEDHA and Earthjustice, December 2006 (evidence file, folios 46 to 57). Medical file of Juan 11 (evidence file, folios 24341 to 24345). Brief with pleadings, motions and evidence, page 94 (merits file, folio 212).

[12] *Cf.* Petition submitted to the Inter-American Commission on Human Rights by AIDA, CEDHA and Earthjustice, December 2006 (evidence file, folios 46 to 57) and medical file of Juan 11 (evidence file, folio 24345).

[13] *Cf.* Brief with pleadings, motions and evidence, page 94 (merits file, folio 212).

[14] *Cf.* Medical file of Juan 9 (evidence file, folio 24327).

[15] *Cf.* Petition submitted to the Inter-American Commission on Human Rights by AIDA, CEDHA and Earthjustice, December 2006 (evidence file, folios 52 to 53), and Medical file of Juan 9 (evidence file, folio 24328).

[16] *Cf.* Medical file of Juan 9 (evidence file, folio 24333).

[17] *Cf.* Petition submitted to the Inter-American Commission on Human Rights by AIDA, CEDHA and Earthjustice, December 2006 (evidence file, folios 46 to 57), and medical file of Juan 10 (evidence file, folios 24338 to 24339).

[18] *Cf.* Petition submitted to the Inter-American Commission on Human Rights by AIDA, CEDHA and Earthjustice, December 2006 (evidence file, folio 052), and medical file of Juan 10 (evidence file, folios 24338 to 24339).

[19] *Cf.* Medical file of Juan 10 (evidence file, folios 24338 to 24339).

[20] *Cf.* Medical file of María 2 (evidence file, folios 24648 to 24657), and brief with pleadings, motions and evidence, page 95 (merits file, folio 213).

[21] *Cf.* Medical file of María 2 (evidence file, folios 24648 to 24657) and brief with pleadings, motions and evidence, page 95 (merits file, folio 213).

[22] *Cf.* Medical file of María 2 (evidence file, folios 24649).

[23] *Cf.* Medical file of María 2 (evidence file, folios 24648 to 24657).

[24] *Cf.* Medical file of Juan 17 (evidence file, folios 24382), and Brief with pleadings, motions and

He has suffered from "stomach bloating" and continuous gas, "headaches," "pneumoconiosis," mood swings and "respiratory problems."[25] A heavy metals analysis in 2009 concluded that Juan 17 presented "chronic cadmium and lead poisoning, without specific symptoms."[26] The same evaluation found that he suffered from "tooth decay and gingivitis with dental plaque," "intestinal parasitosis," "chronic headaches," "chronic gastritis," "anxiety" "mild depression under treatment" and "post-traumatic stress."[27] A blood test carried out in 2011 showed that he had a blood lead level of 14.85 µg /dL, when the method detection limit (MDL) was 5.00 µg /dL.[28] The representatives also reported that María 2 suffers from "chronic tension headaches, stress and mood swings, dizziness and almost daily vomiting, duodenal ulcer […] and loss of teeth."[29]

C. Family 3: María 6 and Juan 6, and their children Juan 3, Juan 4, Juan 24, and Juan 40.

5. **María 6** was born on December 21, 1957, and has lived in La Oroya Antigua since 1997, opposite the Metallurgical Complex.[30] She later moved with her family to an area close to La Oroya Antigua.[31] She has suffered from headaches and abdominal cramps,[32] as well as "constant irritability, decreased strength in her limbs, lack of appetite, persistent cough, and hypertension."[33] The representatives reported that she also suffers from medical symptoms such as headaches, behavioral problems, anxiety, "constant bloating" and pain in her legs and joints, tooth decay and loss of teeth."[34] The representatives reported that on June 13, 2012, María 6 was "assaulted by a Doe Run company worker" who "began to insult her and then pushed and shoved her and slapped her" after identifying her as "a health advocate in the city of La Oroya."[35]

6. **Juan 6** was born on February 24, 1965.[36] He has suffered from headaches and body aches, irritability, persistent cough and abdominal cramps.[37] The representatives indicated that in 2021 Juan 6 suffered from "chronic sinusitis, bronchial asthma, headache, sporadic dizziness at night and kidney disease" as well as "bone and back

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evidence, page 95 (merits file, folio 213).

25 *Cf.* Medical file of Juan 17 (evidence file, folios 24379 to 24386), and brief containing observations of the petitioners, dated December 2, 2011(evidence file, folio 25719).

26 *Cf.* Medical file of Juan 17 (evidence file, folios 24379 to 24386).

27 *Cf.* Medical file of Juan 17 (evidence file, folios 24379 to 24386).

28 *Cf.* Medical file of Juan 17 (evidence file, folio 24386).

29 *Cf.* Brief with pleadings, motions and evidence, page 95 (merits file, folio 213).

30 *Cf.* Medical file of María 6 (evidence file, folios 24679), and brief with pleadings, motions and evidence, page 95 (merits file, folio 213).

31 *Cf.* Medical file of María 6 (evidence file, folios 24679), and brief with pleadings, motions and evidence, page 95 (merits file, folio 213).

32 *Cf.* Medical file of María 6 (evidence file, folios 24679).

33 *Cf.* Medical file of María 6 (evidence file, folios 24680).

34 *Cf.* Brief with pleadings, motions and evidence, page 95 (merits file, folio 213).

35 *Cf.* Brief with pleadings, motions and evidence, page 95 (merits file, folio 213).

36 *Cf.* Medical file of Juan 6 (evidence file, folio 24314).

37 *Cf.* Medical file of Juan 6 (evidence file, folios 24314 and 24316) and statement of Juan 6 (evidence file, folios 28970 to 28979).

pain."[38] **Juan 3** was born on May 13, 2000, and since birth lived in La Oroya, before moving to Lima, where he currently lives.[39] He has suffered from constant headaches, diarrhea, "numbness of the body," and "foot pain" as well as persistent cough, asthma and "abdominal cramps."[40] The representatives reported that he suffers from "heart disease, nerves, behavioral disorders, attention deficit, and mental fatigue."[41] **Juan 4** was born on March 7, 1995, in La Oroya and has lived opposite the CMLO site since he was born.[42] He has suffered from "asthma," "constant headaches," "lack of appetite," "body numbness," "foot pains," "sleep problems," persistent coughing and abdominal cramps.[43] The representatives also reported that he suffers from "headaches and hearing loss."[44]

7. **Juan 24** has lived in La Oroya Antigua since he was born.[45] He has always suffered from "respiratory problems."[46] The representatives reported that in 2021 he presented "language disorders, low academic [performance] and headaches."[47] **Juan 40** was born on August 4, 2008, and lived in La Oroya.[48] Since birth he has suffered from "bronchitis and a persistent cough" as well as "constant stomach infections," "poor appetite" and "pimple rashes on his skin."[49] On February 18, 2016, at the age of seven, he died after falling into the Mantaro River.[50]

D. Family 4: María 17 and her daughter María 18.

8. **María 17** lived in La Oroya Antigua and later moved to La Oroya Nueva.[51] She suffered from a "liver cyst" and "hyperemesis" (lack of appetite) during her pregnancy, as well as "shoulder pain," "dry cough," "tonsillitis," "headaches," "stuffy nose" and "body discomfort."[52] A blood test in 2011 revealed that her blood lead

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38 *Cf.* Brief with pleadings, motions and evidence, page 96 (merits file, folio 214).

39 *Cf.* Medical file of Juan 3 (evidence file, folio 24286), and brief with pleadings, motions and evidence, page 96 (merits file, folio 214).

40 *Cf.* Medical file of Juan 3 (evidence file, folio 24286) and brief with pleadings, motions and evidence, page 96 (merits file, folio 214).

41 *Cf.* Brief with pleadings, motions and evidence, page 96 (merits file, folio 214).

42 *Cf.* Medical file of Juan 4 (evidence file, folio 24288 to 24389), and brief with pleadings, motions and evidence, page 96 (merits file, folio 214).

43 *Cf.* Medical file of Juan 4 (evidence file, folio 24288 to 24389).

44 *Cf.* Petition submitted to the Inter-American Commission on Human Rights by AIDA, CEDHA and Earthjustice, December 2006 (evidence file, folios 46 to 57), and medical file of Juan 10 (evidence file, folios 214).

45 *Cf.* Brief with pleadings, motions and evidence, page 96 (merits file, folio 214).

46 *Cf*. Medical file of Juan 24 (evidence file, folio 24474).

47 *Cf.* Brief with pleadings, motions and evidence, page 96 (merits file, folio 214).

48 *Cf.* Medical file of Juan 40 (evidence file, folios 24604 to 24616), and brief with pleadings, motions and evidence, page 96 (merits file, folio 214).

49 *Cf.* Medical file of Juan 24 (evidence file, folio 24288 to 24389).

50 *Cf.* Death certificate of Juan 40 issued by the Forensic Medical Division of Yauli on February 23, 2016 (evidence file, folios .778 to .780).

51 *Cf.* Medical file of María 17 (evidence file, folios 24758 to 24761), and brief with pleadings, motions and evidence, pages 96 and 97 (merits file, folios 214 and 215).

52 *Cf.* Petition submitted to the Inter-American Commission on Human Rights by AIDA, CEDHA and Earthjustice, December 2006 (evidence file, folios 46 to 57), and Medical file of María 17 (evidence file, folios

level was below 5.0 µg /dL.[53] The representatives noted that in 2021 she suffered from "acute rhinopharyngitis," "post-traumatic stress disorder," "carpal tunnel syndrome," "sporadic headaches," "fatigue" and needs surgery for "chronic cervicitis."[54]

9. **María 18**, the daughter of María 17, has lived all her life in La Oroya Antigua.[55] She constantly feels sleepy and has suffered from "listlessness," "chronic damage to her digestive system," "permanent nausea," weak joints, "dental decay," "diarrhea," "malnutrition," "tonsillitis," "sneezing" and "nasal congestion."[56] A blood test performed in 2011 showed that she had a blood lead level of 8.89 µg/dL, when the method detection limit (MDL) was 5.00 µg/dL.[57] The representatives reported that she has "tooth decay, ametropia (eye condition) and hearing problems" as well as "leg pains."[58]

E. Family 5: María 7 and Juan 15, and their children Juan 14 and Juan 16.

10. **María 7** was born on April 6, 1961, and lives on the outskirts of La Oroya.[59] She has suffered from "very severe headaches" and dizziness, "loss of strength in her limbs," "sleep problems" poor appetite, "numbness of the body," "gastrointestinal problems," "pain in her right arm," and "cough with phlegm."[60] The representatives stated that she currently suffers from chronic rhinopharyngitis, anxiety, depression, joint pain, tooth decay and loss of teeth.[61]

11. **Juan 15** was born on April 11, 1952 in La Oroya and lived in Huaynacancha, fifteen minutes away from the Metallurgical Complex.[62] He later lived in Lima, and currently lives in Jauja-Junín.[63] He has suffered from constant headaches and respiratory problems."[64] The representatives reported that in 2021 he suffered from "chronic tooth

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24758 to 24761).

53 *Cf.* Petition submitted to the Inter-American Commission on Human Rights by AIDA, CEDHA and Earthjustice, December 2006 (evidence file, folios 46 to 57), and Medical file of María 17 (evidence file, folios 24758 to 24761).

54 *Cf.* Brief with pleadings, motions and evidence, pages 96 and 97 (merits file, folios 214 and 215).

55 *Cf.* Medical file of María 18 (evidence file, folios 24763 to 24767), and Brief with pleadings, motions and evidence, pages 96 and 97 (merits file, folios 214 and 215).

56 *Cf.* Petition submitted to the Inter-American Commission on Human Rights by AIDA, CEDHA and Earthjustice, December 2006 (evidence file, folios 46 to 57), and Medical file of María 18 (evidence file, folios 24763 to 24767).

57 *Cf.* Petition submitted to the Inter-American Commission on Human Rights by AIDA, CEDHA and Earthjustice, December 2006 (evidence file, folios 46 to 57), and Medical file of María 18 (evidence file, folios 24763 to 24767).

58 *Cf.* Brief with pleadings, motions and evidence, page 96 and 97 (merits file, folios 214 and 215).

59 *Cf.* Medical file of María 7 (evidence file, folios 24683 to 24685), and Brief with pleadings, motions and evidence, page 97 (merits file, folio 215).

60 *Cf.* Medical file of María 7 (evidence file, folios 24683 to 24685).

61 *Cf.* Brief with pleadings, motions and evidence of, page 97 (merits file, folio 215).

62 *Cf.* Medical file of Juan 15 (evidence file, folios 24372 to 24374), and Brief with pleadings, motions and evidence of, page 97 (merits file, folio 215).

63 *Cf.* Medical file of Juan 15 (evidence file, folios 24372 to 24374), and Brief with pleadings, motions and evidence of, page 97 (merits file, folio 215).

64 *Cf.* Medical file of Juan 15 (merits file, folios 24372 to 24374), and Statement of Juan 15 (evidence file, folios 29004 to 29013).

decay," gingivitis, "occlusal attrition," severe joint pain, "loss of vision [in] one eye," "myopia or glaucoma," high blood pressure and "chronic lichen simplex."[65]

12. **Juan 14** has lived in Huaynacancha and worked across the street from the Metallurgical Complex.[66] He has suffered from "constant agitation," "permanent nasal congestion," "breathing problems" and "lack of appetite."[67] The representatives reported that in 2021 he was diagnosed with a "periapical abscess with fistula, dentin decay, enamel hypoplasia, gingivitis, joint pain and discomfort […] and vision problems."[68] **Juan 16** was born on March 11, 1985, and lived in La Oroya until 2005, when he moved to Huancayo.[69] He has suffered from "nosebleeds," "constant coughing" and "breathing problems."[70] The representatives reported that in 2021 he suffered from an "inguinal hernia, tooth decay, anxiety, mild depression, acid reflux and nausea […]."[71]

F. Family 6: María 11 and Juan 7, and their children María 8, María 9 and Juan 8.

13. **María 11** was born on August 11, 1958, and lives in La Oroya Antigua, across the street from the CMLO.[72] She has suffered from pain in her back, head, bones and the soles of her feet, fatigue, dizziness, as well as "shooting pains in her right arm."[73] Blood and urine tests carried out in 2009 showed that she had the following levels of heavy metals: 14.75 µg/dL of lead in blood, 5.39 µg/L of cadmium in urine, and 17.37 µg/L of arsenic in urine.[74] A blood test in 2011 showed that she had blood lead levels of 8.14 µg /dL, when the method detection limit (MDL) was 5.00 µg /dL.[75] The representatives reported that in 2021 she suffered from "cardiovascular diseases" as well as "gallstones, cardiac arrhythmia and varicose veins," and suffered from "arthrosis in [her] joints."[76]

14. **Juan 7** was born on July 6, 1957, and has lived in La Oroya Antigua, opposite the Metallurgical Complex, since approximately 1988.[77] He has experienced frequent "headaches and bone pain, pharyngitis and lung problems, burning eyes and throat" as

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65 *Cf.* Brief with pleadings, motions and evidence, page 97 (merits file, folio 215). See also the statement of Juan 15 (evidence file, folios 29004 to 29013).

66 *Cf.* Medical file of Juan 14 (evidence file, folio 24370).

67 *Cf.* Medical file of Juan 14 (evidence file, folio 24370).

68 *Cf.* Brief with pleadings, motions and evidence, page 97 (merits file, folio 215).

69 *Cf.* Medical file of Juan 16 (evidence file, folios 24376 to 24377), and brief with pleadings, motions and evidence, page 97 (merits file, folio 215).

70 *Cf.* Medical file of Juan 16 (evidence file, folios 24376 to 24377).

71 *Cf.* Brief with pleadings, motions and evidence, page 97 (merits file, folio 215).

72 *Cf.* Medical file of María 11 (evidence file, folios 24704 to 24708), and brief with pleadings, motions and evidence, pages 98 and 99 (merits file, folios 216 and 217).

73 *Cf.* Medical file of María 11 (evidence file, folios 24704 to 24708), and brief of observations of the petitioners, of January 23, 2014 (evidence file, folio 25715).

74 *Cf.* Medical file of María 11 (evidence file, folios 24704 to 24708).

75 *Cf.* Medical file of María 11 (evidence file, folios 24704 to 24708).

76 *Cf.* Brief with pleadings, motions and evidence, pages 98 and 99 (merits file, folios 216 and 217).

77 *Cf.* Medical file of Juan 7 (evidence file, folios 24318 to 24321), and brief with pleadings, motions and evidence, pages 98 and 99 (merits file, folios 216 and 217).

well as "typhoid, asthma and pharyngitis."[78] He has also suffered from "diarrhea and heartburn."[79] Blood and urine tests carried out in 2009 showed that he had the following heavy metal levels: 17.55 µg/dL of lead in blood, 4.50 µg/L of cadmium in urine and 40.30 µg/L arsenic in urine. A heavy metal analysis in 2011 showed that he had blood lead levels of 5.80 µg/dL, when the method detection limit (MDL) was 5.00 µg. /dL.[80] The representatives pointed out that in 2021 he suffered from "osteoarthritis [in the] knee, shoulder, hip, and problems in his respiratory and digestive systems."[81]

15. In June 2019, María 11 filed a complaint with the Sub-prefecture of Yauli Province requesting personal guarantees and alleging that the presenter of a radio program broadcast by Radio Karisma was using his program to "stir up and incite the population" against her husband, Juan 7, by making a series of "defamatory comments and threats" because of his role as an activist.[82] She added that had people had posted a number of comments on Radio Karisma's Facebook account "inciting violence" against Juan 7.[83] On July 22, 2019, the Sub-prefecture of Yauli granted her request for personal guarantees and ordered the host of Radio Karisma to cease and desist from making "threats, intimidation and harassment," adding that he should also "refrain from any act that would endanger the integrity, peace and tranquility of the petitioner and [her husband."[84]

16. **María 8** was born on September 9, 2003, in La Oroya and spent her childhood and adolescence there before moving to Lima.[85] She has suffered from "poor appetite", "bone pain," "nosebleeds," "skin rashes," "respiratory ailments" and "abdominal pain."[86] She was also admitted to hospital for two days suffering from "bronchopneumonia."[87] Blood and urine tests carried out in 2009 showed that she had the following levels of heavy metals: 24.34 µg/dL of lead in blood, 4.37 µg/L of cadmium in urine, and 67.88 µg/L arsenic in urine.[88] A heavy metals analysis in 2011 showed that her blood lead levels were at 15.31 µg /dL, when the method detection limit (MDL) was 5.00 µg /dL.[89] The representatives reported that in 2021 she suffered from "chronic abdominal pain."[90]

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78 *Cf.* Medical file of Juan 7 (evidence file, folios 24318 to 24321).

79 *Cf.* Brief of observations of the petitioners, of January 23, 2014 (evidence file, folio 25718).

80 *Cf.* Medical file of Juan 7 (evidence file, folios 24318 to 24321).

81 *Cf.* Brief with pleadings, motions and evidence, pages 98 and 99 (merits file, folios 216 and 217).

82 *Cf.* Sub-prefecture of Yauli-La Oroya Province, Decision N°60-2019-VOI/DGIN/SPROV, July 22, 2019 (evidence file, folios .1418 to.1420).

83 *Cf.* Sub-prefecture of Yauli-La Oroya Province, Decision N°60-2019-VOI/DGIN/SPROV, July 22, 2019 (evidence file, folios .1418 to.1420).

84 *Cf.* Sub-prefecture Yauli-La Oroya Province, Decision N°60-2019-VOI/DGIN/SPROV, July 22, 2019 (evidence file, folio .1420).

85 *Cf.* Medical file of María 8 (evidence file, folios 24687 to 24690), and brief with pleadings, motions and evidence, pages 98 and 99 (merits file, folios 216 and 217).

86 *Cf.* Medical file of María 8 (evidence file, folios 24687 to 24690) and brief of observations of the petitioners, of January 23, 2014 (evidence file, folio 25715).

87 *Cf.* Medical file of María 8 (evidence file, folios 24687 to 24690).

88 *Cf.* Medical file of María 8 (evidence file, folios 24687 to 24690).

89 *Cf.* Medical file of María 8 (evidence file, folios 24687 to 24690).

90 *Cf.* Brief with pleadings, motions and evidence, pages 98 and 99 (merits file, folios 216 and 217).

17. **María 9** was born on August 22, 1989, in La Oroya and moved to Lima in 2006.[91] She has suffered from "headaches, skin problems (rashes), respiratory problems, stomach pain, vision problems, listlessness and fatigue."[92] María 9 and her family were also subjected to harassment as a result of their complaints about the environmental contamination caused by the activities at the CMLO.[93] A test carried out in March 2005 found that she had blood lead levels of 23.2 µg/dL.[94] The representatives reported that in 2021 she suffered from an "autoimmune disease and asthma."[95]

18. **Juan 8** was born on September 22, 1992, in La Oroya.[96] He has suffered from nosebleeds, bloodshot eyes, "bronchopneumonia [and] repeated nosebleeds, earache, diarrhea and constant abdominal pain."[97] The representatives reported that in 2021 he suffered from "fatty liver (hepatomegaly), bilateral renal microlithiasis and a simple cyst on his right kidney."[98]

G. Family 7: María 12 and Juan 2, and their children María 5, María 24, and Juan 36.

19. **María 12** lives in La Oroya Antigua.[99] She has suffered from "headaches," "sore throat" and "pain [in the] bones of her hands."[100] A blood test found that she had blood lead levels of 27.69 µg/dL. The study also concluded that María 12 has "rheumatism" "tension headaches" and "pulpal necrosis."[101] The representatives stated that she currently suffers from "extra-articular rheumatism" and "pain in the ovaries."[102] **Juan 2** has lived in La Oroya Antigua and currently resides in Jauja-Junín.[103] He has suffered from "headaches, sore throat and burning eyes," as well as "allergies" and "nasal congestion."[104] Juan 2 stated that "on several occasions" he had "reported acts of

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91 *Cf.* Medical file of María 9 (evidence file, folios 24692 to 24694), and brief with pleadings, motions and evidence, pages 98 and 99 (merits file, folios 216 and 217).

92 *Cf.* Medical file of María 9 (evidence file, folios 24692 to 24694), and statement of María 9 (evidence file, folios 29049 to 29059).

93 *Cf.* Medical file of María 9 (evidence file, folios 24692 to 24694), and statement of María 9 (evidence file, folios 29049 to 29059).

94 *Cf.* Medical file of María 9 (evidence file, folios 24692).

95 *Cf.* Brief with pleadings, motions and evidence, page 98 and 99 (merits file, folios 216 and 217).

96 *Cf.* Medical file of Juan 8 (evidence file, folios 24323 to 24325), and brief with pleadings, motions and evidence, pages 98 and 99 (merits file, folios 216 and 217).

97 *Cf.* Medical file of Juan 8 (evidence file, folios 24323 to 24325).

98 *Cf.* Brief with pleadings, motions and evidence, page 98 and 99 (merits file, folios 216 and 217).

99 *Cf.* Medical file of María 12 (evidence file, folios 24710 to 24711), and brief with pleadings, motions and evidence, page 99 (merits file, folio 217).

100 *Cf.* Medical file of María 12 (evidence file, folios 24710 to 24711), and brief of observations of the petitioners, December 2, 2011 (evidence file, folio 25715).

101 *Cf.* Medical file of María 12 (evidence file, folios 24711).

102 *Cf.* Brief with pleadings, motions and evidence, page 98 and 99 (merits file, folios 216 and 217).

103 *Cf.* Medical file of Juan 2 (evidence file, folios 24281 to 24283), and brief with pleadings, motions and evidence, page 99 (merits file, folio 217).

104 *Cf.* Medical file of Juan 2 (evidence file, folios 24281 to 24283), Statement of Juan 2 (evidence file, folios 28961 28969) and brief containing observations of the petitioners, December 2, 2011(evidence file, folio 25717).

harassment against [him]."[105] The representatives stated that in 2021 he suffered from "chronic allergic rhinitis and chronic otitis media."[106]

20. **María 5** used to live in La Oroya Antigua, 250 meters from the Metallurgical Complex.[107] She had experienced seizures even before she was four years old and was hospitalized for 10 days. She has suffered from "continuous colds and respiratory problems" as well as "headaches."[108] A heavy metal analysis performed on María 5 concluded that she suffered from "chronic cadmium poisoning, without specific symptoms."[109] In addition, a blood lead test carried out in March 2005 yielded a result of 20.00 µg/dL.[110] The representatives reported that she currently suffers from "abdominal pain" and "hemorrhages due to an ovarian cyst."[111]

21. **María 24** has lived in La Oroya Antigua since birth, just 250 meters from the Metallurgical Complex.[112] She has suffered from headaches and a sore throat[113] as well as "back pain," "common warts," "dry skin" and "hypoplasia and tooth decay."[114] In addition, María 24 was diagnosed with "chronic cadmium and lead poisoning" without "specific symptoms."[115] The representatives stated that she currently suffers from "back pain" and "dry skin."[116]

22. **Juan 36** has lived in La Oroya Antigua since birth.[117] He has suffered from a "verruca vulgaris" as well as "tooth decay" and "depressive anxiety disorder."[118] A medical evaluation concluded that Juan 36 has "chronic cadmium and lead poisoning without specific symptoms."[119]

H. Family 8: María 37 and Juan 26, and their daughters María 15, María 16, María 23, and María 27.

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105 *Cf.* Affidavit of Juan 2 (evidence file, folios 28961 28969)

106 *Cf.* Brief with pleadings, motions and evidence, page 99 (merits file, folio 217).

107 *Cf.* Brief with pleadings, motions and evidence, page 99 (merits file, folio 217).

108 *Cf.* Medical file of María 5 (evidence file, folios 24675 to 24677).

109 *Cf.* Medical file of María 5 (evidence file, folios 24675 to 24677).

110 *Cf.* Medical file of María 5 (evidence file, folios 24675 to 24677).

111 *Cf.* Brief with pleadings, motions and evidence, page 99 (merits file, folio 217).

112 *Cf.* Affidavit of María 24 (evidence file, folios 29067 to 29076), and brief with pleadings, motions and evidence, page 99 (merits file, folio 217).

113 *Cf.* Medical file of María 24 (evidence file, folios 24798 to 24799), and statement of María 24 (evidence file, folios 29067 to 29076).

114 *Cf.* Statement of María 24 (evidence file, folios 29067 to 29076).

115 *Cf.* Medical file of María 24 (evidence file, folios 24798 to 24799), and Statement of María 24 (evidence file, folios 29067 to 29076).

116 *Cf.* Brief with pleadings, motions and evidence, page 99 (merits file, folio 217).

117 *Cf.* Medical file of Juan 36 (evidence file, folios 24577 to 24578), and brief with pleadings, motions and evidence, page 99 (merits file, folio 217).

118 *Cf.* Medical file of Juan 36 (evidence file, folios 24577 to 24578).

119 *Cf.* Medical file of Juan 36 (evidence file, folios 24577 to 24578).

23. The family lived in La Oroya until 2007, about 100 meters from the Metallurgical Complex.[120] According to María 37, the family moved to Huancayo, Chupaca, where they currently live, in the "hope that [their] children would no longer be sick."[121] **María 37** has suffered from swollen tonsils, irritability, "headaches, memory loss [and] pain in [her] feet."[122] She explained that she suffers from "a very serious illness that she cannot bear in [her] breast, [her] ovaries hurt, and also [her] feet, [and her] head."[123] She added that since 2000 she has suffered from neuropathy in her arms and legs, plus chronic gastritis, dermatitis, and skin blemishes.[124] **Juan 26** has suffered from constant coughing, headaches, fatigue and nausea, as well as kidney and back pain, motor problems such as stiffness in the body and difficulty walking. In addition, he has impaired hearing, malnutrition, tooth decay, generalized gingivitis, chronic pharyngitis, tooth loss, memory, concentration and cognitive problems, lung impairment, agitation, eyesight problems and high blood pressure.[125]

24. María 37 and Juan 26 have four daughters: María 15, María 16, María 23 and María 27. Regarding the health situation of her daughters, María 37 stated that "[they] have different ailments. [María 27] suffers a lot from abdominal cramps, [and María 15] has bone pain, headaches, paralysis and bloodshot eyes […]."[126] **María 15** has suffered from anemia, headaches, bone pain, skin allergies, abdominal pains, stomach cramps and bloating.[127] The representatives reported that she suffers from "multiple dental cavities," "joint pain" and "ametropia," especially in her right eye.[128] **María 16** has suffered from skin allergies, swollen lips, stomach pain, headaches, bone pain, fatigue, anemia and low academic achievement.[129] **María 23** has suffered from respiratory problems, sore throat and constant coughing, gastrointestinal problems, including cramps and diarrhea, as well as headaches and bone pain. She has also presented skin problems, such as "boils on her hands, arms, jaw and skin allergies," "sporadic intestinal problems," "sinusitis and adenoid hypertrophy," "allergic syndrome," "tooth decay," "headaches" and "fatigue and low academic performance."[130] As a child, she presented nervousness and lethargy as well as respiratory and gastrointestinal problems.[131] **María 27** has suffered from abdominal pain and headaches.[132] The representatives reported that she suffers from "mental fatigue," "headaches," "visual problems," "dizziness," "bone and joint pain," "scoliosis," "gallstones," "tooth decay" and "loss of teeth."[133]

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120 *Cf.* Affidavit of María 37 (evidence file, folios 29105 to 29112), and Brief with pleadings, motions and evidence, page 100 (merits file, folio 218).

121 *Cf.* Statement of María 37 (evidence file, folios 29105 to 29112).

122 *Cf.* Statement of María 37 (evidence file, folios 29105 to 29112).

123 *Cf.* Statement of María 37 (evidence file, folios 29105 to 29112).

124 *Cf.* Brief with pleadings, motions and evidence, page 100 (merits file, folio 218).

125 *Cf.* Medical file of Juan 26 (evidence file, folios 24483 to 24487), and brief with pleadings, motions and evidence, pages 99 and 100 (merits file, folios 217 and 218).

126 *Cf.* Statement of María 37 (evidence file, folios 29105 to 29112).

127 *Cf.* Medical file of María 15 (evidence file, folios 24743 to 24750).

128 *Cf.* Brief with pleadings, motions and evidence, page 100 (merits file, folio 218).

129 *Cf.* Medical file of María 16 (evidence file, folios 24752 to 24756).

130 *Cf.* Medical file of María 23 (evidence file, folios 24784 to 24796).

131 *Cf.* Medical file of María 23 (evidence file, folios 24784 to 24796).

132 *Cf.* Medical file of María 27 (evidence file, folios 24808 to 24811).

133 *Cf.* Medical file of María 27 (evidence file, folios 24808 to 24811), and brief with pleadings, motions

I. Family 9: María 20 and her children María 21, María 22, María 26, and Juan 35.

25. **María 20** has lived all her life in La Oroya Antigua, just 100 meters from the CMLO. She has suffered from "general body aches," cough, headaches, fatigue, abdominal pain and a burning sensation in her nose and throat.[134] The representatives reported that in 2021 she suffered from "anemia," "ankyloses in her right knee," "stress," "stomach inflammation and colic," "gingivitis," "hypothyroidism," "joint pain," "headaches, "pain in the spine and kidneys," as well as "constant fatigue, agitation and acne."[135] María 20 has also "suffered depression and anxiety" due to the "threats" she received because of her activities in the "Defense Committee of La Oroya."[136]

26. María 20's children have lived in La Oroya Antigua since birth.[137] **María 21** has suffered from "chronic malnutrition," bronchitis, "agitation," "the beginnings of asthma," "back and chest pain," "headaches," "persistent cough" and difficulties in her studies.[138] The representatives reported that she suffers from "allergic rhinitis," "chronic bronchitis" and sometimes "coughs up blood."[139] **María 22** has suffered from "chronic malnutrition," bronchitis, continuous agitation, "beginnings of asthma," "a persistent cough," headaches, chest and back pain, and "low weight."[140] She has also faced difficulties in her studies, as well as "depression and anxiety."[141] The representatives indicated that María 22 is currently suffering from "constant chest pain" and "agitation."[142]

27. For her part, **María 26** has suffered from headaches, and "intense stomach cramps."[143] A blood test in 2011 revealed that she had a blood lead level of 6.44 µg /dL, which was higher than the method detection limit (MDL) of 5.00 µg /dL established at the time.[144] The representatives reported that in 2021 María 26 suffered from "tooth decay" as well as "reactive anxiety, stress, and depression."[145] **Juan 35** has suffered from bronchitis, "chronic malnutrition," "low weight and short stature for his age" and "eye irritation."[146] The representatives also noted that he suffers from "kidney pain, short stature due to problems [associated with] malnutrition and weight loss, leukopenia,

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and evidence, page 100 (merits file, folio 218).

134 *Cf.* Medical file of María 20 (evidence file, folios 24774 to 24775).

135 *Cf.* Brief with pleadings, motions and evidence, page 101 (merits file, folio 219).

136 *Cf.* Brief with pleadings, motions and evidence, page 101 (merits file, folio 219).

137 *Cf.* Medical file of María 20 (evidence file, folios 24774 to 24775).

138 *Cf.* Medical file of María 21 (evidence file, folios 24777 to 24778).

139 *Cf.* Brief with pleadings, motions and evidence, page 101 (merits file, folio 219).

140 *Cf.* Medical file of María 22 (evidence file, folios to 24780 to 24782), and brief with pleadings, motions and evidence, page 101 (merits file, folio 219).

141 *Cf*. Medical file of María 22 (evidence file, folios to 24780 to 24782), and brief with pleadings, motions and evidence, page 101 (merits file, folio 219).

142 *Cf.* Brief with pleadings, motions and evidence, page 101 (merits file, folio 219).

143 *Cf.* Medical file of María 26 (evidence file, folios to 24805 to 24806).

144 *Cf.* Medical file of María 26 (evidence file, folios to 24805 to 24806).

145 *Cf.* Brief with pleadings, motions and evidence, page 101 (merits file, folio 219).

146 *Cf.* Medical file of Juan 35 (evidence file, folios 24572 to 24575).

caries, gingivitis, malocclusion and hypo mineralization, as well as ametropia and anemia."[147]

J. Family 10: María 28 and Juan 38, their daughter María 25, and María 38 (mother of Juan 38).

28. **María 28** lives in La Oroya Antigua and has suffered from coughing and a burning sensation in her eyes and throat.[148] A blood test in 2011 showed that she had blood lead levels of 5.00 µg /dL.[149] In 2014, she reported that her "eyes and throat burned when she felt the pollution" and that "when [she] coughed [she] would spit black phlegm."[150] **Juan 38** lives in La Oroya Antigua. He has suffered from blisters on his feet, as well as burning and watering eyes.[151] A blood test carried out in 2011 revealed that he had a blood lead level of 5.21 µg /dL.[152] The representatives reported that Juan 38 had suffered from "blisters on both feet since 2014, which produce very painful wounds when they burst" as well as "burning and tearing of the eyes."[153]

29. **María 25**, the daughter of María 28 and Juan 38, has lived since birth in La Oroya Antigua. She has suffered from severe seizures, burning eyes and a "sore throat," as well as "distress," constant colds, "chronic malnutrition," swollen lips and white spots in her mouth.[154] A test carried out in 2011 revealed that she had blood lead levels of 8.48 µg /dL, which was above the method detection limit (MDL) of 5.00 µg/dL established at the time. [155] According to María 25, the effects of the activities at the Metallurgical Complex have affected her health "psychologically and physically."[156] The representatives noted that she currently suffers from "respiratory problems."[157]

30. **María 38**, mother of Juan 38, was born on January 20, 1943, and has lived in La Oroya since the age of 17.[158] She has suffered from fatigue, coughing, respiratory problems, headaches and pain in her bones, hands and chest, cramps, dizziness, poor appetite, sleep problems, irritability, hypertension and "nervousness."[159] According to the representatives, prior to the closure of the CMLO, María 38 suffered from ailments

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147 *Cf.* Brief with pleadings, motions and evidence, page 101 (merits file, folio 219).

148 *Cf.* Medical file of María 28 (evidence file, folios 24813 to 24814).

149 *Cf.* Medical file of María 28 (evidence file, folios 24813 to 24814).

150 *Cf.* Brief with pleadings, motions and evidence, page 102 (merits file, folio 220).

151 *Cf.* Medical file of Juan 38 (evidence file, folios 24587 to 24588).

152 *Cf.* Medical file of Juan 38 (evidence file, folios 24587 to 24588).

153 *Cf.* Brief with pleadings, motions and evidence, page 102 (merits file, folio 220).

154 *Cf.* Medical file of María 25 (evidence file, folios 24801 to 24803), and statement of María 25 (evidence file, folios 29077 to 29084).

155 *Cf.* Medical file of María 25 (evidence file, folios 24801 to 24803), and statement of María 25 (evidence file, folios 29077 to 29084).

156 *Cf.* Statement of María 25 (evidence file, folios 29077 to 29084).

157 *Cf.* Brief with pleadings, motions and evidence, page 102 (merits file, folio 220), and statement of María 25 (evidence file, folios 29077 to 29084).

158 *Cf.* Medical file of María 38 (evidence file, folios 24922 to 24928).

159 *Cf.* Medical file of María 38 (evidence file, folios 24922 to 24928).

that forced her to be incapacitated for up to ten months.[160] She died on December 5, 2022, a few days after undergoing surgery for a fracture in her leg.[161]

K. Family 11: María 35 and Juan 42, and their son Juan 28, and the children of María 35: Juan 20, Juan 27 and Juan 39.

31. The family lived in La Oroya Nueva for ten years, one kilometer from the CMLO, before moving to Lima.[162] **María 35** has suffered from headaches, bone and waist pains, a persistent cough, "body numbness," dizziness, sore throat, poor appetite, sleep problems, "irritation" and "lumps" on her hands, respiratory problems, hypertension, and gastrointestinal problems.[163] **Juan 42** has suffered from sore throat, stomach cramps and gastrointestinal problems, vertigo, poor appetite, sleep and skin problems, bone, waist, and knee pains.[164] The representatives reported that he suffers from "frequent colic and gastrointestinal pain, mild bone pain and kidney inflammation."[165]

32. **Juan 28** has suffered from colic, diarrhea, constant nausea, hyperactivity and aggressiveness, respiratory problems, "low weight," blood in the urine, hearing problems, skin rashes, "attention deficit," "pimples," nausea and "numbness of the feet."[166] He has also presented "giardiasis," "chronic malnutrition," "acute rhinopharyngitis," bone pain and headaches.[167]

33. **Juan 20** spent his childhood in La Oroya and has experienced medical symptoms associated with "gastric problems."[168] **Juan 27** was born on December 28, 1996, and has always lived near the CMLO.[169] He has suffered from fatigue, anemia, bone pain, stomach cramps, diarrhea, "severe cough and phlegm," hyperactivity, problems in his right ear, "pimples on his face," numbness and swelling of his hands and feet, and attention deficit disorder."[170] In 2010, Juan 27 presented "marginal gingivitis," "goiter," "tooth decay" and "extrinsic pigmentation."[171] **Juan 39** was born on April 15, 1992, and lived in La Oroya, one kilometer from the Metallurgical Complex, until 2010, when he moved to Lima.[172] Since childhood he has suffered from headaches and muscular pain, dizziness, colic, gastrointestinal problems, "poor appetite" and persistent cough.[173] Juan 39 also suffered from anemia at the age of seven, but did not receive any treatment

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160 *Cf.* Brief with pleadings, motions and evidence, page 102 (merits file, folio 220).

161 *Cf.* Death certificate of María 38 (evidence file, folio 30232).

162 *Cf.* Brief with pleadings, motions and evidence, page 103 (merits file, folio 220).

163 *Cf.* Medical file of María 35 (evidence file, folios 24896 to 24902).

164 *Cf.* Medical file of Juan 42 (evidence file, folios 24627 to 24638).

165 *Cf.* Brief with pleadings, motions and evidence, page 103 (merits file, folio 221).

166 *Cf.* Medical file of Juan 28 (evidence file, folios 24509 to 24520).

167 *Cf.* Medical file of Juan 28 (evidence file, folios 24509 to 24520).

168 *Cf.* Medical file of Juan 20 (evidence file, folios 24407 to 24409).

169 *Cf.* Medical file of Juan 27 (evidence file, folios 24499 to 24507).

170 *Cf.* Medical file of Juan 27 (evidence file, folios 24499 to 24507), and brief with pleadings, motions and evidence, page 103 (merits file, folio 221).

171 *Cf.* Brief with pleadings, motions and evidence, page 103 (merits file, folio 221).

172 *Cf.* Medical file of Juan 39 (evidence file, folios 24590 to 24602).

173 *Cf.* Medical file of Juan 39 (evidence file, folios 24590 to 24602).

other than the medicines his family bought privately.[174] The representatives reported that in 2008 and 2009 he suffered from "intense stomach cramps, diarrhea, muscular pain and headaches."[175]

L. Family 12: María 29 and Juan 30, and their sons Juan 21, Juan 22, Juan 23, and Juan 31.

34. **María 29** was born on October 2, 1970, and lived in La Oroya Antigua.[176] She has suffered from headaches, nausea, dizziness, vomiting, diarrhea, "sore throat," "persistent cough," "eye irritation," "sleep problems," "numbness in her body," "decreased strength in her limbs," gastrointestinal problems and cramps. According to the representatives, María 29's symptoms have been "less frequent" since the CMLO suspended its operations in 2009.[177] The representatives also reported that she suffers from "gastroesophageal reflux syndrome, chronic gastritis, intestinal parasitosis, irritable bowel syndrome, chronic constipation and dyspepsia, hyperlipidemia (cholesterol and triglycerides), memory problems and tooth decay."[178]

35. **Juan 30** was born on April 23, 1967. He lived in La Oroya from the age of seven to twelve, and returned to the area from 1984 to 2007, before leaving because of concerns about his children's health. He has suffered from coughs, respiratory and skin problems, bronchitis, "phlegm with black particles," "lung pains," asthma attacks, skin allergies and "hives" impaired hearing, rosacea, "acute upper respiratory tract infection," "pupal necrosis," tooth decay, gingivitis, ametropia and "dry eye syndrome."[179] A test carried out in 2011 revealed that his blood lead levels were 5.02 µg /dL, which was higher than the method detection limit (MDL) of 5.00 µg/dL established at the time.[180] According to the representatives, Juan 30 and María 29 were allegedly threatened and harassed by their neighbors after reporting the pollution problems in La Oroya.[181]

36. Juan 30 explained that the State "never told [them] that there was contamination and that it could affect [their] health."[182] He added that the only actions taken by Doe Run Peru to address the pollution were the so-called "clean-up days" when they had the mothers "clean up and sign checklists in exchange for milk for their children."[183] As for medical care, he stated that the Peruvian Ministry of Health carried out testing and "other medical examinations," but that they only "told [them] the results of the amount of metals in [their] blood, but did not say anything about each person's state of health."[184]

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174 *Cf.* Medical file of Juan 39 (evidence file, folios 24590 to 24602), and brief with pleadings, motions and evidence, page 103 (merits file, folio 221).

175 *Cf.* Brief with pleadings, motions and evidence, page 103 (evidence file, folio 221).

176 *Cf.* Medical file of María 29 (evidence file, folios 24816 to 24822).

177 *Cf*. Medical file of María 29 (evidence file, folios 24816 to 24822).

178 *Cf.* Brief with pleadings, motions and evidence, page 104 (merits file, folio 222).

179 *Cf.* Medical file of Juan 30 (evidence file, folios 24529 to 24535,) and statement of Juan 30 (evidence file, folios 29033 to 29040), and brief with pleadings, motions and evidence, page 104 (merits file, folio 222).

180 *Cf.* Medical file of Juan 30 (evidence file, folios 24529 to 24535,) and statement of Juan 30 (evidence file, folios 29033 to 29040).

181 *Cf.* Brief with pleadings, motions and evidence of February 4, 2022, page 104 (merits file, folio 222).

182 *Cf.* Affidavit of Juan 30 (evidence file, folio 29034).

183 *Cf.* Statement of Juan 30 provided by affidavit (evidence file, folio 29034).

184 *Cf.* Statement of Juan 30 (evidence file, folios 29034).

He also stated that he did "not receive any real treatment."[185] In relation to the health situation of his family members, Juan 30 stated that his "wife and children have also suffered a lot." Specifically, he mentioned that his children have experienced vomiting, stomach upsets, ulcers […] as well as blurred vision and weight loss."[186] In 2014, Juan 30 reported "persistent cough with phlegm," "skin and nasal allergies, tooth decay and tooth loss," "indigestion" and "cramps."[187]

37. **Juan 21** was born on April 14, 2005.[188] He has suffered from sleep disorders, "short stature," anemia, acute rhinopharyngitis, otitis media, facial dermatosis, tooth decay, "hypo-mineralization" and intrinsic pigmentation," decreased appetite, as well as impairment in his academic performance.[189] A test carried out in 2011 revealed that he had a blood lead level of 13.67 µg /dL, which was higher than the method detection limit (MDL) of 5.00 µg/dL established at the time.[190] **Juan 22** was born on July 24, 2006, in La Oroya.[191] He has suffered from "chronic exposure to heavy metals and metalloids," "follicular dermatitis," "xerosis" "congenital hemangioma," anemia, "keratitis," gingivitis, tooth decay, "extrinsic pigmentation" and behavioral disorders.[192] The representatives reported that in 2021 Juan 21 presented with "tooth decay, anxiety, stress and gastrointestinal problems."[193]

38. **Juan 23** has suffered from "chronic fatigue," "chronic bronchitis," "diarrhea," tooth decay, "paresthesia," cramps, "low weight," attention deficit, anemia, ametropia, and headaches. In 2010, he was diagnosed with tooth decay and "pulpal necrosis," "pityriasis alba" and "chronic malnutrition.[194] A blood test carried out in 2011 found that his blood lead level was 9.84 µg /dL, which was higher than the method detection limit (MDL) established at the time of 5.00 µg /dL.[195]The representatives reported that he suffers from "tooth decay," "vision problems" and "recurring bronchitis."[196]

39. **Juan 31** was born on November 24, 1999. He has suffered from seizures, "follicular dermatitis," "eating disorders," "keratosis and keloid scar," intestinal parasites, anemia, gingivitis, tooth decay, bronchitis, rhinitis, emotional disorders, headaches and "eye irritation."[197] Blood tests performed on Juan 31 showed that he had blood lead levels of 36.70 µg/dL in January 2005; 34.00 µg/dL in December 2005; and

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185 *Cf.* Statement of Juan 30 (evidence file, folio 29035).

186 *Cf.* Statement of Juan 30 (evidence file, folio 29035).

187 *Cf.* Brief with pleadings, motions and evidence, page 104 (merits file, folio 222).

188 *Cf.* Medical file of Juan 21 (evidence file, folios 24411 to 24428)

189 *Cf.* Medical file of Juan 21 (evidence file, folios 24411 to 24428) and brief with pleadings, motions and evidence, page 104 (merits file, folio 222).

190 *Cf.* Medical file of Juan 21 (evidence file, folios 24411 to 24428).

191 *Cf.* Brief with pleadings, motions and evidence, page 104 (merits file, folio 222).

192 *Cf.* Medical file of Juan 22 (evidence file, folios 24449 to 24461) and brief with pleadings, motions and evidence, pages 104 and 105 (merits file, folios 222 to 223).

193 *Cf.* Brief with pleadings, motions and evidence, page 105 (merits file, folio 223).

194 *Cf.* Medical file of Juan 23 (evidence file, folios 24463 to 24472). Brief with pleadings, motions and evidence, page 105 (merits file, folio 223).

195 *Cf.* Medical file of Juan 23 (evidence file, folios 24463 to 24472).

196 *Cf.* Brief with pleadings, motions and evidence, page 105 (merits file, folio 223).

197 *Cf.* Medical file of Juan 31 (evidence file, folios 24537 to 24556).

13.55 µg /dL in 2011.[198] The representatives reported that he suffers from "nosebleeds in the mornings, nausea, vomiting, low weight, cavities, dental malformation, [and] respiratory allergy."[199]

M. Family 13: María 30, Juan 41, María 32, María 33 and María 3 and María 34.

40. **María 30** was born on June 8, 1958, and has lived in La Oroya for most of her life.[200] Since 2003 she has suffered from continuous bronchitis and persistent cough, irritability, sore throat, headaches, bone and joint pain, stomach cramps and "diarrhea."[201] In 2005 she was hospitalized for "hyperthyroidism," during which time she was also diagnosed with "tachycardia and osteoporosis." [202] She was incapacitated for most of 2005, during which time she suffered from "weakness in [her] arms and feet, hair loss, gastrointestinal pains, and severe underweight," weighing only 34 kilos as an adult woman.[203] Since 2008, she has experienced respiratory problems, tonsillitis, pharyngitis, dry cough, tiredness, agitation, intense bone pain, diarrhea every 15 days and pneumonia.[204] In 2010 she was hospitalized again with pneumonia.[205] On May 5, 2010, she was diagnosed with mild cardiac arrhythmia, "polycythemia" and osteoporosis. The representatives reported that she has "bronchial hyper-reactivity, D/C bronchial asthma, left basal neuropathy, low back pain and osteoporosis, hyperlipidemia, chronic gastritis and irritable bowel syndrome."[206] She also suffers from "pains in the left wrist, nosebleeds three times a week" as well as hyperthyroidism and respiratory problems."[207]

41. **Juan 41** was born on December 16, 1953, and has lived in La Oroya since 1968.[208] He has suffered from "chronic ailments" such as "back pain, bone pain, headaches and abdominal pain."[209] In addition, he has frequently suffered from a sore throat, "accumulation of phlegm," burning eyes, breathing difficulties, dizziness, sleep problems and hypertension, symptoms that began when he arrived at La Oroya and increased "particularly in the last 16 years."[210] In 1970, he was incapacitated for three months due to "bronchial problems" and was diagnosed with an "allergy to cold

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198 *Cf.* Medical file of Juan 31 (evidence file, folios 24537 to 24556).

199 *Cf.* Brief with pleadings, motions and evidence, page 104 (merits file, folio 222).

200 *Cf.* Medical file of María 30 (evidence file, folios 24824 to 24859), and brief with pleadings, motions and evidence, page 105 (merits file, folio 223).

201 *Cf.* Medical file of María 30 (evidence file, folios 24824 to 24859).

202 *Cf.* Medical file of María 30 (evidence file, folios 24824 to 24859).

203 *Cf.* Medical file of María 30 (evidence file, folios 24824 to 24859).

204 *Cf.* Medical file of María 30 (evidence file, folios 24824 to 24859).

205 *Cf.* Medical file of María 30 (evidence file, folios 24824 to 24859).

206 *Cf.* Brief with pleadings, motions and evidence, page 105 (merits file, folio 223).

207 *Cf.* Brief with pleadings, motions and evidence, page 105 (merits file, folio 223).

208 *Cf.* Medical file of Juan 41 (evidence file, folios 24618 to 24625). Brief with pleadings, motions and evidence, page 105 (merits file, folio 223).

209 *Cf.* Medical file of Juan 41 (evidence file, folios 24618 to 24625).

210 *Cf.* Medical file of Juan 41 (evidence file, folios 24618 to 24625).

temperatures."[211] He was hospitalized for 25 days due to skin allergies.[212] In 2014 he experienced "waist pains."[213] According to the representatives he presents "metabolic syndrome, high triglycerides and cholesterol, eyesight problems, low back pain and possible urinary tract infection."[214]

42. **María 32** was born on September 4, 1985, and lived in La Oroya from birth until 2009, when she left the city "to work at the toll booth on the Ambo-Huánuco highway."[215] Since 2000 she has suffered from "allergies, sneezing, hives all over her body and pimples on her face, headaches, sore throat, dizziness and gastrointestinal problems."[216] These symptoms have lessened since she left La Oroya, but they recur whenever she visits her family once a fortnight.[217] In 2010, María 32 was diagnosed with "cold allergy."[218] In 2014 also was diagnosed with "swollen tonsils."[219] She currently "suffers from a sore throat" as well as "skin allergies," "hair loss," "dental problems" and "a polycystic ovary." [220]

43. **María 33** was born on February 27, 1981, and has lived one kilometer from the CMLO since she was born.[221] She has suffered from several ailments since childhood, which worsened significantly from 1998. Since then, she has been diagnosed with "chronic asthma" and suffers from "chronic symptoms such as fatigue, headaches, breathing difficulties, persistent cough, eye irritation, burning of the nose, nausea, stomach bloating, agitation, dizziness, body numbness and skin irritations such as blisters on her fingers and peeling of the skin on her palms."[222] Due to her asthma, bronchitis and pneumonia conditions, she has been incapacitated several times for periods ranging from fifteen days to one month.[223] In 2010 she was diagnosed with "suppurative pharynringotonsillitis."[224] In 2014 she suffered from "abdominal swelling" and cramps, nausea, "severe cough," tonsillitis, fever, pain in her arms, twinges in her right arm, a burning sensation inside her left arm and numbness in both arms."[225] The representatives also reported that Maria 33 has asthma ("bronchial hyper reactivity"),

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211 *Cf.* Medical file of Juan 41 (evidence file, folios 24618 to 24625).

212 *Cf.* Medical file of Juan 41 (evidence file, folios 24618 to 24625).

213 *Cf.* Medical file of Juan 41 (evidence file, folios 24618 to 24625).

214 *Cf.* Brief with pleadings, motions and evidence, page 106 (merits file, folio 224).

215 *Cf.* Medical file of María 32 (evidence file, folios 24869 to 24876), and statement of María 32 (evidence file, folios 29086 to 29092).

216 *Cf.* Medical file of María 32 (evidence file, folios 24869 to 24876), and statement of María 32 (evidence file, folios 29086 to 29092).

217 *Cf.* Medical file of María 32 (evidence file, folios 24869 to 24876), and statement of María 32 (evidence file, folios 29086 to 29092).

218 *Cf.* Medical file of María 32 (evidence file, folios 24869 to 24876), and statement of María 32 (evidence file, folios 29086 to 29092).

219 *Cf.* Medical file of María 32 (evidence file, folios 24869 to 24876), and statement of María 32 (evidence file, folios 29086 to 29092).

220 *Cf.* Statement of María 32 (evidence file, folios 29093 to 29103).

221 *Cf.* Medical file of María 33 (evidence file, folios 24878 to 24887), and brief with pleadings, motions and evidence, page 106 (merits file, folio 224).

222 *Cf.* Medical file of María 33 (evidence file, folios 24878 to 24887).

223 *Cf.* Medical file of María 33 (evidence file, folios 24878 to 24887).

224 *Cf.* Medical file of María 33 (evidence file, folios 24878 to 24887).

225 *Cf.* Medical file of María 33 (evidence file, folios 24878 to 24887).

"chronic gastritis" with treatment, "gastroesophageal reflux," as well as "very intense" headaches and nosebleeds.[226] She also suffers from "pain and inflammation in the left eye and even a ruptured vein."[227]

44. María 33 reported that she was subjected to "harassment" for speaking out about her health problems and the pollution in La Oroya.[228] Specifically, she explained that "when there were events, the workers [of the Metallurgical Complex] would come to attack us, they said that were not welcome in La Oroya."[229]

45. **María 3** was born on August 21, 1979, in La Oroya.[230] She has suffered from "constant colds, coughs, headaches, fatigue, stomach pain, a burning sensation in her nose and throat, kidney problems, excessive thirst and fever," as well as anemia, headaches, stomach pain and numbness in her face.[231] She has also suffered from "xerosis," mild anxiety and depression, "post-traumatic stress," "pupal necrosis," tooth decay, gingivitis" and "chronic nodular gastritis."[232] A blood test in 2011 showed that she had blood lead levels below 5.0 µg /dL.[233] According to María 3, in La Oroya "there were no specialists or any support provided by the central government at the medical center to ensure proper and comprehensive care."[234]

46. **María 34** was born on December 23, 2000, and has lived in La Oroya Nueva all her life; she currently lives on "the outskirts of this town."[235] Since birth she has suffered from "respiratory ailments" and was hospitalized with pneumonia when she was just eighteen days old.[236] Since then, she has suffered from throat irritation and has had "respiratory problems" such as asthma and bronchitis.[237] In 2008 she was incapacitated for fifteen days with these symptoms. She has been diagnosed with "pneumonia and hepatitis" and has experienced "irritability, headaches, foot bone pain, excessive tear production in her eyes, decreased strength in her limbs, and poor appetite," as well as "constant gastrointestinal problems."[238] In 2014 she reported pain in her "entire body," as well as "fever, headaches and nasal congestion," "coughing" and "swollen tonsils."[239] The representatives reported that she suffers from "bronchial hyper-reactivity," "spinal pain" and "dyspepsia," as well as "hypertriglyceridemia, headaches, exhaustion and stress, eye problems and menstrual cramps."[240]

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226 *Cf.* Brief with pleadings, motions and evidence of February 4, 2022, page 106 (merits file, folio 224).

227 *Cf.* Brief with pleadings, motions and evidence of February 4, 2022, page 106 (merits file, folio 224).

228 Statement of María 33 (evidence file, folios 29093 to 29103).

229 Statement of María 33 (evidence file, folios 29093 to 29103).

230 *Cf.* Medical file of María 3 (evidence file, folios 24659 to 24666).

231 *Cf.* Medical file of María 3 (evidence file, folios 24659 to 24666).

232 *Cf*. Medical file of María 3 (evidence file, folios 24659 to 24666).

233 *Cf.* Medical file of María 3 (evidence file, folios 24659 to 24666).

234 *Cf.* Statement of María 3 (evidence file, folios 29041 to 29048).

235 *Cf.* Medical file of María 34 (evidence file, folios 24888 to 24894), and brief with pleadings, motions and evidence, page 107 (merits file, folio 225).

236 *Cf.* Medical file of María 34 (evidence file, folios 24888 to 24894).

237 *Cf.* Medical file of María 34 (evidence file, folios 24888 to 24894).

238 *Cf.* Medical file of María 34 (evidence file, folios 24888 to 24894).

239 *Cf.* Medical file of María 34 (evidence file, folios 24888 to 24894).

240 *Cf.* Brief with pleadings, motions and evidence, page 107 (merits file, folio 225).

N. Family 14: María 31 and Juan 1.

47. **María 31** was born on March 10, 1956, and lives in La Oroya Antigua, in front of the Metallurgical Complex.[241] In 1988 she was diagnosed with a "gallstone" which was operated on.[242] She has suffered from sleep disorders, irritability, allergies, abdominal pain, gastritis, "low appetite," a burning sensation in her eyes, rashes all over her body, headaches and bone pain, arthritis, bronchitis, asthma, persistent cough, sore throat, and acute tonsillitis.[243] She stated that in 2006 she had to stay home for more than a week due to "eye irritation."[244] The representatives reported that she has suffered from "respiratory problems" (sore tonsils), "joint and back pain," "bone decalcification" and "nosebleeds."[245]

48. **Juan 1** was born on June 17, 1954, and has lived in La Oroya Antigua since he was twelve years old.[246] A blood test carried out in 2005 showed that his blood lead levels were 33 µg/dL, when the established reference values were 10 µg/dL.[247] He has suffered from cough with phlegm, swollen tonsils, fever, headaches, "stuffy nose" and "frequent sneezing."[248] Juan 1 declared that the State and the mining company "have not provided sufficient information about the health impacts" of pollution, focusing instead on "information on care," and the notion of "eating better, with vegetables, milk and fruits."[249] He also pointed out that he had medical symptoms associated with "chronic tonsillitis," "joint and bone pain" and "vision and hearing problems."[250] Despite this situation, he stated that he has "never received good quality health care."[251]

49. Juan 1 also reported that both he and María 31 have suffered harassment for denouncing the pollution in La Oroya and for their actions in support of the Health Movement of La Oroya (MOSAO). He specifically stated that as a result of their complaints, they were "persecuted by the company" and accused of being "anti-mining."[252] He added that the population "demonized" them by saying that they were trying "to have the company closed down."[253] He explained that in 2004 a meeting was

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241 *Cf.* Medical file of María 31 (evidence file, folios 24861 to 24867), and brief with pleadings, motions and evidence, page 107 (merits file, folio 225).

242 *Cf.* Medical file of María 31 (evidence file, folios 24861 to 24867).

243 *Cf.* Medical file of María 31 (evidence file, folios 24861 to 24867).

244 *Cf.* Medical file of María 31 (evidence file, folios 24861 to 24867).

245 *Cf.* Brief with pleadings, motions and evidence, page 107 (merits file, folio 225).

246 *Cf.* Medical file of Juan 1 (evidence file, folio 24279), and statement of Juan 1 (evidence file, folios 28950 to 28960).

247 *Cf*. Medical file of Juan 1 (evidence file, folio 24279), and statement of Juan 1 (evidence file, folios 28950 to 28960).

248 *Cf.* Medical file of Juan 1 (evidence file, folio 24279), and statement of Juan 1 (evidence file, folios 28950 to 28960).

249 *Cf.* Medical file of Juan 1 (evidence file, folio 24279), and statement of Juan 1 (evidence file, folios 28950 to 28960).

250 *Cf.* Statement of Juan 1 (evidence file, folios 28950 to 28960).

251 *Cf.* Medical file of Juan 1 (evidence file, folio 24279), and statement of Juan 1 (evidence file, folios 28950 to 28960).

252 *Cf.* Statement of Juan 1 (evidence file, folios 28950 to 28960).

253 *Cf.* Statement of Juan 1 (evidence file, folios 28950 to 28960).

held with the union, the municipality and the company, and that company workers arrived and "attacked several social leaders." [254] According to Juan 1, several of his colleagues "were left with bruises and were beaten up on the orders of the company."[255]

O. Family 15: María 36 and Juan 25.

50. **María 36** was born on November 1, 1960, and has lived in La Oroya since 1974.[256] She has suffered from "urinary infections, cramps, diarrhea, [and] gastrointestinal problems." In addition, she has experienced "headaches, dizziness, cough, sore throat, sleep problems, bone pain [and] pain in her arms, swollen feet, pimples on her face and pelvis, hypertension and urinary tract infections."[257] She also stated that she has suffered from "pain in the intestines," "a swollen stomach," "pressure in the head" and "chronic gastritis."[258] The representatives reported that she suffers from "severe colic due to kidney stones."[259]

51. **Juan 25** was born on January 11, 1955.[260] From 1978 to 1999 he lived in La Oroya Antigua in a house near the Metallurgical Complex, before moving to La Oroya Nueva.[261] Juan 25 worked at the Complex from 1979 to 2002, in the mill.[262] He stated that "the tools we used for work or to protect ourselves were not good."[263] Juan 25 stated he had been subjected to harassment because of his complaints about the contamination in La Oroya. He added that he "was excluded by [his] co-workers" and accused of "promoting the closure of the metallurgical complex."[264] He added that the company had dismissed several workers "to get even with those workers who were fighting for justice [and] for our health."[265]

52. Juan 25 has suffered from semantic and visual memory impairment, "migraine," "chronic bronchitis," "anxiety", "mild to moderate depression," "post-traumatic stress," "tooth decay," "gingivitis," "non-symptomatic sinus bradycardia," "dyslipidemia," "onychomycosis," "contact dermatitis" and "chronic heavy metal intoxication."[266] Juan

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254 *Cf.* Statement of Juan 1 (evidence file, folios 28950 to 28960).

255 *Cf.* Statement of Juan 1 (evidence file, folios 28950 to 28960).

256 *Cf.* Medical file of María 36 (evidence file, folios 24904 to 24912).

257 *Cf.* Medical file of María 36 (evidence file, folios 24904 to 24912).

258 *Cf.* Medical file of María 36 (evidence file, folios 24904 to 24912).

259 *Cf.* Brief with pleadings, motions and evidence, page 108 (merits file, folio 226).

260 *Cf.* Medical file of Juan 25 (evidence file, folios 24476 to 24481), and statement of Juan 25 (evidence file, folios 29023 to 29028).

261 *Cf.* Medical file of Juan 25 (evidence file, folios 24476 to 24481), and statement of Juan 25 (evidence file, folios 29023 to 29028).

262 *Cf.* Medical file of Juan 25 (evidence file, folios 24476 to 24481), and statement of Juan 25 (evidence file, folios 29023 to 29028).

263 *Cf.* Medical file of Juan 25 (evidence file, folios 24476 to 24481), and statement of Juan 25 (evidence file, folios 29023 to 29028).

264 *Cf*. Medical file of Juan 25 (evidence file, folios 24476 to 24481), and statement of Juan 25 (evidence file, folios 29023 to 29028).

265 *Cf.* Medical file of Juan 25 (evidence file, folios 24476 to 24481), and statement of Juan 25 (evidence file, folios 29023 to 29028).

266 *Cf.* Medical file of Juan 25 (evidence file, folios 24476 to 24481), and statement of Juan 25 (evidence file, folios 29023 to 29028).

25 stated that he has suffered from "pulmonary thrombosis," "problems in [his] spine and limbs" and "gastritis."[267] The representatives reported that Juan 25 also has suffered from "pulmonary silicosis," along with "muscular pains, gas, heartburn, black spots on his arms, deafness in his left ear and vision problems."[268]

53. According to Juan 25, the doctors carried out various tests on him over a four-year period which revealed "high levels of lead, arsenic, [and] cadmium" in his body.[269] In spite of this, "the doctors only did the tests, but never treated [him] or spoke to [him] about the effects of these metals and what they could do to [his] health."[270] Finally, he stated that, due to the facts of this case, his "mental health has suffered a lot," especially after he was dismissed from his job at the metallurgical company.[271]

P. Family 16: María 10 and Juan 5, and their daughters María 4 and María 14.

54. **María 10** was born on September 24, 1966. She lived in La Oroya Antigua for 25 years and currently lives in La Oroya.[272] She has suffered from hearing loss, "respiratory problems," "bronchitis," "anemia," "back pain," "constant colic," "headaches and bone pain" and was hospitalized in 2000 and 2003 with "abdominal cramps, stress and chest pains."[273] The representatives reported that she suffers from "gynecological complaints."[274] They also indicated that María 10 and her husband, Juan 5, had "reported that the illnesses suffered by their children [were] caused by pollution," for which reason they have "faced harassment and threats of different kinds."[275]

55. **María 4,** who is the daughter of María 10 and Juan 5, was born on February 6, 1994, and lived in La Oroya Antigua before moving to Lima.[276] She has suffered from bronchitis since the age of two and from "inflammation of the kidneys" since the age of eight.[277] In addition, she has suffered from headaches and body pains, "skin problems" on her fingers and face, burning and numbness in her feet, "pain in her left ear" and "gastrointestinal problems."[278] The representatives also reported that she suffers from "gynecological ailments."[279]

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267 *Cf.* Statement of Juan 25 (evidence file, folios 29023 to 29028).

268 *Cf.* Brief with pleadings, motions and evidence, page 108 (merits file, folio 226).

269 *Cf.* Statement of Juan 25 (evidence file, folios 29023 to 29028).

270 *Cf.* Statement of Juan 25 (evidence file, folios 29023 to 29028).

271 *Cf.* Statement of Juan 25 (evidence file, folios 29023 to 29028).

272 *Cf.* Medical file of María 10 (evidence file, folios 24696 to 24702), and brief with pleadings, motions and evidence, page 109 (merits file, folio 227).

273 *Cf.* Medical file of María 10 (evidence file, folios 24696 to 24702).

274 *Cf.* Brief with pleadings, motions and evidence, page 109 (merits file, 227).

275 *Cf.* Medical file of María 10 (evidence file, folios 24696 to 24702), and brief with pleadings, motions and evidence, page 109 (merits file, folio 227).

276 *Cf.* Medical file of María 4 (evidence file, folios 24668 to 24673), and brief with pleadings, motions and evidence, page 109 (merits file, folio 227).

277 *Cf.* Medical file of María 4 (evidence file, folios 24668 to 24673).

278 *Cf.* Medical file of María 4 (evidence file, folios 24668 to 24673).

279 *Cf.* Medical file of María 4 (evidence file, folios 24668 to 24673), and brief with pleadings, motions and evidence, page 109 (merits file, folio 227).

56. **Juan 5**, the husband of María 10, was born on December 12, 1959, in La Oroya.[280] He suffered from "heart failure" and died on September 19, 2009, at the age of 49, due to a hemorrhage caused by "warfarin anticoagulation."[281] He also suffered from fatigue, anxiety and depression, "gall bladder problems," "complications in his right ear," "liver inflammation," body numbness," "bronchial and respiratory problems," cough, "gastrointestinal problems" and hypertension.[282] **María 14** was born on September 16, 1988. She suffered from "skin problems" and was diagnosed with "cutaneous T-cell lymphoma" when she was 14 years old. She died on April 4, 2006, at the age of 17.[283]

Q. Family 17: María 19 and Juan 32, and their sons Juan 33, Juan 34, and Juan 37.

57. **María 19** was born on October 22, 1971, and lives in La Oroya Antigua.[284] She has suffered from "respiratory and intestinal infections and hypersensitivity to drugs," pain on the left side of her head, and "burning and tearing" in her eyes.[285] Blood and urine samples taken from María 19 in 2008 and 2009 showed the following levels of heavy metals: 12.3 µg/dL and 16.29 µg/dL of lead in blood in June 2008 and February 2009, respectively; 80.7 µg/L of arsenic in 24-hour urine specimen, and 2.73 µg/L of cadmium in 24-hour urine specimen.[286] These levels resulted in a diagnosis of "chronic lead, cadmium and arsenic poisoning, without specific symptoms."[287] This same evaluation concluded that María 19 presented "mild anemia," "generalized bacterial gingivitis" and "tooth decay."[288]

58. **Juan 32** was born on November 10, 1968, and lived in La Oroya Antigua.[289] Blood and urine samples taken in 2008 and 2009 showed the following heavy metal levels: 17.63 µg/dL of lead in blood, 97.08 µg/L arsenic in a 24-hour urine specimen, and 1.85 µg/L of cadmium in a 24-hour urine specimen.[290] These levels resulted in a diagnosis of "chronic lead, cadmium and arsenic poisoning, without specific symptoms."[291]The same evaluation concluded that Juan 32 suffered from "tooth decay," "bronchial hyperactivity," "anxiety and mild depression under treatment" and "post-traumatic stress."[292] He also presented tonsillitis, pharyngitis, bronchitis and "respiratory and intestinal infections."[293]

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280 *Cf.* Medical file of Juan 5 (evidence file, folios 24309 to 24312).

281 *Cf.* Medical file of Juan 5 (evidence file, folios 24309 to 24312).

282 *Cf.* Medical file of Juan 5 (evidence file, folios 24309 to 24312).

283 *Cf.* Medical file of María 14 (evidence file, folios 24720 to 24741).

284 *Cf.* Medical file of María 19 (evidence file, folios 24769 to 24772), and brief with pleadings, motions and evidence, page 109 (merits file, folio 227).

285 *Cf.* Medical file of María 19 (evidence file, folios 24769 to 24772).

286 *Cf.* Medical file of María 19 (evidence file, folios 24769 to 24772).

287 *Cf.* Medical file of María 19 (evidence file, folios 24769 to 24772).

288 *Cf.* Medical file of María 19 (evidence file, folios 24769 to 24772).

289 *Cf.* Medical file of Juan 32 (evidence file, folios 24558 to 24563), and brief with pleadings, motions and evidence, page 110 (merits file, folio 228).

290 *Cf.* Medical file of Juan 32 (evidence file, folios 24558 to 24563).

291 *Cf.* Medical file of Juan 32 (evidence file, folios 24558 to 24563).

292 *Cf.* Medical file of Juan 32 (evidence file, folios 24558 to 24563).

293 *Cf*. Medical file of Juan 32 (evidence file, folios 24558 to 24563).

59. **Juan 33** has lived in La Oroya Antigua since birth.[294] He has suffered from "tonsillitis, pharyngitis, bronchitis, persistent cough, breathing difficulties [and] excess phlegm" as well as "colic," "diarrhea," "abdominal pain," "discoloration of tooth enamel," "headaches" and "eye irritation."[295] **Juan 34** was born on October 11, 2006, and has lived in La Oroya Antigua since birth.[296] He has presented "dental discoloration," "gastrointestinal problems" and "diarrhea."[297]Blood and urine samples taken in 2008 and 2009 showed the following levels of heavy metals: 44.42 µg/dL of lead in blood, 291.1 µg/L of arsenic in a 24-hour urine specimen, and 2.04 µg/L of cadmium in a 24-hour urine specimen.[298]These levels resulted in a diagnosis of "chronic lead, cadmium and arsenic poisoning without specific symptoms."[299]The same evaluation concluded that Juan 34 presented "severe anemia," "persistent diarrhea" and "chronic bronchitis."[300]

60. **Juan 37** was born on July 17, 1991, in La Oroya Antigua and lived there until he left the city for work reasons.[301] He has suffered from "intestinal and respiratory infections."[302] Blood and urine samples taken in 2008 and 2009 showed the following levels of heavy metals: 16.6 µg/dL and 22.21 µg/dL of lead in blood, in June 2008 and February 2009, respectively; 26.26 µg/L of arsenic in a 24-hour urine specimen, and 2.85 µg/L of cadmium in a 24-hour urine specimen.[303] These levels resulted in a diagnosis of "chronic lead and cadmium poisoning, without specific symptoms."[304] The same evaluation concluded that Juan 37 had experienced "delayed adolescence" and had suffered from a "severe depressive episode with psychotic symptoms."[305]

R. Individuals

61. **María 13** was born on March 1, 1959.[306] She lived in La Oroya Antigua and later in "Villa del Sol," on the outskirts of La Oroya.[307] She has suffered from "severe headaches and dizziness," "irritability," "numbness in her body," "persistent cough," "skin problems," "convulsions," "mild anemia," tooth decay, "acute rhino-pharyngitis," asthma, "migraine and tension headaches," "carpal tunnel syndrome," "crural fascia,"

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294 *Cf.* Medical file of Juan 33 (evidence file, folio 24565), and brief with pleadings, motions and evidence, page 110 (merits file, folio 228).

295 *Cf.* Medical file of Juan 33 (evidence file, folio 24565).

296 *Cf.* Medical file of Juan 34 (evidence file, folios 24567 to 24570), and brief with pleadings, motions and evidence, page 110 (merits file, folio 228).

297 *Cf.* Medical file of Juan 34 (evidence file, folios 24567 to 24570).

298 *Cf.* Medical file of Juan 34 (evidence file, folios 24567 to 24570).

299 *Cf.* Medical file of Juan 34 (evidence file, folios 24567 to 24570).

300 *Cf.* Medical file of Juan 34 (evidence file, folios 24567 to 24570).

301 *Cf.* Medical file of Juan 37 (evidence file, folios 24580 to 24585), and brief with pleadings, motions and evidence, page 110 (merits file, folio 228).

302 *Cf.* Medical file of Juan 37 (evidence file, folios 24580 to 24585).

303 *Cf.* Medical file of Juan 37 (evidence file, folios 24580 to 24585).

304 *Cf.* Medical file of Juan 37 (evidence file, folios 24580 to 24585).

305 *Cf.* Medical file *of* Juan 37 (evidence file, folios 24580 to 24585).

306 *Cf.* Medical file of María 13 (evidence file, folios 24713 to 24718), and brief with pleadings, motions and evidence, page 110 (merits file, folio 228).

307 *Cf.* Medical file of María 13 (evidence file, folios 24713 to 24718), and brief with pleadings, motions and evidence, page 110 (merits file, folio 228).

"lumbago," "reversible pulpitis," "hearing loss," tinnitus, "anxiety," "mild depression" and "post-traumatic stress."[308] A blood test carried out in 2011 showed that she had a blood lead level of 7.34 µg /dL, when the method detection limit (MDL) was 5.00 µg. /dL.[309]The representatives reported that she suffers from "elevated glucose [levels]," "acute rhinopharyngitis," "inflammation of the gums (multiple reversible pulpitis)," "hearing loss and tinnitus," back pain and "pain in the eyes and a fleshy overgrowth on her left eye."[310] They added that she was the "victim of hostilities by [Doe Run Peru] workers," which "caused her anxiety, mild depression and post-traumatic stress."[311]

62. **Juan 13** lives in La Oroya about 30 minutes from the CMLO. He has suffered from "respiratory problems" and "headaches."[312] A blood test in 2011 showed that his blood lead level was 5.33 µg /dL, when the method detection limit (MDL) was 5.00 µg. The representatives reported that he has "cardiac arrhythmia" and "high blood pressure."[313]

63. **Juan 18** was born on June 18, 1930, in La Oroya and has lived most of his life in La Oroya Antigua.[314] He has suffered from "constant headaches, decreased strength in his limbs, dizziness, body numbness, irritability, persistent cough and lead poisoning."[315] Blood and urine samples taken in 2009 showed a blood lead level of 10.51 µg/dL, when the method detection limit (MDL) at that time was 5.00 µg/dL. The samples also showed cadmium levels of 2.37 µg/L in urine.[316] This resulted in a diagnosis of "chronic lead and cadmium poisoning without specific symptoms."[317] The same evaluation concluded that Juan 18 had "obstructive lung disease," "chronic bronchitis" and "age-related macular degeneration."[318] He has also suffered from mild anemia, uremia, headaches, weakness in the limbs, dizziness, irritability, persistent cough and lead poisoning.[319] Juan 18 stated that "the authorities never paid any attention to the population" and that he did "not recall receiving any information from the State about the activities at the Metallurgical Complex."[320]

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308 *Cf.* Medical file of María 13 (evidence file, folios 24713 to 24718).

309 *Cf.* Medical file of María 13 (evidence file, folios 24713 to 24718).

310 *Cf.* Brief with pleadings, motions and evidence, page 110 (merits file, folio 228).

311 *Cf.* Brief with pleadings, motions and evidence, page 110 (merits file, folio 228).

312 *Cf.* Medical file of Juan 13 (evidence file, folios 24365 to 24368).

313 *Cf.* Brief with pleadings, motions and evidence, page 110 (merits file, folio 228).

314 *Cf.* Medical file of Juan 18 (evidence file, folios 24388 to 24396), and brief with pleadings, motions and evidence, page 110 (merits file, folio 228).

315 *Cf.* Medical file of Juan 18 (evidence file, folios 24388 to 24396), and statement of Juan 18 (evidence file, folios 29015 to 29016).

316 *Cf.* Medical file of Juan 18 (evidence file, folios 24388 to 24396), and statement of Juan 18 (evidence file, folios 29015 to 29016).

317 *Cf.* Medical file of Juan 18 (evidence file, folios 24388 to 24396), and statement of Juan 18 (evidence file, folios 29015 to 29016).

318 *Cf.* Medical file of Juan 18 (evidence file, folios 24388 to 24396), and statement of Juan 18 (evidence file, folios 29015 to 29016).

319 *Cf.* Medical file of Juan 18 (evidence file, folios 24388 to 24396), and brief with pleadings, motions and evidence, page 110 (merits file, folio 228).

320 *Cf.* Medical file of Juan 18 (evidence file, folios 24388 to 24396), and statement of Juan 18 (evidence file, folios 29015 to 29016).

64. **Juan 12** was born on August 28, 1948, and worked in La Oroya from 1972 to 2003.[321] He presented symptoms of paresthesia, fatigue, decreased strength in his left hand, and decreased visual and hearing acuity.[322] A medical evaluation in 2008 concluded that Juan 12 had gingivitis and tooth decay, anxiety and mild depression, intestinal parasitosis and grade I pneumoconiosis.[323] In 2009 he suffered from "superficial chronic gastritis," "Class II pneumoconiosis" and hearing problems.[324] A blood test in 2011 showed that he had blood lead levels of 5.03 µg /dL, when the method detection limit (MDL) was 5.00 µg /dL. [325] He died on June 24, 2020, from Covid-19.[326] His son, C.A.M.H., recalled that when Juan 12 "was involved in politics and denounced the problem of contamination, he was threatened and intimidated."[327] He added that Juan 12 had also suffered "two pre-infarctions," "severe skin and joint problems" and "arthrosis in both knees."[328]

65. **Juan 19** was born on June 17, 1956.[329] He suffered from "insomnia," "constant colds," "irritability," "headaches," "hearing loss," "skin rashes and a bitter taste in his mouth."[330] According to tests carried out between 2008 and 2009 by the Ministry of Health, he presented "chronic cadmium poisoning without specific symptoms," as well as "probable arsenic poisoning."[331] The same evaluation concluded that he also suffered from "arterial hypertension," "umbilical hernia," "pulpal necrosis," "caries," "gingivitis," "benign prostatic hyperplasia," "nevus ruby," "solar keratosis," "xerosis," "onychomycosis," "plantar keratoderma," "contact dermatitis," "anxiety and mild to moderate depression" and "post-traumatic stress."[332] On September 25, 2011, he passed away due to a cerebrovascular accident (stroke).[333]

66. **Juan 29** has lived in La Oroya since 1976 and worked at the Metallurgical Complex as a production mechanic from 1980.[334] He has suffered from "pneumoconiosis"

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321 *Cf.* Medical file of Juan 12 (evidence file, folios 24347 to 24363), and statement of the son of Juan 12 (evidence file, folios 29023 to 29028).

322 *Cf.* Medical file of Juan 12 (evidence file, folios 24347 to 24363).

323 *Cf.* Medical file of Juan 12 (evidence file, folios 24347 to 24363).

324 *Cf.* Medical file of Juan 12 (evidence file, folios 24347 to 24363), and statement of the son of Juan 12 (evidence file, folios 29023 to 29028).

325 *Cf.* Medical file of Juan 12 (evidence file, folios 24347 to 24363), and statement of the son of Juan 12 (evidence file, folios 29023 to 29028).

326 *Cf.* Death certificate of Juan 12 issued by the Forensic Medical Division of La Molina, in Lima, on June 23, 2020 (evidence file, folio 17906).

327 *Cf.* Medical file of Juan 12 (evidence file, folios 24347 to 24363), and statement of the son of Juan 12 (evidence file, folios 29023 to 29028).

328 *Cf.* Medical file of Juan 12 (evidence file, folios 24347 to 24363), and statement of the son of Juan 12 (evidence file, folios 29023 to 29028).

329 *Cf.* Medical file of Juan 19 (evidence file, folios 24397 to 24405).

330 *Cf.* Medical file of Juan 19 (evidence file, folios 24397 to 24405).

331 *Cf.* Medical file of Juan 19 (evidence file, folios 24397 to 24405).

332 *Cf.* Ministry of Health, Report No. 019-2009-DGSP-ESNP/MINSA. Diagnostic conclusions of the beneficiaries of precautionary measure No. 271-05, March 16, 2009 (evidence file, folios 24400 to 24405).

333 *Cf.* Death certificate of Juan 19 issued by the Forensic Medical Division of Yauli on September 25, 2011 (evidence file, folio .773).

334 *Cf.* Medical file of Juan 29 (evidence file, folios 24522 to 24527), and brief with pleadings, motions and evidence, page 111 (merits file, folio 229).

and "severe neurosensory hearing loss."[335] He has also suffered from "sleepiness and fatigue," "persistent cough," "constant agitation and vomiting" and "expels gray phlegm" due to lung problems.[336]

[335] *Cf.* Medical file of Juan 29 (evidence file, folios 24522 to 24527).

[336] *Cf.* Medical file of Juan 29 (evidence file, folios 24522 to 24527).

CONCURRING OPINION OF THE JUDGES

RICARDO C. PÉREZ MANRIQUE,

EDUARDO FERRER MAC-GREGOR POISOT

AND RODRIGO MUDROVITSCH

CASE OF THE INHABITANTS OF LA OROYA V. PERU

JUDGMENT OF NOVEMBER 27, 2023
(Preliminary Objections, Merits, Reparations and Costs)

INTRODUCTION

1. This is not the first time that the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") rules on the right to the environment. Nevertheless, we consider it important to issue this concurring opinion in order to highlight how this right has gradually gained ground in the inter-American sphere, especially since the Court issued Advisory Opinion No. 23 in 2017.[1]

2. Recognition of the right to the environment has belatedly reached all latitudes, and was recently acknowledged by the United Nations in 2022;[2] however, the rapid pace of its projection at the international level makes it necessary to emphasize its importance, both for present and future generations.

3. In the case of the *Inhabitants of La Oroya v. Peru,* the Court placed the right to the environment and its link with other rights that it deemed to have been violated at the forefront of the judgment. Thus, it declared the international responsibility of the State for the violation of the rights to the environment, health, life, a life with dignity, personal integrity, the rights of the child, access to information, political participation, and the failure to investigate and to provide effective judicial recourse contained in Articles 26, 4(1), 5, 13, 23, 8(1) and 25, in relation to the general obligations of Articles 1(1) and 2 of the American Convention on Human Rights (hereinafter "the American Convention" or "Pact of San José"). All this to the detriment of 80 inhabitants of La Oroya,[3] and with said violations, by their very nature, having a "collective scope."[4] In the instant case, the Court declared that all these rights had been violated as a result of the high levels of contamination caused by the La Oroya Metallurgical Complex,[5] which implied more than one hundred years of violations with irreversible risks. In its judgment, the Court found that the contamination in question was proven, that the State was aware of this situation, and that it posed a significant risk to the environment

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1 *Cf. 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), in relation to Articles 1(1) and 2 of the American Convention on Human Rights)*. Advisory Opinion OC-23/17 of November 15, 2017. Series A No. 23.

2 United Nations General Assembly, "Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms", Resolution A/76/L.75, of July 26, 2022.

3 See Annex 2 (80 victims identified) and Annex 3 (Proven facts regarding the illnesses and medical treatment provided to the victims of the judgment).

4 See paragraphs 179 and 324, and the third operative paragraph of the judgment.

5 The Court considered that the metallurgical activities at the CMLO were the main cause of environmental contamination from lead, arsenic, cadmium, sulfur dioxide and other metals in the air, soil and water in La Oroya. See paragraphs 158, 159 and 263 of the judgment.

and to human health.[6]

4. In our view, this case highlights and clearly illustrates the impact that failure to guarantee social rights - such as the environment and health - has on people, especially when the effects are prolonged over time without appropriate and effective measures being taken (based on environmental obligations). In particular, we wish to show how inter-American case law and norms have gradually been changing, evolving and expanding, to the extent of recognizing that the right to the environment is an autonomous right protected by Article 26 of the American Convention - both in its individual and collective dimensions - and that in recent years it has been at the center of inter-American jurisprudence.

5. In this opinion we consider it pertinent to analyze five areas related to the right to the environment and its impact on present and future generations. First, (i) to show how this judgment is inserted in a context described as "green" in international human rights law (*infra paras. 6 to 15*). Second, (ii) to examine the evolution of inter-American jurisprudence on the environment (*infra paras. 16 to 37*). Third, (iii) to highlight some aspects of the environment that are addressed in the judgment (*infra paras. 38 to 45*). Fourth, (iv) to highlight the collective dimension of this right and its relevance in terms of collective reparations and measures of non-repetition (*infra paras. 46 to 70*). Fifth, (v) to emphasize the *jus cogens* nature of environmental protection and to develop the principle of intergenerational equity (*infra paras. 71 to 160*). Finally, we present some general conclusions (*infra paras. 161 to 177*).

I. "A GREEN CONTEXT": AN OVERVIEW OF INTERNATIONAL SYSTEMS FOR THE PROTECTION OF HUMAN RIGHTS RELATED TO THE ENVIRONMENT AND CLIMATE CHANGE

6. In recent years, national and international human rights law has focused attention on a problem that is no longer confined to a specific geographical area of our planet: environmental degradation and its impact on climate change. An overview of current international law reveals the existence of what could be termed a "green" *corpus juris*.

I.1. United Nations System

7. In the Universal Human Rights System, a turning point occurred in 2022 when the United Nations General Assembly recognized "the right to a clean, healthy and sustainable environment as a human right."[7]

8. This was not an isolated step, but rather the culmination of a gradual evolution of this right and the progress that had been made in this area in different regional and international human rights jurisdictions. For example, within the United Nations system, the Committee on the Rights of the Child, while not delving into the substance of the matter, has suggested that the right to the environment could potentially be analyzed

[6] See paragraphs 158, 159 and 263 of the judgment.

[7] United Nations General Assembly, Resolution A/76/L.75, "Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms." July 26, 2022.

from the perspective of the Convention on the Rights of the Child.[8] Similarly, the Human Rights Committee has recently made statements that indicate, indirectly, that environmental degradation could have an impact on rights protected by the International Covenant on Civil and Political Rights.[9]

9. At the same time, special attention should be paid to General Comment No. 26 (2022) of the Committee on Economic, Social and Cultural Rights concerning land rights and economic, social and cultural rights, which states that "sustainable land use is essential to ensure the right to a clean, healthy and sustainable environment and to promote the right to development, among other rights."[10] Similarly, the Committee on the Rights of the Child, in General Comment No. 26 (2023), has stated that "a clean, healthy and sustainable environment is both a human right in itself and is necessary for the full enjoyment of a broad range of children's rights."[11]

10. Nor can we forget the mandate and the various reports issued by the United Nations Special Rapporteur on Human Rights and the Environment, as well as the mandate and the various reports issued by the Special Rapporteur on Climate Change.[12]

11. Finally, the importance of this matter at the global level is reflected in the momentous step taken by the United Nations General Council in requesting an Advisory Opinion from the International Court of Justice on the obligations of States with respect to climate change.[13]

I.2. European Human Rights System

12. Neither the European Convention on Human Rights nor the European Social Charter have expressly recognized the right to a healthy environment. In the case of the European Court, it should be noted that the environment has been accorded recognition by means of what has been termed "indirect justiciability," as evidenced in several cases. However, it is noteworthy that a number of rulings are currently pending resolution at the seat of this Court, which directly involve the environmental and climate change obligations of countries that make up the Council of Europe.[14]

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[8] See Chiara Sacchi et al. (represented by the attorneys Scott Gilmore et al., of Hausfeld LLP, and Ramin Pejan et al., of Earthjustice), CRC/C/88/D/104/2019, November 11, 2019, para. 10.7.

[9] See the cases of Portillo Cáceres v. Paraguay, CCPR/C/126/D/2751/2016, September 20, 2019 and Daniel Billy et al. v. Australia, CCPR/C/135/D/3624/2019. September 22, 2022.

[10] General Comment No. 26 (2022), on Land and Economic, Social and Cultural Rights, E/C.12/GC/26, January 24, 2023.

[11] General Comment No. 26 (2023), Children's Rights and the Environment, with a special focus on Climate Change CRC/C/GC/26, 22 August 2023.

[12] To consult the mandate of the United Nations Rapporteur on Human rights and the Environment see: https://www.ohchr.org/es/special-procedures/sr-environment. In the case of the United Nations Special Rapporteur on Climate Change, see: https://www.ohchr.org/es/specialprocedures/sr-climate-change.

[13] The questions raised were: a) What are the States' obligations under international law to ensure the protection of the climate system and other elements of the environment from anthropogenic emissions of greenhouse gases for the benefit of States and of present and future generations? b) What are the legal consequences of these obligations for States which, by their acts and omissions, have caused significant damage to the climate system and other elements of the environment, with respect to: i) those States, including, in particular, small island developing States, which, owing to their geographical circumstances and level of development, are adversely affected or particularly affected by, or particularly vulnerable to, the adverse effects of climate change; ii) the peoples and individuals of present and future generations affected by the adverse effects of climate change." Resolution A/77/L.58, Request for Advisory Opinion from the International Court of Justice on the State's obligations with respect to climate change, of March 1, 2023.

[14] In this regard, see the Factsheets published by the European Court of Human Rights on environment and climate change available at: https://www.echr.coe.int/documents/d/echr/FS_Climate_change_ENG and https://www.echr.coe.int/documents/d/echr/FS_Environment_ENG.

13. Perhaps the most innovative approach has been taken by the European Committee of Social Rights, which is responsible for the supervision and application of the European Social Charter. Although the Turin Charter does not specifically establish the "right to the environment," the Committee has indicated that this right is subsumed in the right to health protected under Article 11 of the Turin Charter.[15]

I.3. African Human Rights System

14. Finally, in the case of the African system, the African Charter on Human and People's Rights provides that: *"All peoples shall have the right to a general satisfactory environment favorable to their development."* In this regard, the African Commission on Human and Peoples' Rights has stated that the "right to the environment" is guaranteed by Article 24; based on this, it has specified that the right to the environment is closely related to economic, social and cultural rights, insofar as the environment affects the quality of life and the security of individuals.[16]

15. Thus, Article 24 imposes clear obligations on States which should translate into reasonable measures to prevent pollution and ecological degradation, promote conservation and ensure the ecologically sustainable development and use of natural resources. In addition, States are required to mandate, or at least allow, independent scientific monitoring of threatened environments; to require and publish environmental and social impact studies prior to any major industrial development; to adequately monitor and provide information to communities exposed to hazardous materials and activities; and to provide meaningful opportunities for people to be heard and participate in development decisions affecting their communities.[17]

II. THE RIGHT TO A HEALTHY ENVIRONMENT IN THE CASE LAW OF THE INTER-AMERICAN COURT

1. The environment in the Court's jurisprudence through its connection with civil and political rights

16. The right to a healthy environment has been indirectly protected under Article 21 (through collective ownership by indigenous and tribal peoples), Article 23 (through effective participation and consultation) and Article 13 (through access to information).

17. The protection of the environment has had a major presence in inter-American case law in relation to the collective property of indigenous and tribal peoples and communities, protected mainly by the Inter-American Court through Article 21 of the American Convention. The Court has also underscored the importance of the protection, preservation and improvement of the environment in Article 11 of the Protocol of San Salvador,[18] as an essential human right associated with the right to a life with dignity derived from Article 4 of the Pact of San José; and, in light of the existing international

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15 European Committee on Social Rights, Marangopoulos Foundation for Human Rights (MFHR) v. Greece, Complaint No. 30/2005, December 6, 2006, paras. 195 to 198.

16 African Commission on Human and People's Rights, Case of Ogoni v. Nigeria, October 27, 2001, para. 51.

17 African Commission on Human and People's Rights, Case of Ogoni v. Nigeria, October 27, 2001, paras. 52 and 53.

18 *Additional Protocol to the American Convention on Human Rights in the area of economic, social and cultural rights, Protocol of San Salvador*, OAS/Ser. A/44, approved on November 17, 1988.

corpus juris on the special protection required by members of indigenous communities "in relation to the general obligation of guarantee contained in Article 1(1) and the duty of progressive development contained in Article 26."[19]

18. The Court has recognized that indigenous and tribal communities suffer from the expropriation of their territories, from the damage caused to those territories and, in addition, that indigenous and tribal peoples have the right to the *conservation and protection of their environment* and the productive capacity of their land and natural resources.[20] Thus, we can identify two aspects of protection guarantees: a) consultation - specifically, environmental and social impact studies - and b) the compatibility of nature reserves with traditional indigenous rights.

19. With respect to consultation with indigenous peoples and the lack of environmental and social impact studies as a guarantee of environmental protection, in the case of the *Saramaka People v. Suriname,* the Inter-American Court considered that, in the absence of: a) a process of prior, free, informed and good faith consultation, b) shared benefits and c) environmental and social impact studies, the logging concessions granted by the State over the Saramaka territory *damaged the environment* and this damage had a negative impact on the land and natural resources traditionally used by this indigenous community. Their resources were, in whole or in part, located within the boundaries of the territory over which they had a right to communal property. Furthermore, the Court found that the State had failed to oversee any prior environmental and social impact studies or to provide guarantees or mechanisms to ensure that these logging concessions did not cause further damage to the territory and communities of the Saramaka clan. In sum, the Court concluded that the State had violated the right to property of members of the Saramaka community recognized in Article 21 of the Pact of San José, in relation to Article 1(1) of the same instrument.[21]

20. Regarding the obligation to conduct environmental impact studies, in the case of the *Kichwa Indigenous People of Sarayaku v. Ecuador*, the Court referred for the first time to Convention 169 of the International Labor Organization (ILO), which states that "Governments shall ensure that, whenever appropriate, studies are carried out, in co-operation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities.[22]

21. Thus, in both the *Saramaka* and *Sarayaku* cases*,* the Inter-American Court consolidated the principle that the implementation of such studies is one of the safeguards to ensure that the restrictions imposed on indigenous or tribal communities

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[19] *Cf. Case of the Kaliña and Lokono Peoples v. Suriname. Merits, reparations and costs*. Judgment of November 25, 2015. Series C No. 309, para. 172, *Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, reparations and costs.* Judgment of June 17, 2005. Series C No. 125, para. 163, and *Case of the Xákmok Kásek Indigenous Community v. Paraguay. Merits, reparations and costs*. Judgment of August 24, 2010. Series C No. 214, para. 187.

[20] *Cf. Case of the Garífuna Community of Triunfo de la Cruz and its Members v. Honduras. Merits, reparations and costs*. Judgment of October 8, 2015. Series C No. 305, para. 293, and *Case of the Garífuna Community of Punta Piedra and its Members v. Honduras. Preliminary objections, merits, reparations and costs.* Judgment of October 8, 2015. Series C No. 304, para. 346.

[21] *Cf. Case of the Saramaka People v. Suriname. Preliminary objections, merits, reparations and costs*. Judgment of November 28, 2007. Series C No. 172, para. 54.

[22] *Cf. Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and reparations*. Judgment of June 27, 2012. Series C No. 245, para. 204.

with respect to their right to property, when concessions are granted within their territories, do not imply a denial of their subsistence or survival as a people. Therefore, the Court established that States must ensure that no concession is granted within the territory of an indigenous community unless and until independent and technically competent entities, under the supervision of the State, have conducted a prior social and environmental impact assessment.

22. Furthermore, the Court determined that environmental impact studies "serve to evaluate *the possible damage or impact* that a development or investment project may have on the property and community in question. Their purpose is not [only] to have some objective measure of the possible impact on the land and the people, but also […] to ensure that members of the community […] are aware of the potential risks, including environmental and health risks," so that they can decide whether to accept the proposed development or investment plan "knowingly and voluntarily."[23]

23. As regards the second point mentioned above, concerning the compatibility of nature reserves with traditional indigenous rights, the Inter-American Court has recognized that environmental protection may also be in the public interest, and thus would justify the motive and purpose of an expropriation in connection with the loss of the right to private property.[24] Regarding the establishment of protected areas that limit the territorial rights of indigenous peoples, in the case of the *Xákmok Kásek Indigenous Community v. Paraguay*, the Court decided that "[...] the State should adopt the necessary measures so that [its domestic legislation regarding protected areas] does not become an obstacle to the return of traditional lands to members of the Community."[25] As a complement to the above, in the case of the *Kaliña and Lokono Peoples v. Suriname*, the Court stated that:

> 173. The Court considers it important to refer to the need to ensure the compatibility of the safeguard of protected areas with the adequate use and enjoyment of the traditional territories of indigenous peoples. In this regard, the Court finds that a protected area consists not only of its biological dimension, but also of its socio-cultural dimension and that, therefore, it requires an interdisciplinary, participatory approach. Thus, in general, indigenous peoples may play an important role in nature conservation, since certain traditional uses entail sustainable practices and are considered essential for the effectiveness of conservation strategies. Consequently, respect for the rights of the indigenous peoples may have a positive impact on environmental conservation. Hence, the rights of the indigenous peoples and international environmental laws should be understood as complementary, rather than exclusionary, rights.[26]

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[23] The Court has established that: "environmental impact assessments must be carried out in conformity with the relevant international standards and best practices; must respect the indigenous peoples´ traditions and culture; and be completed before the concession is granted, since one of the objectives of requiring such studies is to guarantee the right of the indigenous people to be informed about all proposed projects on their territory. Therefore, the State's obligation to supervise the environmental impact assessment is consistent with its obligation to guarantee the effective participation of the indigenous people in the process of granting concessions. The Court also indicated that one of the points that should be addressed in the environmental and social impact assessment is the cumulative impact of existing and proposed projects." *Cf. Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, supra*, paras. 204 and 206 and *Case of the Saramaka People v. Suriname. Interpretation of the Judgment on preliminary objections, merits, reparations and costs*. Judgment of August 12, 2008. Series C No. 185, para. 40.

[24] *Cf. Case of Salvador Chiriboga v. Ecuador. Preliminary objection and merits*. Judgment of May 6, 2008. Series C No. 179, para. 76.

[25] *Cf. Case of the Xákmok Kásek Indigenous Community v. Paraguay, supra*, para. 313.

[26] *Cf. Case of the Kaliña and Lokono Peoples v. Suriname*, *supra*, para. 173.

24. The Inter-American Court has held that, in principle, there is compatibility between the conservation of natural protected areas and the right of indigenous and tribal peoples to protect the natural resources on their territories. It has also emphasized that, owing to their relationship with Nature and their way of life, indigenous and tribal peoples can make a significant contribution to conservation. Therefore, the principles of a) effective participation, b) access to and use of their traditional territories c) receiving benefits from conservation -all of these principles, as long as they are compatible with protection and sustainable use - are fundamental elements to achieve this compatibility.[27]

25. In sum, the Inter-American Court has found that the States violate the victims' rights to collective property, cultural identity and participation in public affairs, mainly by preventing their effective participation in and access to their traditional territory and natural resources, as well as by failing to effectively guarantee the traditional territory of the communities affected by environmental degradation, in breach of Articles 21 and 23 of the American Convention.[28]

26. As for the right to seek and receive information, protected by Article 13 of the American Convention, in the case of *Claude Reyes et al. v. Chile,* the State refused to provide the victims with all the information they requested from the Foreign Investment Committee regarding the Trillium forestry company and the Río Cóndor Project, a deforestation plan that was to be implemented in Chile's twelfth region and that could be detrimental to the environment and hinder the country's sustainable development. In this case, the Court considered that, by expressly stipulating the right to "seek" and "receive information," Article 13 of the Pact of San José protects the right of every person to request access to State-held information, with the exceptions allowed under the restrictions established in the Convention. Consequently, according to the Inter-American Court, "this article protects the right of the individual to receive such information and the positive obligation of the State to provide it, so that the individual may have access to information or receive an answer that includes a justification when, for any reason permitted by the Convention, the State is allowed to restrict access to the information in a specific case. The information should be provided without the need to prove a direct interest or personal involvement in order to obtain it, except in cases in which a legitimate restriction is applied. The delivery of information to an individual can, in turn, allow it to circulate in society, so that the latter can become acquainted with it, have access to it, and assess it."[29]

2. The right to the environment and its direct justiciability

27. Prior to this judgment, the Inter-American Court had ruled on the issue of direct justiciability on two occasions: first, in Advisory Opinion No. 23/17 on the State's obligations in environmental matters related to the right to life and personal integrity (2017); and, secondly, in the case of the *Indigenous Communities Members of the Lhaka Honhat (Our Land) Association v. Argentina* (2020).

2.1. Advisory Opinion No. 23/17

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27 *Cf. Case of the Kaliña and Lokono Peoples v. Suriname*, *supra*, para. 181.

28 *Cf. Case of the Kaliña and Lokono Peoples v. Suriname*, *supra*, para. 198.

29 *Cf. Case of Claude Reyes et al. v. Chile. Merits, reparations and costs*. Judgment of September 19, 2006. Series C No. 151, para. 77.

28. In Advisory Opinion OC-23/17, the Court emphasized that the right to a healthy environment as an autonomous right, unlike other rights, protects the components of the environment, such as forests, rivers and seas, as legal interests in themselves, even in the absence of certainty or evidence of a risk to individuals. This means that it protects nature and the environment, not only because of the benefits they provide to humanity or the effects that their degradation may have on other human rights, such as health, life or personal integrity, but because of their importance to the other living organisms with which we share the planet that also merit protection in their own right.[30]

29. In general terms, Advisory Opinion OC-23/17 can be divided into three main sections: i) jurisdiction over environmental matters, ii) the relationship of the right to the environment with other human rights and iii) the environmental obligations that must be observed.

30. Regarding the first point, the Court makes a distinction between territory and jurisdiction, specifying that it is the latter term that should prevail in the case of determining the State to which international responsibility can potentially be attributed. In Advisory Opinion OC-23/17, it considers that, based on the "State of origin" concept, it is possible to identify the State or States upon which international responsibility would fall. According to the Court, the State of origin is the one that allows or tolerates the use of potential contaminating agents within its jurisdiction (in breach of its environmental obligations. See the table in paragraph 33 of this opinion).[31]

31. Another concept that is particularly relevant in this section is that of "extraterritorial conduct in environmental matters." This Court is conscious that environmental violations do not respect borders, and that polluting agents generated in the State of origin will often have an impact on the territory or jurisdiction of other States. Accordingly, the Court considers that it is the State of origin that will potentially bear international responsibility for environmental violations generated in third States. This conclusion is based on the understanding that it is the State of origin that exercises a kind of *effective control* within the jurisdiction of other States.[32] The notion of effective control has been developed mainly in relation to situations of armed conflict, but has recently has begun to be applied to the protection of the right to the environment.[33]

32. In the second section, the Court states that the obligations of respect, guarantee and non-discrimination apply to the content of this right. It specifies that, given the relationship between the right to a healthy environment and other rights, some human rights "may be particularly vulnerable to environmental degradation," such as the right to life, personal integrity or health, while other rights may serve as an "instrument" to guarantee the right in question (such as the right of access to information or the right to political participation).[34]

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30 *Cf.* Advisory Opinion OC-23/17, *supra*, para. 62.

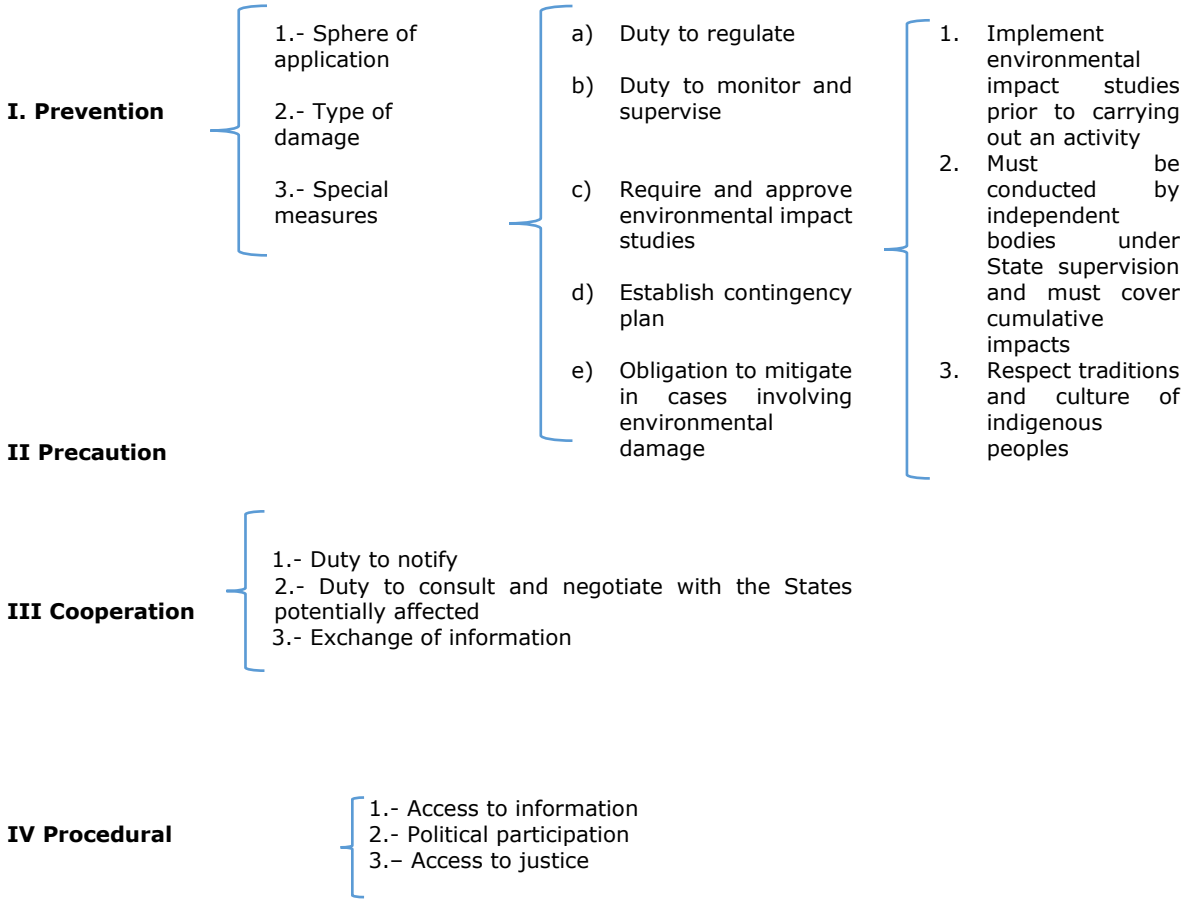
31 *Cf.* Advisory Opinion OC-23/17, *supra*, paras. 72 to 82

32 *Cf.* Advisory Opinion OC-23/17, *supra*, para. 101.

33 For example, in the case concerning the inadmissibility of the communication presented by a group of children against five States, the Committee on the Rights of the Child adopted the concept of jurisdiction defined by the Inter-American Court in Advisory Opinion OC-23/17. In this regard, the Committee indicated: "the Committee considers that the appropriate criterion to determine the jurisdiction in the present case is the one applied by the Inter-American Court of Human Rights in its Advisory Opinion on the Environment and Human Rights." See: Chiara Sacchi et al. (represented by the attorneys Scott Gilmore et al., of Hausfeld LLP, and Ramin Pejan et al. of Earthjustice), CRC/C/88/D/104/2019, November 11, 2019, para. 10.7.

34 *Cf.* Advisory Opinion OC-23/17, *supra*, paras. 80 to 82

33. The Court has made significant advances with respect to environmental obligations, which may be summarized as follows:



34. Regarding the obligations, two aspects should be emphasized: the obligation of prevention and the obligation of protection -better known as the precautionary principle. The Court points out that the difference between the two is that while in the former there is scientific certainty as to what the environmental consequences would be (in relation to which sub-obligations such as regulation, oversight, environmental impact studies, etc., operate), in the case of the second obligation, it operates when there is no scientific certainty about the environmental consequences; however, this does not exempt the State from taking measures to address possible environmental damage. Finally, the Court advises that these obligations must be fulfilled with "due diligence," which is not defined by the Court, since it only indicates that this must take effect whenever there is potential for "significant harm to the right to life or integrity" of individuals.[35]

2.2. The case of the Indigenous Communities Members of the Lhaka Honhat (Our Land) Association v. Argentina

35. In the case of the *Indigenous Communities Members of the Lhaka Honhat (Our Land) Association v. Argentina*, the State was declared internationally responsible because *criollo* settlers had introduced cattle into the ancestral indigenous territories,

[35] *Cf.* Advisory Opinion OC-23/17, *supra,* paras. 174 and 175.

which fed on plants used by the indigenous communities for their traditional food and polluted their traditional water sources (which were contaminated with cattle feces). In addition, there was a problem with illegal logging. This situation also violated the communities' right to participate in cultural life, since their inability to enjoy the rights previously described also impacted the continuity of their cultural practices.

36. In this instance, and for the first time in a contentious case, the Court declared the violation of the right to the environment recognized in Article 26 of the American Convention, because the illegal logging and extraction of timber and other natural resources had occurred in an indigenous territory, and these activities had been reported to the State authorities.[36]

37. Although this case sets an important precedent in terms of the justiciability of economic, social, cultural and environmental rights (ESCER), and more specifically with regard to environmental rights in relation to indigenous peoples, it should be noted that the Court did not develop standards relating to this right, since the matter analyzed in the case was limited to the failure to adopt measures to prevent the felling of trees within the ancestral territory.

III. VIOLATION OF THE RIGHT TO THE ENVIRONMENT IN THE CASE OF THE INHABITANTS OF LA OROYA

38. As stated in section I, the instant case is set in a context in which international human rights law has placed environmental impacts and climate change at the forefront of its analysis of the human rights of people around the world.

39. In particular, the Inter-American Court's examination of this case reflects certain advances, even when compared to Advisory Opinion No. 23/17 which, at the time when it was issued by this international Court, was (and still is) considered a groundbreaking instrument on this subject.

40. This is the first case in which the Inter-American Court issues a ruling on how "contamination" -in this case of the air, water and soil- has a direct impact on conventionalized rights (such as the environment). Furthermore, in our opinion, it is particularly noteworthy that the Court states that everyone has "the right to breathe air with pollution levels that do not pose a significant risk to the enjoyment of their human rights."[37] This ruling is in line with statements made by the European Committee of Social Rights concerning the obligations of States to protect the air.[38]

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[36] *Cf. Case of the Indigenous Communities Members of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs*. Judgment of February 6, 2020. Series C No. 400, para. 264.

[37] See paragraph 120 of the judgment.

[38] The European Committee of Social Rights has indicated the following: "203. Therefore, in order to fulfil their obligations in protecting the right to the environment and air quality, national authorities must: i) develop and regularly update sufficiently comprehensive environmental legislation and regulations; ii) take specific steps such as modifying equipment, introducing threshold values for emissions, and measuring air quality, to prevent air pollution at local level and to help to reduce it on a global scale; iii) ensure that environmental standards and rules are properly applied, through appropriate supervisory machinery; iv) inform and educate the public, including pupils and students at school, about both general and local environmental problems and v) assess health risks through epidemiological monitoring of the groups concerned." It has also stated that: "204. Admittedly, overcoming pollution is an objective that can only be achieved gradually. Nevertheless, States party must strive to attain this objective within a reasonable time, by showing measurable progress and making the best possible use of the resources at their disposal." European Committee on Social Rights, Marangopoulos Foundation for Human Rights (MFHR) v. Greece, Complaint No. 30/2005, December 6, 2006.

41. Secondly, the Inter-American Court specifically states that "water" should be considered as an element within the right to the environment. Thus, on the one hand, the Court has identified "a substantive facet" of water as an element that has value in itself -for example, when rivers have been recognized as subjects of rights- and on the other hand, when it refers to water as an autonomous right, that is, when the Court is called upon to determine whether or not access to water violates the human rights protected by the American Convention.[39] This important distinction made by the Court is of vital importance since it differentiates those cases that should be analyzed from the perspective of the right to the environment, from other cases in which the violations should be assessed from the perspective of the right to water, as an autonomous right, also protected under Article 26 of the Pact of San José.

42. Third, the Inter-American Court refers to the importance of the principle of "intergenerational equity."[40] The mention of this principle in the judgment is not isolated because, unlike many of the human rights protected by the American Convention, the content of the right to the environment cannot be reduced to reparation measures—or policies adopted from that perspective— under the assumption that they will only have an impact over a short period of time (and therefore impact a group of people in one generation). On the contrary, the measures adopted from an environmental perspective must not lose sight of the fact that the safeguarding of environmental resources (for example, in this case, air, water and soil) will inevitably have an impact on future generations in the short and long term. It also entails recognition of the Inter-American Court's current responsibility towards the next generations.

43. Fourth, the Court delivers a very strong message on the importance of the international community's progressive recognition of the prohibition of conduct that harms the environment as a peremptory norm of international law (*jus cogens*).[41] In this regard, we must remember that the basis for this type of norm is that there is no "justification" on the part of the State authorities for violating the protected rights. For example, there is no valid and justifiable reason for torturing, forcibly disappearing or enslaving a person. It is the same reasoning that lies behind the Court's ruling in this case: the international community must recognize that international law does not accept any justification or permission for the violation of the resources that comprise the environment. This rationale is even more consistent with the *principle of intergenerational equity*, since it is up to us at this time to safeguard the rights of future generations. These aspects will be developed and explored in the fifth section of this opinion.

44. Fifth, the collective dimension of the right to the environment should be emphasized together with collective reparations and measures of non-repetition which, in the case of the community of La Oroya, should reflect fair compensation for more than one hundred years of violations and the risk of irreversible consequences. Establishing collective guarantees of non-repetition makes it possible to compensate communities affected by environmental damage and prevent risks for future generations. This collective dimension will be discussed in the fourth section of this opinion.

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39 See paragraph 124 of the judgment.
40 See paragraph 128 of the judgment.
41 See paragraph 130 of the judgment.

45. Finally, it should not go unnoticed that the Inter-American Court continues to consolidate its effort to differentiate the content of those rights in which the environmental content has traditionally been subsumed (for example, in the rights to life or personal integrity). It is vitally important to ensure that each right contained in the Pact of San José has a differentiated and specific spectrum of protection. Otherwise, it would not be possible to accurately delineate its content and would sometimes prevent full analysis of the violations of the American Convention and avoidance of unnecessary overlapping between rights. In this case, the importance of addressing the right to the environment in a differentiated manner, as well as the right to health, is that the Court can rule directly on aspects that must be evaluated in accordance with the obligations inherent to ESCER, such as the obligations of progressivity (or the prohibition of retrogression).[42] If social rights are rendered invisible through civil and political rights, there is a risk of limiting the scope of the analysis of facts involving injury to individuals. This, of course, should always take into account the universality, indivisibility, interdependence and interrelatedness of all rights, whether civil, political, economic, social, cultural or environmental.

IV. THE COLLECTIVE DIMENSION OF THE RIGHT TO THE ENVIRONMENT AND ITS IMPORTANCE IN COLLECTIVE REPARATIONS AND GUARANTEES OF NON-REPETITION

46. After examining the 'state of the art' regarding environmental protection in international human rights law and the evolution of this Court's jurisprudence on the subject, and after highlighting some specific aspects relevant to the judgment, this section of the opinion will be devoted to the collective dimension of the right to a healthy environment in this case and the impact of this understanding on collective reparations, especially on guarantees of non-repetition.

47. The instant case is noteworthy for its discussion of the collective environmental impacts of extractive activities. Starting in 1922, the *Complejo Metalúrgico de La Oroya* ("CMLO"), a private metallurgical complex, nationalized in 1974, operated by the State until 1997, and later privatized by Doe Run, began processing minerals such as lead, copper, zinc, silver, gold, cadmium, mercury and arsenic in the city of La Oroya.[43] Operations were suspended in 2009, but partially resumed between 2012 and 2014. Thus, for more than 100 years, mining and smelting activities have historically exposed the region's residents to harmful levels of pollution.

48. According to the judgment, and based on data provided by the World Health Organization (WHO), four of the ten metals that are most harmful to human health were present in the community of La Oroya: lead, cadmium, mercury and arsenic.[44] The exposure of the local population to these contaminants for long periods of time led the victims to report serious health problems such as cancer, anemia, malnutrition, gastric irritation, respiratory infections and skin problems. Not surprisingly, higher-than-permitted levels of silver were detected in the blood of children.[45]

49. By recognizing that the harm caused to the victims' health was the result of a collective violation of the right to a healthy environment,[46] the Court, in its contentious

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42 See paragraph 187 and third operative paragraph this judgment.
43 See paragraph 67 of the judgment.
44 See paragraph 189 of the judgment.
45 See paragraph 191 of the judgment.
46 *See* paragraph 179 of the judgment.

jurisdiction, applied the conclusions that it had reached when it issued Advisory Opinion No. 23 in 2017. On that occasion, the Court stated that "the human right to a healthy environment has been understood as a right with both individual and collective connotations. In its collective dimension, the right to a healthy environment constitutes a universal value, owed to both present and future generations. […]."[47]The possibility of recognizing the community as the main party affected by environmental damage caused by mining and smelting activities, also reinforces the notion that the protection of nature is not only important for human beings, but is also important "for other living organisms with which we share the planet and which also deserve protection in their own right," as postulated in the aforementioned advisory opinion.[48]

50. The same advisory opinion presents additional conclusions on the intrinsic relationship between the rights to the environment and to a decent life, establishing that environmental protection is one of the necessary conditions for the enjoyment of a decent life through access to health, food and acceptable levels of air and water quality.[49] The contamination of soil, water and air, as occurred in the community of La Oroya, endangers the population's health, since the need to ensure a "state of complete physical, mental and social well-being, and not only the absence of disease or illness," is not fully satisfied.[50] In the judgment, the Court recognizes that "the alleged victims in this case found themselves in a situation of significant risk to their health, due to years of exposure to high levels of heavy metals and environmental contamination in La Oroya."[51]

51. In addition to the fact that exposure to environmental pollution posed a significant risk to people's health in the community of La Oroya, the judgment also recognizes that the State's failure to prevent such harm meant that the region's inhabitants were unaware of the extent and harmfulness of the dangers of poisoning.[52] The lack of scientific information on the risks to which they were exposed—due to the absence or inadequacy of legal frameworks, environmental impact studies and contingency plans— created a situation of vulnerability in the face of the mining company's activities. Access to environmental information is considered a matter of public interest and must be provided in an accessible, effective and timely manner.[53]

52. The victims' vulnerability due to lack of information on the environmental risks of mining activities is a central factor in this case. In terms of environmental harm, indigenous communities, children, people living in extreme poverty, minorities and people with disabilities are more susceptible to the risks associated with exploitation of the environment, either because they live in environmentally sensitive areas or because they are economically dependent on natural resources,[54] or else because of their personal situation of increased vulnerability. In the case of the community of La Oroya, the State did not provide evidence to show that it was not responsible for exposing the region's inhabitants to contamination, a situation aggravated by the lack of access to information on the real risks they faced. In this case, both the State and the mining company had responsibilities to regulate and supervise the hazardous activities.[55]

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47 *Cf.* Advisory Opinion OC-23/17, *supra*, para. 59.
48 *Cf.* Advisory Opinion OC-23/17, *supra*, para. 62.
49 *Cf.* Advisory Opinion OC-23/17, *supra*, para. 109.
50 *Cf.* Advisory Opinion OC-23/17, *supra*, para. 110.
51 *See* paragraph 205 of the judgment.
52 *See* paragraph 203 of the judgment.
53 *See* paragraph 145 of the judgment.
54 *Cf.* Advisory Opinion OC-23/17, *supra*, para. 67.
55 See paragraph 114 of the judgment.

53. The State also had an obligation to refrain from unlawfully polluting the environment and ensuring that measures were adopted to protect the local population's right to a decent life.[56] According to Advisory Opinion No. 23/17, the duty of prevention extends to third parties that endanger legally protected rights such as the rights to life and personal integrity. Both paragraph 126 of the judgment and the aforementioned advisory opinion of 2017, establish that "in the context of environmental protection, the State's international responsibility derived from the conduct of third parties may result from a failure to regulate, supervise or monitor the activities of those third parties that caused the environmental damage."[57]

54. Three elements are essential to determine the scope of the State's duty of prevention in relation to risks of significant environmental damage: the context, nature and size of the project.[58] In the case of La Oroya, the community was subjected to around one hundred years of mining exploitation. From 1922 to 1993, activities were carried out without any legal framework to regulate pollution in the area or address the environmental hazards involved in the operation. And, although the Environmental Impact Assessment (EIA) or the Environmental Adaptation and Management Program became mandatory after the enactment of the *Regulations for Environmental Protection in Mining and Metallurgical Activities* in 1993,[59] they were insufficient to fully protect the area's inhabitants. For more than seventy years, the local population was unaware of the specific environmental risks to which they were exposed, even though they knew that the damage was of concern because La Oroya was regarded as one of the ten cities with the highest levels of air pollution in the world.[60]

55. Given the risk of irreversible contamination from the activities of the La Oroya Metallurgical Complex, it is necessary to comply with collective obligations in relation to the precautionary principle and the principle of intergenerational equity. The first is the "duty of States to preserve the environment to allow future generations opportunities for development and the viability of human life" and the second refers to the obligation of States to "actively contribute by creating environmental policies aimed at ensuring that current generations leave conditions of environmental stability that will allow future generations similar opportunities for development," as emphasized by the judgment in this case.[61]

56. Considering more than one hundred years of violations with risks of irreversible harm, it is possible to attest to the magnitude of the environmental damage caused to the community of La Oroya. The term "sacrifice zone," used by the expert witness Marco Orellana and reinforced by the Court's judgment,[62] highlights the far-reaching effects caused by the historical exposure of the population to high levels of contamination in the region of La Oroya. In this regard, the Court stated:

> This Court considers that the severity and duration of the pollution produced by the CMLO over decades suggests that La Oroya was used as a "sacrifice zone," since for years it was subjected to high levels of environmental contamination that

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56 *Cf. Advisory Opinion OC-23/17, supra,* para. 117-118.
57 *Cf. Advisory Opinion OC-23/17*, *supra*, para. 119.
58 *Cf. Advisory Opinion OC-23/17*, *supra*, para. 135.
59 See paragraphs 160-162 of the judgment.
60 See paragraph 76 of the judgment.
61 See paragraph 128 of the judgment.
62 See paragraph 180 of the judgment.

affected the air, water and soil, and consequently endangered the health, integrity and lives of its inhabitants.[63]

57. From the perspective of the community of La Oroya as a "sacrifice zone," Sultana affirms that "some lives and ecosystems become disposable and expendable, fueled by both historical and contemporary structural forces."[64] The case of La Oroya is not isolated in inter-American case law on environmental violations: the *Case of the Indigenous Communities Members of the Lhaka Honhat (Our Land) Association v. Argentina (2020)* was emblematic in declaring the autonomy of this right in the contentious arena.

58. By recognizing the collective dimension of a violation, the Court does not merely assign a classification to the State's conduct; it is also a declaration that has a direct bearing on the measures adopted by the Inter-American Court, especially with regard to reparations. The inter-American *corpus juris* has developed legal instruments capable of addressing violations of this nature, with two main mechanisms that are discussed below. The first is the possibility of expanding the list of victims, as provided for in Article 35(2) of the Court's Rules of Procedure. The second –the focus of this section – involves the development of case law on collective reparation measures, especially in the form of guarantees of non-repetition.

59. Regarding the identification of the victims, Article 35(1) of the Court's Rules of Procedure establishes that the Commission must submit the case to the Court duly identifying the alleged victims at the appropriate procedural opportunity. As a general rule, the victims must be identified in the Merits Report and, if new victims are subsequently added, the State's right of defense must be fully safeguarded. In turn, Article 35(2) of the Court's Rules of Procedure establishes that "[w]hen it has not been possible to identify one or more of the alleged victims who figure in the facts of the case because it concerns massive or collective violations, the Court shall decide whether to consider those individuals as victims."

60. The Court's consolidated case law has already postulated certain hypotheses for the application of Article 35(2) of the Rules of Procedure, namely: armed conflict, forced displacement, the destruction of the victims' bodies, the disappearance of entire families, difficulty in gaining access to areas where human rights violations have occurred, the absence of records of the local inhabitants, the particular characteristics of the victims, migration, investigative omissions by the State that result in an incomplete identification of the victims, slavery,[65] and, more recently, the practice of clandestine intelligence activities.[66] The list of examples of cases in which Article 35(2) of the Court's Rules of Procedure is applied confirms the broad scope of the provision,

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63 *See* paragraph 180 of the judgment.

64 "*Some lives and ecosystems are rendered disposable and sacrificial, whereby structural forces, both historical and contemporary, fuel it*" (Original). *Cf.* SULTANA, Farhana. The unbearable heaviness of climate coloniality. Political Geography, v. 99, p. 102638, 2022. See also: ANDREUCCI, Diego; ZOGRAFOS, Christos. *Between improvement and sacrifice: Othering and the (bio) political ecology of climate change. Political Geography*, v. 92, 2022 (our translation).

65 *Cf. Case of the Members of Chichupac Village and Neighboring Communities of the Municipality of Rabinal v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of November 30, 2016. Series C No. 328, para. 64.

66 *Cf. Case of José Alvear Restrepo Lawyers' Collective Corporation (CAJAR) v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of October 18, 2023. Series C. No. 506.

preventing the identification of victims from being compromised by excessive formalism, as noted in the case of the *Rio Negro Massacres v. Guatemala.*[67]

61. Although Article 35(2) was not applied in the instant case, the evolution of the Court's jurisprudence reflects an increasingly clear understanding of the measures that may be adopted in the event of collective harms. The Court's response to the collective damage caused by the environmental impact of the metallurgical activities on the community of La Oroya allows us to readjust the scope of the reparation measures and their non-repetition effects in order to protect the lives of present and future generations. Accordingly, the following paragraphs will examine this important mechanism adopted by the Inter-American Court to address collective human rights violations, namely, collective reparations.

62. The adoption of remedies with a 'diffuse' impact is an established practice in the Court's jurisprudence, especially in situations in which the Court has been confronted with violations whose magnitude and scope are difficult to measure and which affect the life and memory of the communities in which they occurred. Such measures can be seen, for example, in the case of the *Plan de Sánchez Massacre v. Guatemala* (2004). In this case, the Guatemalan Army caused the deaths of 268 members of the Maya Achí indigenous community in the territory of Plan de Sánchez village, prompting the Court to award the sum of US$25,000.00 to "help raise public awareness to avoid the repetition of events such as those that occurred in this case, and to keep alive the memory of those who died."[68] The Court also ordered collective measures to improve health, education and infrastructure in the community, including the study and dissemination of the Maya Achí indigenous culture, improvements to the sewage system and drinking water supply, and the establishment of health centers and schools in the community with the inclusion of intercultural training.[69]

63. In situations involving the most vulnerable groups, such as human rights violations committed against indigenous communities, the Court has paid special attention to the implementation of health, housing and education programs for the community, as occurred in the cases of the *Moiwana Community v. Suriname* (2005),[70] the *Yakye Axa Indigenous Community v. Paraguay* (2005)[71] and the *Sawhoyamaxa Indigenous Community v. Paraguay* (2006).[72] In other situations such as in the case of the *Xákmok Kásek Indigenous Community v. Paraguay* (2010), the Court ordered specialized studies to improve the water supply, hygiene management and the provision of medical and educational services to the community.[73] It has also ordered programs for the recovery and preservation of the culture of indigenous peoples, in accordance with their cultural identity and worldview, as in the case of the *Río Negro Massacres v. Guatemala* (2021).[74]

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[67] *Cf. Case of the Río Negro Massacres v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of September 4, 2012, para. 49 and *Case of the Massacres of El Mozote and nearby places v. El Salvador. Merits, reparations and costs.* Judgment of October 25, 2012. Series C No. 252, para. 54.

[68] *Cf. Case of the Plan de Sánchez Massacre v. Guatemala. Reparations*. Judgment of November 19, 2004. Series C No. 116, para. 104.

[69] *Cf. Case of the Plan de Sánchez Massacre v. Guatemala, supra*, para. 110.

[70] *Cf. Case of the Moiwana Community v. Suriname. Preliminary objections, merits, reparations and costs*. Judgment of June 15, 2005. Series C No. 124, paras. 214-215.

[71] Cf. *Case of the Yakye Axa Indigenous Community v. Paraguay, supra*, para. 221.

[72] *Cf. Case of the Sawhoyamaxa Indigenous Community v. Paraguay. Merits, reparations and costs*. Judgment of March 29, 2006. Series C No. 146, para. 230.

[73] *Cf. Case of the Xákmok Kásek Indigenous Community v. Paraguay, supra*, para. 303.

[74] *Cf. Case of the Rio Negro Massacres v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of September 4, 2012. Series C No. 250, para. 285.

64. The collective impacts of human rights violations are especially significant in indigenous territories. In the *Case of the Xákmok Kásek Indigenous Community v. Paraguay* (2010)*,* for example, the creation of a Community Development Fund was aimed not only at repairing the damage caused, but also at the cultural preservation of indigenous traditions for future generations, as stated by the Court in the following terms:

> 321. When establishing the non-pecuniary damage, the Court will assess the special meaning that land has for indigenous peoples in general, and for the Xákmok Kásek Community in particular (supra paras. 107, 149 and 174 to 182). This means that any denial of the enjoyment or exercise of property rights harms values that are very significant to the members of those peoples, who run the risk of losing or suffering irreparable harm to their life and identity and to the cultural heritage to be passed on to future generations.
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> 323. Based on the above, and as it has done in previous cases, the Court considers it appropriate to order, in equity, that the State create a community development fund as compensation for the non-pecuniary damage that the members of the Community have suffered. […] the State must allocate resources […] which must be used to implement educational, housing, nutritional and health projects, as well as to provide drinking water and to build sanitation infrastructure, for the benefit of members of the Community.[75]

65. The scope of the non-repetition measures in the case of the community of La Oroya, is another addition to the Court's chain of precedents on reparations in cases where extractive activities cause intergenerational environmental damage. In the case of the *Kaliña and Lokono Peoples v. Suriname* (2015), the factual context of the violations involved mining activities in the territory of an ecological reserve.[76] The non-repetition measures, in turn, were aimed at developing a rehabilitation plan for the territory, including an updated comprehensive assessment of the affected area, measures to remediate the damage caused by mining operations and a mechanism to monitor and oversee the community's rehabilitation plan.[77]

66. In the case of La Oroya, the reparation measures ordered in the judgment also seek to ensure the maximum scope possible due to the magnitude of the violations. It should be recalled that, during the written phase of the proceedings, the representatives submitted observations on the total number of people affected by the pollution. Their main argument concerned the discrepancy between the number of victims identified in the Merits Report prepared by the Inter-American Commission and the true number of people affected by the contamination in the community of La Oroya, since the damage caused by the environmental impacts affected not only certain inhabitants in the area, but the community as a whole.[78] For this reason, they requested that the reparation measures established by the Inter-American Court consider the collective damage.

67. Accordingly, the measures ordered by the Court include an assessment of the status of air, water and soil contamination in the city of La Oroya and an action plan to contain the damage in the affected areas.[79] They also include the creation of effective

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75 *Cf. Case of the Xákmok Kásek Indigenous Community v. Paraguay, supra,* para. 321 and 323.
76 *Cf. Case of the Kaliña and Lokono Peoples v. Suriname, supra,* paras. 90-93.
77 *Cf. Case of the Kaliña and Lokono Peoples v. Suriname, supra,* para. 290.
78 *Cf.* Merits Report Nº 330/20, February 19, 2009, para. 15.
79 See paragraph 333 of the judgment.

participation mechanisms to enable citizens to know and challenge the action plan before, during and after its execution.[80] As measures of non-repetition, the following protocols were established (i) the State must make existing regulations compatible with air quality standards;[81] (ii) the State must ensure the correct functioning of the warning systems in the city of La Oroya, and develop a system for monitoring air, water and soil quality;[82] (iii) immediate and specialized medical attention must be provided for the inhabitants of La Oroya who suffer from symptoms or diseases caused by pollution, and (iv) an Assistance Fund must be created to provide medical treatment outside the city of La Oroya.[83]

68. Regarding the CMLO's activities, the non-repetition measures stipulate that the company's operations must comply with international environmental standards and be accompanied by an environmental compensation plan in view of the damage already caused.[84] As for the public administration, the judgment provides for a permanent training plan for public authorities[85] and a data system with updated information on air quality and polluted areas.[86] Finally, the Court establishes a relocation or resettlement plan for those inhabitants of La Oroya who wish to leave the city because of the environmental risks arising from pollution.[87] The collective impact of the remediation measures is proportional to the scale of the irreversible damage caused by the CMLO's activities over more than 100 years.

69. The establishment of collective non-repetition measures for the inhabitants of La Oroya ensures the effectiveness of the precautionary principle and the principle of intergenerational equity. Thus, mechanisms were created to contain the existing damage and to define the scope of future risks. According to the Inter-American Commission's Merits Report, 23 of the victims were children who were affected by diseases or poor health.[88] One victim was just 14 years old when she was diagnosed with cancer as a result of environmental contamination and died. The severe impact on the lives of children and adolescents means that non-repetition measures must be preventive and not merely palliative of the damage already caused.

70. The principles that guide this judgment take into account the collective impact of environmental damage and establish measures of non-repetition capable of reducing the risks for future generations. In this sense, at the current stage of jurisprudential development on economic, social, cultural and environmental rights, the case of the *Inhabitants of La Oroya v. Peru* provides an important source of standards for States regarding their obligations to ensure equitable conditions for development in the face of climate change.

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80 See paragraph 334 of the judgment.
81 See paragraph 346 of the judgment.
82 See paragraph 347 of the judgment.
83 See paragraph 349 of the judgment.
84 See paragraphs 351-352 of the judgment.
85 See paragraph 353 of the judgment.
86 See paragraph 354 of the judgment.
87 See paragraph 355 of the judgment.
88 *Cf.* Merits Report Nº 330/20, of February 19, 2009, para. 211.

V. THE *JUS COGENS* NATURE OF ENVIRONMENTAL PROTECTION AND THE PRINCIPLE OF INTERGENERATIONAL EQUITY

i) The protection of the environment as a peremptory norm of international law (*jus cogens*)

71. The judgment recognizes the importance of the international obligation to protect the environment against unlawful or arbitrary actions that cause "serious, extensive, lasting, and irreversible environmental damage, especially in the context of the climate crisis that threatens the survival of species."[89] In this regard, it states that environmental protection requires the progressive recognition by the international community of the prohibition of such actions as a peremptory norm (*jus cogens*), taking into account the interests of both present and future generations, as well as its importance for the survival of humanity. We consider it important to examine in depth the obligation to protect the environment as a *jus cogens* norm, as it is one of the Court's first rulings on this subject. We will further explore this assertion, which we consider to be major significance, since in our opinion, in the present stage of evolution of international law, the protection of the environment and the obligation not to damage it has the character of *jus cogens*, despite being an ongoing process due to its own nature.

72. The Inter-American Court has already stated that *jus cogens* "is presented as the legal expression of the international community as a whole, based on universal and superior values, which embodies basic standards that guarantee essential or fundamental human values related to life, human dignity, peace and security."[90] Thus, *jus cogens* norms protect fundamental rights and universal values without which society would not prosper.

73. Furthermore, *jus cogens* norms embody or crystallize general or universal interests and values of the community of States and not just those of individual States, as the International Court of Justice has indicated: "The contracting States do not have any interests of their own; they merely have, one and all, a common interest, namely, the accomplishment of those high purposes which are the *raison d'être* of the convention."[91]

74. Consequently, the conventional freedom of the States is limited; nor is it possible to deny them the character of *jus cogens* in order to avoid compliance with them individually, since they are norms that are firmly rooted in the legal conviction of nations and because they are indispensable for the very existence of the international community. Hence, through their recognition, the international community as a whole is protected against acts, deeds or omissions by a State that threaten the universal legal asset that is the environment.

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89 See paragraph 129 of the judgment.

90 *Cf. The Human Rights Obligations of a State that has denounced the American Convention on Human Rights and the Charter of the Organization of American States (Interpretation and scope of Articles 1, 2, 27, 29, 30, 31, 32, 33 to 65 and 78 of the American Convention on Human Rights and 3(l), 17, 45, 53, 106 and 143 of the Charter of the Organization of American States)*. Advisory Opinion OC-26/20 of November 9, 2020. Series A No. 26, para. 105.

91 International Court of Justice. Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide. Advisory Opinion of May 28, 1951.

75. The International Law Commission has provided the following definition of a peremptory norm of international law: "a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character."[92] It has also emphasized that "peremptory norms of general international law (*jus cogens*) reflect and protect fundamental values of the international community, are hierarchically superior to other rules of international law and are universally applicable.[93]

76. The current status of the environment and the impact on each of its components - including the human species- calls for further reflection on the State's obligations in this regard. Never before have human activities on the planet caused so much environmental degradation and, unless the necessary legal mechanisms are employed and human behavior is brought into line with these standards, the forecasts do not seem to augur a better situation. In this context, the Inter-American Court is called upon to protect and ensure the interests of present and future generations, by virtue of the principle of intergenerational equity, as will be discussed below in this opinion.

77. The survival of the human species and, by extension, of the international community as a whole, depends on the protection of the environment. The collective dimension of the right to live in a clean, healthy and sustainable environment is shared not only by individuals, but also by the community of States, since the problems of ecosystems, pollution and the environment overall extend beyond national borders, as this Court has indicated in Advisory Opinion No. 23/17: "Many environmental problems involve transboundary damage or harm. One country's pollution can become another country's human and environmental rights problem, particularly where the polluting media, such as air and water, are capable of easily crossing boundaries."[94]

78. Hence, the obligation to protect the environment as a *jus cogens* norm embodies or reflects the fundamental values of the international community by recognizing the environment as a support for States and a *sine qua non* condition for their existence. Likewise, international security also depends on environmental protection, a value enshrined in the Preamble to the United Nations Charter and in Article 2 of the OAS Charter.

79. *Jus cogens* norms protect against acts that are considered intolerable by the international community because they threaten the very survival of the community itself, of peoples or of fundamental values. In this sense, the purpose of the peremptory norms of international law is determined by essential social values resulting from a certain level of development of the international community and its legal systems.[95] Judge Augusto Cançado Trindade, in his concurring opinion on Advisory Opinion No. 18/03, has expressed a similar view:

> In fact, when we recognize the fundamental principles that form the substratum of the legal order itself, we are already entering into the domain of *jus cogens*, of peremptory law […] It is perfectly possible to visualize peremptory law (*jus*

[92] United Nations. International Law Commission. Peremptory norms of general international law (jus cogens) A/CN.4/L.967. May 11, 2022. Conclusion 3 [2].
[93] United Nations. International Law Commission. Peremptory norms of general international law (jus cogens) A/CN.4/L.967. May 11, 2022. Conclusion 2 [3].
[94] *Cf.* Advisory Opinion OC-23/17, *supra*, para. 96.
[95] Puceiro Ripoll, R. in Jiménez of Aréchaga, E. et al. International Public Law. Principles, norms and structures. Tome I (2005) Ed. FCU, Montevideo. p. 376.

> *cogens*) as identified with the general principles of law of a material order which are guarantors of the legal order itself, of its unity, integrity and cohesion. Such principles are necessary (*jus necessarium*), they are prior and superior to will […] they are consubstantial with the international legal order itself.[96]

80. As noted previously, the existence of an international - or domestic - legal order cannot be conceived if the environment does not exist in conditions suitable for survival, both for human beings and for the other components. This is so because the environment supports the elements of the State; therefore, its degradation endangers the State itself and humanity as a whole.

81. The International Law Commission has pointed out that in order to identify a *jus cogens* norm it is necessary to ensure that it meets two criteria, namely: i) that it is a rule of general international law; and ii) that it is accepted and recognized by the international community of States in its entirety, as a norm from which no derogation is permitted and which can only be modified by a subsequent norm having the same character.[97]

82. We consider that the current state of this issue allows us to conclude that the obligation to protect the environment meets the criteria of a *jus cogens* norm.

83. Customary international law is the most common basis for the *jus cogens* norms. Article 38 of the Statute of the International Court of Justice refers to international custom as "evidence of a general practice accepted as law." There is consensus that custom is composed of two elements: a *usus diurnitas* or material element and the *opinio iuris necessitatis* or psychological element.

84. As regards the first element, this is reflected in the positive action of state organs, e.g., the enactment of laws, domestic judgments, regulations, and practices in international organizations, among others. It is therefore possible to argue that a general consensus exists in the international community that understands the importance of environmental protection. This international consensus is reflected in the practice of taking numerous measures or actions to reverse damage or to care for, protect and promote the environment and it is embodied in the many and varied instruments agreed upon by the community of States. For example, the 1972 United Nations Conference on the Human Environment in Stockholm, with the participation of 113 States;[98] the World Charter for Nature signed by 118 States; the United Nations Conference on Environment and Development, in Rio de Janeiro, with the participation

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[96] Cançado Trindade, A., Concurring Opinion on Advisory Opinion OC-18/03. *Juridical Condition and Rights of Undocumented Migrants*. Series A No. 18. September 17, 2003, para. 58.

[97] *Cf.* United Nations. International Law Commission. Peremptory norms of general international law (jus cogens) A/CN.4/L.967. May 11, 2022. Conclusion 4.

[98] The minutes record the participation of: Afghanistan, Algeria, Argentina, Australia, Austria, Bahrain, Bangladesh, Belgium, Bolivia, Botswana, Brazil, Burundi, Cameroon, Canada, Central African Republic, Ceylon, Colombia, Republic of the Congo, Costa Rica, Chad, Chile, China, Cyprus, Dahomey, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, Federal Republic of Germany, Fiji, Finland, France, Gabon, Ghana, Greece, Guatemala, Guinea, Guyana, Haiti, Holy See, Honduras, Iceland, India, Indonesia, Iraq, Iran, Ireland, Israel, Italy, Ivory Coast, Jamaica, Japan, Jordan, Kenya, Kuwait, Lebanon, Lesotho, Liberia, Libya, Liechtenstein, Luxemburg, Madagascar, Malaysia, Malawi, Malta, Morocco, Mauritius, Mauritania, Mexico, Monaco, Nepal, Nicaragua, Niger, Nigeria, Norway, New Zealand, Netherlands, Pakistan, Panama, Peru, Philippines, Portugal, Republic of Korea, Republic of Viet-Nam, Romania, San Marino, Senegal, Singapore, South Africa, Spain, Sudan, Sweden, Switzerland, Swaziland, Syria, Tanzania, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Uganda, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, Yemen, Yugoslavia, Zaire and Zambia.

of 110 States; and the World Summit on Sustainable Development held in Johannesburg in 2002.[99] [100] It is also reflected in the national legislation of several States in the region, since it is enshrined in constitutional norms.[101]

85. The second element of international custom is the recognition that it is a legally binding norm. Thus, the United Nations resolution on the human right to a clean, healthy and sustainable environment was adopted by 161 votes in favor and eight votes against. [102] At this point, we should remember that it must be recognized as such by the majority of States, without the need for unanimity. It is clear that the majority of States declared their support for its recognition as a human right, taking into account that the resolution does not create or enshrine, but rather declares a pre-existing reality (the human right to a clean, healthy and sustainable environment), which was already being developed in multiple international instruments, as noted previously.

86. The United Nations 2030 Agenda has a similar vocation or claim to universality: "All countries accept it and it applies to all of them, although taking into account the different national realities, capacities and levels of development of each one […] these goals and targets are universal and affect the whole world, both developed and developing countries."[103]

87. The first consequence of the general recognition of the human right to the environment by the majority of UN Member States lies in the correlative duty of respect and guarantee placed on States, which not only entails refraining from polluting, but also involves positive measures to ensure that these provisions do not become devoid of content through the actions of those who contribute to their formulation.

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[99] The minutes record the participation of: Afghanistan, Chad, Albania, Chile, Germany, China, Andorra, Cyprus, Angola, Colombia, Antigua and Barbuda, Comoros, Saudi Arabia, European Community, Algeria, Congo, Argentina, Costa Rica, Armenia, Côte d'Ivoire, Australia, Croatia, Austria, Cuba, Azerbaijan, Denmark, Bahamas, Djibouti, Bahrein, Dominica, Bangladesh, Ecuador, Barbados, Egypt, Belarus, El Salvador, Belgium, United Arab Emirates, Belize, Eritrea, Benin, Slovakia, Bhutan, Slovenia, Bolivia, Spain, Bosnia and Herzegovina, United States of America, Botswana, Estonia, Brazil, Ethiopia, Brunei, Darussalam, former Yugoslav Republic of Macedonia, Bulgaria, Russian Federation, Burkina Faso, Fiji, Burundi, Filipinas, Cape Verde, Finland, Cambodia, France, Cameroon, Gabon, Canada, Gambia, Georgia, Monaco, Ghana, Mongolia, Granada, Mozambique, Greece, Myanmar, Guatemala, Namibia, Guinea, Nepal, Guinea-Bissau, Nicaragua, Equatorial Guinea, Niger, Guyana, Nigeria, Haiti, Niue, Honduras, Norway, Hungary, New Zealand, India, Oman, Indonesia, Netherlands, Iran (Islamic Republic of), Pakistan, Iraq, Palau, Ireland, Panama, Iceland, Papua New Guinea, Cook Islands, Paraguay, Marshall Islands, Peru, Solomon Islands, Poland, Israel, Portugal, Italy, Qatar, Jamahiriya Arab, Libya, Jamaica, United Kingdom of Great Britain and Northern Ireland, Japan, Republic Arab, Syria, Jordan, Central African Republic, Kazakhstan, Czech Republic, Kenya, Republic of Korea, Kirgizstan, Democratic Republic of Congo, Kiribati, Lao People's Democratic Republic, Kuwait, Republic of Moldova, Lesotho, Dominican Republic, Latvia, Lebanon, Republic Popular Democratic of Korea, Liberia, United Republic of Tanzania, Liechtenstein, Romania, Lithuania, Rwanda, Luxemburg, Saint Kitts and Nevis, Madagascar, Samoa, Malaysia, St. Lucia, Malawi, Holy See, Maldives, Santo Tomé and Príncipe, Mali, St. Vincent and the Grenadines, Mauricio, Senegal, Mauritania, Seychelles, Malta, Sierra Leone, Morocco, Singapore, Mexico, Somalia, Micronesia (Federated States of), Sri Lanka, South Africa, Turkey, Sudan, Ukraine, Sweden, Uganda, Switzerland, Uruguay, Suriname, Uzbekistan, Swaziland, Vanuatu, Thailand, Venezuela, Tajikistan, Viet Nam, Togo, Yemen, Tonga, Yugoslavia, Trinidad and Tobago, Zambia, Tunisia, Zimbabwe and Tuvalu.

[100] Other instruments include: the Antarctic Treaty of 1959, the Protocol on Environmental Protection to the Antarctic Treaty, 1991, the Millennium Summit of 2000, the United Nations Conference on Sustainable Development ("Rio +20"), 2012, with representatives of 193 States of the United Nations; the Agreement of Paris, the Agreement of Escazú, etc.

[101] See footnote 215 of the judgment.

[102] United Nations General Assembly. The Human Right to a clean, healthy and sustainable environment. Resolution A/RES/76/300. July 28, 2022.

[103] United Nations General Assembly. Resolution A/70/L.1. Transforming Our World: 2030 Agenda for Sustainable Development. 18 September 2015. Para. 5.

88. Given that the United Nations General Assembly is the most representative organ of the international community, decisions of a legislative nature concerning its most important interests - which undoubtedly include environmental protection - are suitable for the test of *opinio iuris necessitatis*. The declaration issued by the most representative body recognizing or endorsing a human right must necessarily have an impact; it must also have a practical application, since it is not merely a declaration of intent.

89. The International Court of Justice has based its *opinio iuris necessitatis* on the conduct of the parties and of other States with respect to international resolutions and declarations. Referring to the prohibition of the use of force in the *case of Nicaragua v. United States* it stated:

> [t]he weight of an expression of *opinio juris* can similarly be attached to its support for the resolution of the Sixth International Conference of American States condemning aggression (February 18, 1928) […]Also significant is the United States' acceptance of the principle of the prohibition of the use of force which is contained in the declaration on principles governing the mutual relations of States participating in the Conference on Security and Co-operation in Europe […] Acceptance of a text in these terms confirms the existence of an *opinio juris* of the participating States prohibiting the use of force in international relations.
>
> A further confirmation of the validity as customary international law of the principle of the prohibition of the use of force […] may be found in the fact that it is frequently referred to in statements by State representatives as being not only a principle of customary international law but also a fundamental or cardinal principle of such law.[104]
>
> […] In determining the legal rule which applies to these latter forms, the Court can again draw on the formulations contained in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV), referred to above). As already observed, the adoption by States of this text affords an indication of their *opinio juris* as to customary international law on the question. (Emphasis added)

90. Regarding proof of acceptance and recognition, the International Law Commission has stated that proof is constituted, *inter alia*, by public statements made on behalf of States, official publications, governmental opinions, diplomatic correspondence, constitutional, legislative or administrative norms, national case law, and resolutions adopted by an international organization or intergovernmental conference.[105] The wide range of international instruments in different bodies shows that the international community has agreed to accept and recognize environmental protection as a legal obligation of the States.

91. The international obligation to protect the environment as a *jus cogens* norm becomes a guarantor of the international legal order, as it encapsulates principles that are necessary or inherent to the international legal order. This is because international

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[104] International Court of Justice. Case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States). Merits. June 27, 1986. Paras. 189-191.

[105] United Nations. International Law Commission. Peremptory norms of general international law (jus cogens) A/CN.4/L.967. May 11, 2022. Conclusion 8.2.

security[106] as well as the survival of the human species and of the community of States as we know it, depends on respect for this norm. Therefore, we cannot rationally and in good faith conceive, tolerate or justify acts that jeopardize the integrity of the environment, because this means destroying the foundation or the basis upon which human life and all its aspects evolve.

92. As we have pointed out, this consolidation process is also reflected in the many instruments for the protection of the environment in general, or its components in particular,[107] which, in addition to showing international concern in this regard, underscore the value that the international community has placed on the environment, aware of the drastic consequences that its deterioration entails for the continuity of life as we know it.

93. Consequently, the international community has no valid reasons to disregard the obligation to protect the environment as a *jus cogens* norm and, therefore, no State acts, deeds or omissions that have repercussions on the quality and conservation of the environment are acceptable, especially taking into account that we, the present generations, act as custodians who must hand over this legal asset to future generations in equal or better conditions than those in which we have received it from our predecessors.

94. The recognition of the obligation to protect the environment as a *jus cogens* norm also has several legal implications for States. First, the international customary norm of environmental protection, having become a peremptory norm of international law (*jus cogens*), means that any persistent objection raised by some States is futile; they will not be able to evade compliance with said norm by claiming their opposition or disagreement.

95. Furthermore, States will not be able to evade compliance with *jus cogens* norms by means of legal acts, practices or even omissions. This places a limit on the notion of the State's unrestricted sovereignty and autonomy with regard to the protection of a supra-state or universal value – namely, the environment - as a prerequisite for the survival of humanity itself and therefore of the community of States. Thus, there is a subordination of individual interests to the fundamental interests of the international community.

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[106] Initially, the concept of international security was conceived in military or war terms; however, the term has evolved to include other phenomena that, like the former, threaten the coexistence, stability and continuity of the community of States and individuals. In this sense, environmental degradation has consequences that endanger international security: forced migrations, conflicts over the control of natural resources, loss and deterioration of flora and fauna species as the natural heritage of humankind, human rights violations, etc.

[107] In this regard, see the following: Protocol of San Salvador; International Covenant on Economic, Social and Cultural Rights; Stockholm Declaration, 1972; World Charter for Nature, 1982; Rio Declaration on Environment and Development, 1992; United Nations Framework Convention on Climate Change, 1992; Convention on Biological Diversity, 1992; World Summit on Sustainable Development, Johannesburg, 2002; Rio+20 Conference, 2012; the Paris Agreement, 2015; Kyoto Protocol of the United Nations Framework Convention on Climate Change; Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean; United Nations General Assembly Resolution A/RES/76/300 of 2022; Convention on the Protection of Flora, Fauna and Natural Scenic Beauty in the Countries of the Americas; Convention on the International Trade in Endangered Species of Wild Fauna and Flora, 1973; Convention Concerning the Protection of the World Cultural and Natural Heritage, 1972; Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter, 1972.

96. The very broad discretion that had traditionally been granted to States in environmental matters and in the exploitation of natural resources, has been replaced by a global concept of solidarity (human family), where the management and care of natural resources is the responsibility of all humankind. Thus, on the basis of this recognition, any State is entitled to require others to comply with the international obligations derived from this norm, and to demand accountability for any wrongful acts or damage caused, since a violation by one State affects and is a matter of concern to all the others.

97. In relation to the current treaties in force, it is necessary to remember that the rules of Article 64 of the 1969 Vienna Convention on the Law of Treaties apply, so that treaty provisions that are contrary to the prevailing *jus cogens* norm are annulled and state acts that violate these norms increase the international responsibility of the State.

98. In addition, the States' autonomy is limited when signing future treaties, given that their content must conform to this new rule, under penalty of annulment in accordance with Article 53 of the 1969 Vienna Convention on the Law of Treaties. However, it is important to remember that the duty to conform to a peremptory norm of international law will not only occur in the conventional sphere, but that its effects extend to the entire system of international law.[108]

ii) Sustainable development as a right protected under the Convention and its dimensions

99. This Court has already stated its position on sustainable development. In Advisory Opinion No. 23/17, it referred to the relationship between environmental protection, sustainable development and human rights, as well as to the possibility of applying the principles, rights and obligations of international environmental law as part of the inter-American *corpus juris*, to determine the scope of conventional obligations.[109] It has also highlighted the contribution made by human rights defenders, directly or indirectly, to sustainable development and governance and how this benefits the rule of law and democracy.[110]

100. In the instant case, the Court delves deeper into these considerations and reaffirms the obligation of States to promote sustainable development for the benefit of individuals and communities in order to achieve economic, social, cultural and political wellbeing, taking into account the limits set by respect for human rights and, in particular, the right to a healthy environment. Therefore, sustainable development and environmental protection are essential, especially for children, as a group that may be disproportionately affected by the consequences of environmental degradation.[111]

101. The judgment also highlights the pressures experienced by the inhabitants of La Oroya, where certain groups perceived an incompatible tension between development and environmental protection, which resulted in acts of harassment against them.[112] It is for this reason, as well as for the importance that this issue has for our region, that

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108 *Cf.* Advisory Opinion OC-26/20, *supra,* para. 102.

109 *Cf.* Advisory Opinion OC-23/17, *supra,* paras. 52-55.

110 *Cf. Case of Acosta et al. v. Nicaragua. Preliminary objections, merits, reparations and costs*. Judgment of March 25, 2017. Series C No. 334, para. 221.

111 See paragraph 243 of the judgment.

112 See paragraphs 93-101 of the judgment.

we seek to develop the concept of sustainable development and its implications in this concurring opinion.

102. The United Nations General Assembly has stated that development is a comprehensive economic, social, cultural and political process, aimed at the constant improvement of the well-being of the entire population. Accordingly, it has declared that "the right to development is an inalienable human right, by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized."[113]

103. The notion of sustainable or lasting development emerges as an alternative to models of production and consumption characterized by a disregard for the preservation of the environment and the availability of resources. Many forms of development irreversibly affect resources in the environment in which they are located; at the same time, environmental degradation can undermine economic development and adversely impact the future of the populations who live there.

104. Ultimately, sustainability has to do with our obligations to future generations; it therefore involves a necessary combination of development and intergenerational equity. Sustainable development consists of ensuring "that the needs of the present generations are met without compromising the ability of future generations to meet their own needs. The concept of sustainable development does imply limits - not absolute limits but limitations imposed by the present state of technology and social organization on environmental resources and by the ability of the biosphere to absorb the effects of human activities."[114]

105. The right to sustainable development is enshrined in Articles 30 to 34 of the Charter of the Organization of American States. Article 30 of the Charter mentions the need for social justice in relations among Member States and the integral development of their peoples as "conditions essential to peace and security." It adds that "integral development encompasses the economic, social, educational, cultural, scientific, and technological fields."

106. Articles 31 and 32 refer to inter-American cooperation for integral development as a "common and joint responsibility of the Member States," an aspect that suggests the recognition of the principle of international solidarity, which is fundamental to achieving sustainable development, as discussed below. Solidarity is therefore a legal obligation assumed by the States.

107. Finally, Article 33 stipulates that development - which is a primary responsibility of each State - must "make possible and contribute to the fulfillment of the individual." Therefore, as we explain in this section, the full realization of the human person is not conceivable - as the law states- in a degraded environment or one at risk of being degraded by the activities carried out there.

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[113] United Nations General Assembly. Resolution 41/128 of December 4, 1986. Declaration on the Right to Development. Article 1.

[114] United Nations General Assembly. Resolution A/42/427. Report of the World Commission on the Environment and Development. August 4, 1987. Recapitulation of the World Commission on the Environment and Development. Para. 27, p. 23.

108. If the development referred to in the OAS Charter must be oriented toward and contribute to the full realization of the individual, then this development must be sustainable, lasting, concerned with its own durability and endurance, meeting the needs of present and future generations. In other words, there can be no full realization of the individual in an environment that is at risk or where the prospects for survival and well-being are not secure in the medium and long term. This is the concept of sustainable development.[115]

109. However, the right to sustainable development is not only enshrined in soft law instruments, nor does it depend on the good will of the States; rather, as a right derived from the OAS Charter, it enjoys protection under Article 26 of the American Convention as a conventionally protected right.

110. Sustainable development is, first and foremost, development; therefore, it inexorably imposes on States the requirement to satisfy basic human needs and aspirations as its main objective. This includes the eradication of poverty, the elimination of gender barriers and the inclusion of all people, access to clean water, equitably distributed economic growth, housing and education, and democratic systems that protect human rights.

111. But, secondly, it is "sustainable" or "lasting", which means that production and consumption levels must consider long-term durability, the impact on future generations, and the availability of resources and their conservation in terms of quality standards, among other aspects. Sustainable development means adopting a "green" perspective that takes into account the preservation of plant and animal species and the conservation of soil and ecosystems. In this regard, the "Bruntland Report" notes that "it is a process of change in which the exploitation of resources, the direction of investments, the orientation of technological development, and institutional change are made consistent with future as well as present needs."[116]

112. Hence, development emerges as a human right. However, as a State obligation, it presupposes that such development occurs on the basis of a sound environmental system, since sustainability is a necessary condition for true development to exist as a human right. We can therefore affirm that a relationship of interdependence and interconnection exists between environment, sustainability and development; consequently, every decision related to production, development or society must be taken from a sustainable perspective, harmonizing and, if necessary, weighing, on the one hand, the current benefits and, on the other hand, the consequences and future projections, anticipating the degree of impact and benefits in both cases. The "Bruntland Report" states that "economic growth always brings a risk of environmental damage, as it puts increased pressure on environmental resources. But policy makers guided by the concept of sustainable development will necessarily work to assure that growing economies remain firmly attached to their ecological roots and that these roots are protected and nurtured so that they may support growth over the long term."[117]

113. Sustainable development, as a State obligation, must be implemented in three areas: (i) ecological, which involves designing policies for the protection, conservation

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115 This conclusion is derived from Articles 45 a, d and f, as well as Article 47.

116 UN General Assembly. Resolution A/42/427. Report of the World Commission on Environment and Development. Chapter 2. Towards Sustainable Development. August 4, 1987. Para. 15, p. 63.

117 United Nations General Assembly. Resolution 4/42/427. Report of the World Commission on Environment and Development. Chapter 1. A Threatened Future. August 4, 1987. Para. 50, p. 56.

and restoration of our natural heritage and the environment, taking into account biological diversity and regeneration capacity; (ii) economic, which requires adaptation of the means of production and consumption, the valuation of resources in the short and long term, and intergenerational and intra-generational equity; and (iii) social, which implies equal opportunities, integration, citizen participation in decision-making that affects the environment, satisfaction of basic needs, decent jobs and poverty eradication. In short, sustainable development involves three aspects that must be balanced and integrated because they are three dimensions of the same phenomenon: economic, social and environmental.[118]

114. A true sustainable development perspective must also consider the impact of current forms of development on vulnerable groups, especially children, whose opportunities for long-term development and well-being may be jeopardized if resources are not properly managed and preserved at the present time. We must also consider the responsibility of present generations with respect to future generations, since we are called upon to hand over the environment in conditions at least equal to those in which we received it.

115. In this regard, the High Commissioner for Human Rights has emphasized the importance that States "when developing their environmental policies, take into account how environmental degradation may affect all members of society, and in particular women, children, indigenous people or disadvantaged members of society, including individuals and groups of individuals who are victims of or subject to racism."[119]

116. States must therefore make a concerted effort to address the situation of people living in poverty and devise plans to eradicate it, given that the effects of pollution and environmental degradation have a greater impact on vulnerable groups, as stated in the judgment.[120] On this point, the 2030 Agenda affirms that "eradicating poverty in all its forms and dimensions, including extreme poverty, is the greatest global challenge and an indispensable requirement for sustainable development."[121]

117. However, the right to development —including economic development — cannot be achieved at any price, without considering the costs and risks of this process. On the contrary, any policy in this regard must be framed or defined in relation to the principle of intergenerational equity and sustainable development. It is correct to affirm that the State has a duty to make every effort to achieve economic and social development; but this development must be continuous, inclusive (equitably distributed) and sustainable. Sustainability enables the development model to be maintained over time, without detriment to environmental, social and other conditions. It is imperative that States review their production, development and consumption models in order to make them more sustainable, based on the rational and responsible management of natural resources.

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118 United Nations General Assembly. Resolution A/4/70/L.1. Transforming Our World: The 2030 Agenda for Sustainable Development. September 18, 2015, para. 2.

119 Office of the High Commissioner for Human Rights. Human Rights and the Environment as part of Sustainable Development. Resolution 2005/60. April 20, 2005, para. 4.

120 See paragraph 231 of the judgment.

121 United Nations General Assembly. Resolution A/4/70/L.1. Transforming our world: The 2030 Agenda for Sustainable Development. September 18, 2015, para. 2.

118. This requires a joint effort between individuals, States and companies, without prejudice to the State's obligation to regulate, monitor and supervise in order to respect and ensure the right to a healthy, clean and sustainable environment.

119. The Constitutional Court of Colombia has ruled on this matter, stating that: "sustainable development is not only a theoretical framework but involves a set of instruments, including legal instruments, that make feasible the progress of future generations in line with a harmonious development of Nature […] from this perspective, economic and technological development, instead of being in conflict with environmental improvement, must be compatible with environmental protection and the preservation of historical and cultural values."[122]

120. In the case that prompts this opinion, the activities carried out at the Metallurgical Complex in La Oroya were not based on a sustainable outlook; as the judgment points out, the situation was the result of deficient regulation and a lack of oversight by the State. In relation to industry, innovation and infrastructure, the targets established in the UN's Sustainable Development Goals require "the adoption of clean and environmentally sound technologies and industrial processes, with all countries taking action in accordance with their respective capabilities."[123] This is especially important when, as in this case, the activities are carried out by private parties, which requires the State to adopt a proactive attitude and a sustainable approach in terms of measures, regulation, incentives, etc.

121. The concepts of development, growth and sustainability should not be interpreted as antagonistic; on the contrary, they should be compatible. Development is not possible on the basis of a degraded environment, nor can the environment be protected when economic growth does not take account of its environmental impact; therefore, States should not address these aspects in isolation, but rather with an overall vision that facilitates a sustainable perspective. [124]

122. Finally, we wish to emphasize the importance of linking sustainable development with the principle of international solidarity, which is enshrined in the OAS Charter as a duty of the States Parties. Sustainable development is not a fixed state; rather, it is a process of continuous and dynamic change in which the exploitation of resources, investments, research and technology development are adapted to present and future needs. That is why it is necessary for the international community, private companies and individuals to join forces.

123. Regarding the need for international cooperation in a case concerning climate change - which is perfectly applicable to the protection of the environment in general - the Federal Constitutional Court of Germany has stated the following:

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122 Constitutional Court of Colombia. Judgment C-339/02. May 7, 2002.

123 United Nations General Assembly. Resolution A/RES/70/1.

124 The "Bruntland Report" has referred to this point, stating that: "Economic and ecological concerns are not necessarily in opposition. For example, policies that conserve the quality of agricultural land and protect forests improve the long-term prospects for agricultural development. An increase in the efficiency of energy and material use serves ecological purposes but can also reduce costs. But the compatibility of environmental and economic objectives is often lost in the pursuit of individual or group gains, with little regard for the impacts on others, with a blind faith in science's ability to find solutions, and in ignorance of the distant consequences of today's decisions. Institutional rigidities add to this myopia […]." United Nations General Assembly. Resolution A/42/427. Report of the World Commission on the Environment and the Development, para. 73, pp. 84-85.

> In requiring that the natural foundations of life be protected for future generations, Article 20a GG makes it obligatory to pursue a goal that the national legislator is not capable of reaching on its own but can only achieve through international cooperation. This is due to the physical realities of climate change and climate action. The problem of climate change and the (legal) activities involved in its prevention, are genuinely global in nature […] no State can stop global warming on its own. Furthermore, emissions from every State contribute to climate change in the same way.[125] [126]

124. The above does not imply disregarding the State's sovereign right to determine its own policies or the use of its resources in accordance with the rules of international law; rather, the current sustainable approach requires States to work together through their international cooperation ties, and in the interests of inter and intra-generational solidarity, in order to unite efforts in research, technology, prevention, planning and monitoring of the environment. This aspect is further analyzed below.

iii) The principle of intergenerational equity

125. The judgment in the instant case also refers to the link between the "precautionary principle" in environmental matters and the "principle of intergenerational equity," which requires States to design environmental policies so that present generations can bequeath a sound environment to future generations.[127] It also highlights the importance of special measures of protection for children and adolescents, who are particularly vulnerable to the effects of environmental degradation,[128] by requiring "a stricter process of due diligence"[129] and a reinforced obligation in terms of monitoring and supervision in cases where the pollution originates from companies whose activities or scope of operations may damage the environment.

126. This is not the first time that the Inter-American Court has ruled on this issue; it had already referred to the need to protect future generations in Advisory Opinion OC-23/17.[130] In this opinion, we wish to further develop the principle of intergenerational equity and its legal basis, bearing in mind its special connection with the right to sustainable development and the rights of children and adolescents as a group especially vulnerable to the impact of pollution. Our considerations on intergenerational equity will take into account the perspective of environmental protection, notwithstanding the fact that it has other dimensions, e.g. related to the external debt of countries, among other aspects.

127. The preamble to the American Declaration of the Rights and Duties of Man states that "[a]ll men are born free and equal, in dignity and in rights, and, being endowed by nature with reason and conscience, they should conduct themselves as brothers one

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125 Federal Constitutional Court of Germany. Beschluss vom 24. March 2021 - 1 BvR 2656/18 First Chamber. March 24, 2021. Available at: https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/ES/2021/03/rs20210324_1bvr265618es.html, para. 200.

126 The "Bruntland Report" also referred to this matter, stating the following: "The systemic features operate not merely within but also between nations. National boundaries have become so porous that traditional distinctions between matters of local, national, and international significance have become blurred. Ecosystems do not respect national boundaries." See also Principles 5, 6 and 7 of the Rio Declaration and Principle 24 of the 1972 Stockholm Declaration.

127 *Cf.* paragraph128 of the judgment.

128 *Cf.* paragraph 141 of the judgment.

129 *Cf.* paragraph 142 of the judgment.

130 *Cf.* Advisory Opinion OC-23/17, *supra,* para. 59.

to another." Thus, it is clear that there is no reference that limits it to "men" (persons) of the present, but it refers to "all." Likewise, the spirit of brotherhood that should guide human relations is not based solely on an intra-generational dimension -that is, the current generations- but also on an intergenerational one, since the text does not distinguish between them.

128. Article XXIX also mentions the "duty of the individual so to conduct himself in relation to others that each and every one may fully form and develop his personality."

129. Furthermore, Article 30 of the Charter of the Organization of American States stipulates that "The Member States, inspired by the principles of inter-American solidarity and cooperation, pledge themselves to a united effort to ensure international social justice in their relations and integral development for their peoples, as conditions essential to peace and security." This should be understood from a diachronic perspective and not only in relation to current or present development; in addition, Article 33 refers to the fact that development should contribute to the full realization of the individual, as mentioned above.

130. For its part, Article 1(2) of the American Convention defines a "person" as every human being, without distinctions of any kind, and this must be the criterion that guides our interpretation of Article 1(1).

131. Similarly, the Universal Declaration of Human Rights states in its preamble that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." This human family should be understood to include even those members of the human family who have not yet been born. Article 1 proclaims that "all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."[131]

132. Also, the Covenant on Economic, Social and Cultural Rights recognizes the inherent dignity and the equal and inalienable rights of "all members of the human family" which "can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights."

133. Particularly noteworthy in the universal sphere of the protection of human rights is the UNESCO Declaration on the Responsibilities of the Present Generations Towards Future Generations,[132] which states in Article 1 that the present generations have "the responsibility of ensuring that the needs and interests of present and future generations are fully safeguarded." Article 3 of this declaration refers to the maintenance and perpetuation of humankind while Article 4 stipulates that present generations have "the responsibility to bequeath to future generations a planet that will not be irreversibly damaged by human activity. Each generation inheriting the Earth temporarily should take care to use natural resources reasonably and ensure that life is not prejudiced by harmful modifications of the ecosystems and that scientific and technological progress in all fields does not harm life on Earth."

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[131] United Nations General Assembly. Resolution A/68/322. Intergenerational Solidarity and the Needs of Future Generations. Report of the Secretary General. August 15, 2013, para. 13.

[132] UNESCO. Declaration on the Responsibility of the Present Generations Towards Future Generations. November 12, 1997.

134. Recently, the Maastricht Principles on the Human Rights of Future Generations has recognized that "Neither the Universal Declaration of Human Rights, nor any other human rights instrument contains a temporal limitation or limits rights to the present time. Human rights extend to all members of the human family, including both present and future generations."[133] Principle 8 establishes that, "Humanity is of the Earth, wholly dependent upon it, and interdependent with it. Every generation lives on the Earth and has an interlinked relationship with Nature and its biodiverse ecosystems. During their time on Earth, each generation must act as trustees of the Earth for future generations. This trusteeship must be carried out in harmony with all living beings and Nature."

135. Principle 10 expresses the mandate of international solidarity, as mentioned above (paragraph 121), stating that "All human beings, whether within present or future generations, are entitled to a social and international order in which rights and freedoms can be realized for all. Such an international order is only possible, now or in the future, if people, groups and States adopt the principle of international solidarity."

136. Other instruments also refer to intergenerational equity, including the Stockholm Declaration, in Principles 2 and 5;[134] the Convention on International Trade in Endangered Species of Wild Fauna and Flora of 1973;[135] the Convention Concerning the Protection of the World Cultural and Natural Heritage of 1972;[136] Principle 3 of the Rio Declaration;[137] and the Charter of Economic Rights and Duties of States.[138]

137. This shows that both the inter-American system and other systems recognize the principle of intergenerational equity as a duty imposed on present generations with respect to future generations.[139] The German Federal Constitutional Court has referred to this point, also emphasizing the connection with the current younger generations,

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133 Maastricht Principles on the Human Rights of Future Generations. Adopted on July 13, 2023. Available at https://drive.google.com/file/d/11PM0Wc8emhVG3y2lEfTqj7a-H4TVm0f0/view

134 Principle 2 states that: "The natural resources of the Earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations." Principle 5 establishes that: "The non-renewable resources of the Earth must be employed in such a way as to guard against the danger of their future exhaustion and to ensure that benefits from such employment are shared by all."

135 The preamble states: "Recognizing that wild fauna and flora in their many beautiful and varied forms are an irreplaceable part of the natural systems of the earth which must be protected for this and the generations to come."

136 Article 4: "Each State Party to this Convention recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage referred to in Articles 1 and 2 and situated on its territory, belongs primarily to that State. It will do all it can to this end, to the utmost of its own resources and, where appropriate, with any international assistance and co-operation, in particular, financial, artistic, scientific and technical, which it may be able to obtain."

137 Article 3: The right to development must be fulfilled so as to equitably meet the developmental and environmental needs of present and future generations.

138 United Nations General Assembly. Resolution 3281 (XXIX) of December 12, 1974. Charter of Economic Rights and Duties of States. Article 30: "The protection, preservation and enhancement of the environment for the present and future generations is the responsibility of all States. All States shall endeavor to establish their own environmental and developmental policies in conformity with such responsibility. The environmental policies of all States should enhance and not adversely affect the present and future development potential of developing countries. All States have the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction. All States should co-operate in evolving international norms and regulations in the field of the environment."

139 For example, the Constitutional Council of France refers to future generations in the judgment of August 12, 2022 (Judgment No. 2022-843 DC), on the Budget Amendment Act for 2022.

when assessing the constitutionality of the CO2 values allowed until 2030, and analyzing its link with climate change, noting that:

> […] The restrictions on freedom that will be necessary in the future are already built into the generosity of the current climate change legislation. Climate action measures that are presently being avoided out of respect for current freedom, will have to be taken in future – under possibly even more unfavorable conditions – and would then curtail the exact same needs and freedoms but with far greater severity.[140]
>
> […] it does at least seem possible that the Basic Law's fundamental rights – as intertemporal guarantees of freedom- afford protection against provisions that allow such consumption without taking sufficient account of the future freedom jeopardized as a result (on subjective rights in the context of freedom to shape one's own life), that is to be distributed over time and across generations […]
>
> Freedom in the post-2030 future might be specifically impaired by the fact that the amounts of CO2 emissions allowed until 2030 are overly generous in the Federal Climate Change Act; there might be a lack of precautionary measures that are sufficient to respect future freedom.[141]
>
> [...] insofar as this measure causes the remaining CO2 budget to be used up, the effect is irreversible because no method is currently known for removing CO2 emissions from the Earth's atmosphere on a large scale. Since future impairments of fundamental rights could potentially be set into irreversible motion today, and given that lodging a constitutional complaint to address the ensuing restrictions on freedom might be futile by the time the impairments have arisen, the complainants already have standing to lodge a constitutional complaint at the present time.[142]
>
> The complainants are individually affected in their own freedom. They are themselves capable of experiencing the measures necessary to reduce CO2 emissions after 2030. The fact that the restrictions will affect virtually everyone then living in Germany does not exclude the complainants from being individually affected.[143]
>
> The State's duty of protection arising from Art. 2(2) first sentence GG does not take effect only after violations have already occurred. It is also oriented towards the future […] The duty to afford protection against risks to life and health can also establish a duty to protect future generations […]This is all the more applicable where irreversible processes are at stake. However, this duty to afford intergenerational protection has a solely objective dimension because future generations – either as a whole or as the sum of individuals not yet born – do not yet carry any fundamental rights in the present.[144]
>
> It follows from the principle of proportionality that one generation must not be allowed to consume large portions of the CO2 budget while bearing a relatively minor share of the reduction effort, if this would involve leaving subsequent

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140 German Federal Constitutional Court Beschluss vom 24. March 2021 - 1 BvR 2656/18 First Chamber. March 24, 2021. Available at: https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/ES/2021/03/rs20210324_1bvr265618es.html, para. 120.

141 *Ibid.* para. 123.

142 *Ibid.* para. 130.

143 *Ibid.* para. 131.

144 *Ibid.* para. 146.

> generations with a drastic reduction burden and exposing their lives to serious losses of freedom – something the complainants describe as an "emergency stop." […] However, since the current provisions on allowed emissions have now already established a path to future burdens on freedom, the impacts on future freedom must be proportionate from the standpoint of today – while it is still possible to change course.[145]

138. In our region, the Constitutional Court of Colombia has ruled on intergenerational equity and consideration of future generations:[146]

> For this Court of Review, environmental protection is not "platonic love for Mother Nature," but the answer to a problem that, if it continues to worsen at the present rate, would end up becoming a real matter of life and death: the pollution of rivers and seas, the progressive disappearance of fauna and flora, the unbreathable atmosphere of many large cities due to pollution, the disappearance of the ozone layer, the greenhouse effect, noise, deforestation, increased erosion, the use of chemical products, industrial waste, acid rain, nuclear melons (sic), the impoverishment of the planet's genetic banks, etc., are such vital issues that they deserve a firm and unanimous response by the world population. At the end of the day, the natural heritage of a country, as is the case with the historical and artistic heritage, belongs to the people who live in it, but also to future generations, since we have the obligation and the challenge of handing over the legacy we have received in optimal conditions to our descendants.

139. The Colombian Supreme Court of Justice has also explained the basis of intergenerational equity by stating that:

> This means that all individuals of the human species must stop thinking exclusively about their own self-interest. We are obliged to consider how our deeds and daily conduct also have an impact on society and Nature.
>
> […] As noted, the scope of protection of the precepts of fundamental principles is each person, but also the "other." The "neighbor" is otherness, its essence, the other people that inhabit the planet, including also the other animal and plant species.
>
> But it also includes the unborn, who deserve to enjoy the same environmental conditions experienced by us.
>
> […] the environmental rights of future generations are based on (i) the ethical duty of solidarity of the species and (ii) the intrinsic value of Nature.
>
> The first is explained by the fact that natural assets are shared by all the inhabitants of planet Earth, and by the descendants or future generations that do not yet have them materially, but are beneficiaries, recipients and owners of them; however, paradoxically, they are increasingly insufficient and limited. Thus, without the existence of an equitable and prudent approach to consumption, the human species could be compromised in the future by the scarcity of resources essential for life. In this way, solidarity and environmentalism "are related to the point of becoming the same thing."
>
> […] The above, then, establishes an obligatory legal relationship with the environmental rights of future generations, as the obligation of "not doing" whose

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145 *Ibid.* para. 192.

146 Constitutional Court of Colombia. Judgment No. T-411/92 (motion for protection) Presented by Alejandro Martínez Caballero.

> effect translates into a limitation of the freedom of action of present generations, while this requirement implicitly attributes to them new burdens of environmental commitment, to such an extent that they assume an attitude of care and custody of natural resources and of the future world.[147]

140. All cultures have a concern for future generations. Just as we receive and enjoy what has been bequeathed to us by previous generations, there is also a concern for our children and grandchildren. Intergenerational equity imposes a duty of appropriate use and enjoyment of the environment so that future generations are given a world that offers them equal or greater opportunities for development than those given to us. Ultimately, it stands as a guardian of the freedom of future generations, since we, the present ones, must not restrict the options and opportunities to satisfy the needs that will arise in the future.

141. In the context of sustainable development, intergenerational solidarity goes beyond the living and encompasses those who do not yet exist today; as noted in the universal system, "humanity as a whole forms an intergenerational community in which all members respect and care for one another, thus achieving the common goal of the survival of humankind."[148]

142. In this sense, States may not excuse themselves from compliance by alleging the lack of personhood or legitimacy of future generations; as has been pointed out in the universal sphere, "the link between rights and duties is not ironclad, so that it is conceivable that persons can be subject to duties without the strict requirement of a corresponding rights holder."[149]

143. The United Nations has defined this concept in the following terms: "Intergenerational solidarity is widely understood as social cohesion between generations. […] Increasingly, the scope of family policies related to intergenerational solidarity has been gradually expanding, from a focus on families with young children to the inclusion of all generations."[150] This is not only a matter of responsibility across generations; it is based on a concept of the common heritage of humankind, whereby the human species and resources must be considered globally and managed for the benefit of humanity as a whole. It is therefore necessary to consider at least three interests: those of present human beings, those of future generations and those of natural entities,[151] bearing in mind the notions of the common heritage of humanity and the impact of irreversibility.

144. The principle of intergenerational equity, linked to the duty of sustainable development, demands a rational use of resources to preserve the environment and an approach that makes it possible to satisfy current needs without compromising the quality of the environment for future generations or the possibility of satisfying the needs that may arise in due course. Likewise, the environment should be understood

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147 Colombian Supreme Court of Justice. Civil Cassation Chamber. Judgment STC 4360-2018. Presented by: Luis Armando Tolosa Villabona. April 5, 2018.

148 United Nations General Assembly. Resolution A/68/322. Intergenerational Solidarity and the Needs of Future Generations. Report of the Secretary General. August 15, 2013. Para. 8.

149 United Nations General Assembly. Resolution A/68/322. Intergenerational Solidarity and the Needs of Future Generations. Report of the Secretary General. August 15, 2013. Para. 21

150 United Nations General Assembly. Resolution A/68/322. Intergenerational Solidarity and the Needs of Future Generations. Report of the Secretary General. August 15, 2013. Para. 6.

151 Djemni-Wagner, S., *Droit(s) des générations futures*, Institut des Études et de la Recherche sur le Droit et the Justice, Paris, 2023, pp. 45-46.

as a set of relationships and not merely as an accumulation of components; it contains humans, but also encompasses other living beings, ecosystems, natural resources, etc.

145. Thus, it emerges as a formula for weighing two great interests: on the one hand, the States, by virtue of their obligations to respect and guarantee rights, must ensure the highest degree of well-being and development for present generations. But, on the other hand, this obligation must be harmonized with the duty to conserve the environment in such a way that its quality does not deteriorate or threaten the survival or well-being of future generations. The essence of intergenerational equity is to achieve harmonization between present and future interests; between future and present; between needs and projections.

146. In this context, States are required to weigh and assess the present and future consequences of the actions taken in any decision-making process. It also imposes active obligations not only in terms of evaluation, but also of continuous studies and assessments, new prevention systems, research, etc., within a framework of international solidarity, given that intergenerational equity concerns all members of the human family and is not limited to the nationals of one State or the inhabitants of one region.

147. Accordingly, the United Nations Secretary General's report on intergenerational solidarity and the needs of future generations points out that "this in no way implies that the needs of present generations always enjoy priority over those of future generations; at the very least, the poorest and most vulnerable should not be called upon to make sacrifices for the long-term good of humanity." Therefore, "the needs of future generations should be identified and articulated as precisely as possible; current generations should not forego benefits unless it can be reasonably foreseen that this would make a difference. At the same time, small gains for current generations should not be pursued when actions are strongly likely to incur large losses for future generations."[152]

148. The present generations are custodians of an environment that does not belong to them, but which they must manage and exploit only within certain limits. The Court has ruled on two important principles in environmental law: the precautionary principle and the principle of prevention,[153] which are also developed in the judgment in this case. We believe that, in the harmonization process required by intergenerational equity, the *in dubio pro natura* rule is also relevant. This rule requires States to resolve interpretative uncertainties or regulatory gaps in a manner that conserves or affords greater protection to the environment, based on the mandate of intergenerational equity and as an extension of the *pro persona* principle. Several national courts in the region have already adopted this interpretation.[154]

149. As Bryner explains, this hermeneutic guideline implies "a preference for decision-making that favors greater protection of, or less impact on, diversity, habitats, ecosystem processes, air and water quality, and so forth. For judicial interpretation in

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[152] United Nations General Assembly. Resolution A/68/322. Intergenerational Solidarity and the Needs of Future Generations. Report of the Secretary General. August 15, 2013. Para. 16-17.

[153] *Cf.* Advisory Opinion OC-23/17, *supra,* paras. 175-186.

[154] Supreme Court of Justice of Costa Rica. Constitutional Chamber. Judgment 5893 of October 27, 1995; Supreme Court of Justice of Argentina. Judgment of July 11, 2019 "Majul, Julio Jesús c/Municipality of Pueblo General Belgrano et al./ motion for environmental amparo." 714/2016/RH1; Constitutional Court of Colombia, Judgment C-449 of 2015; etc.

complex matters, it gives weight to the interpretation of constitutional provisions, laws, policies and regulations in favor of whatever will provide the greatest protection to the environment."[155]

150. The aforementioned interpretative rule is added to previous ones and requires the judicial or administrative authority - in the event of any doubt in the interpretation of a norm or loophole - to opt for the most protective or conservationist solution for the environment, in favor of intergenerational equity. The *in dubio pro natura* principle is merely a 'byproduct' of sustainable development, insofar as environmental values are understood as a support for human life and the need to harmonize social, economic and ecological development.

151. The obligation to ensure intergenerational equity does not imply any detriment to current obligations, given that the fair and equitable distribution of opportunities and resources today will result in better opportunities and outcomes in the future. States should bear in mind that the protection or preservation of the environment imposed by the principle of intergenerational equity derives from the fact that, like a trust, our responsibility is to manage or preserve this environment to be handed over to future generations as beneficiaries. Present generations have received from their predecessors an environment to be passed on to future generations in equal or better conditions than those in which it was given to them. Thus, every development decision that compromises the subsistence, opportunities or quality of life of future generations is lacking in solidarity and, therefore, is contrary to this obligation.

152. Intergenerational equity primarily has its *raison d'être* in a duty of morality towards the species, since it is essential for the survival of humanity itself.

153. But, secondly, it is also justified because Nature as such - of which human beings are merely one of its many components - has an intrinsic value. In this regard, the Court has indicated in Advisory Opinion No. 23 that: "as an autonomous right, the right to a healthy environment, unlike other rights, protects the components of the environment, such as forests, rivers and seas, as legal interests in themselves […] not only because of the benefits they provide to humanity or the effects that their degradation may have on other human rights."[156]

154. In analyzing this principle, we must not lose sight of the fact that the environment is a collective and intergenerational asset; its diachronic nature means that it extends across human generations over time, and that is why the duty of sustainability is linked to the duty of solidarity. Thus, the present generations have limits to their freedom: their relationship with Nature can no longer be based on unfettered irresponsibility or disregard for the next generations, but rather on greater responsibility.

155. This is further increased by the asymmetry that exists between present and future generations, since only the former can influence the situation of the latter and not vice versa: with their decisions, the present generation affects and influences future generations, who are forced to suffer the effects of decisions in which they have not participated and which are often irreversible. The future generations have no political

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[155] Bryner, N. "Applying the 'In dubio pro natura' principle for Enforcement of Environmental Law," *Inter-American Congress on Environmental Rule of Law*, OAS, 2015, pp. 175-176.

[156] *Cf.* Advisory Opinion OC-23/17, *supra,* para. 62. See also *Case of the Indigenous Communities Members of the Lhaka Honhat (Our Land) Association v. Argentina, supra*, para. 203.

power and their interests are only represented by the concern that current generations may have for them.[157] It is therefore important that States guarantee the legitimacy of future generations to demand the protection of the environment, either through the present generations (children and young people), human rights defenders or through the role of the ombudsperson or other similar figures.

156. Consequently, intergenerational equity imposes three duties on the States, which must guide their development policies and which imply both negative and positive obligations for their achievement.

157. First, the conservation of options. Each generation is required to preserve and restore the diversity of natural resources, ecosystems and species so as not to unduly restrict their availability for future generations to meet their needs.

158. Secondly, the aim should be to preserve quality: it is not acceptable to leave an environment in a worse condition than that in which it was received. Thus, the environment and its components must not be exploited unrestrictedly. This does not prevent the environment from being exploited, but it should be done within the limits of sustainability.

159. Finally, it requires the preservation of access, understood as access without discrimination by members of the present generation, provided that the rights of the future generations are respected. In other words, it implies a combination of intra-generational and intergenerational equity.

160. In their efforts to achieve these three goals, States should be mindful that the division between present and future generations is less sharp than it sometimes appears to be, and that harmful consequences for the environment and other generations will not necessarily occur in a distant or very remote future, but may have an impact on people who already exist: "Concerns about future generations and sustainable development often focus on the state of the environment in particular years in the future, such as the year 2030 or 2100. Many people who will be living in 2100 are not yet born […]; however, many others who will be living then are already alive today. […] Moreover, the line between future generations and today's children shifts every time another baby comes into the world. It is therefore essential that discussions about future generations take into account the rights of children who are constantly arriving, or have already arrived, on this planet […] the people whose future lives will be affected by our actions today: they are already among us."[158] Hence, when taking decisions related to development or that in any way involve the exploitation of the environment, we must also be guided by the principle of the best interests of the child.

VI. CONCLUSIONS

161. The case of the *Inhabitants of La Oroya v. Peru* is inserted in what could be described as a "green" context, since international human rights law (in the United Nations, Europe and Africa) places the right to the environment and issues related to climate change at the forefront of its concerns.

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[157] United Nations General Assembly. Resolution A/68/322. Intergenerational Solidarity and the Needs of Future Generations. Report of the Secretary General, August 15, 2013, para. 5

[158] United Nations General Assembly. Human Rights Council. Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. Resolution A/HRC/37/58. January 24, 2018, para. 68.

162. As noted above, we consider that this case marks a turning point in inter-American jurisprudence, since the Court places the right to a healthy environment and the protection of its components -such as clean air and water- at the center of its decisions. This case is another step towards the consolidation of the Court's case law on the direct justiciability of economic, social, cultural and environmental rights (ESCER) under Article 26 of the American Convention. In addition to establishing how the content that protects the right to the environment differs from that of other civil and political rights (such as life or personal integrity), the judgment specifically addresses the collective impact of environmental damage and establishes measures of non-repetition aimed at reducing the risks for future generations. It also constitutes an important source of standards for States in relation to their obligations to ensure equitable conditions for development in the face of climate change.

163. We consider that the duty to protect the environment currently stands as a *jus cogens* norm in view of the threat that its non-observance implies for the survival of humanity and the most fundamental human values. At present, it is possible to affirm the existence of an international customary norm, widely recognized by the majority of States, which attaches importance to the protection of the environment -as it emerges from the extensive *corpus juris* on this subject- and which has become a peremptory norm of international law (*jus cogens*). In turn, the assurance of its obligatory nature derives, *inter alia*, from the United Nations' recent declaration, in 2022, on the human right to the environment, which was endorsed by large majority of countries.

164. Furthermore, no State can seriously consent to or tolerate actions that cause degradation or harm to the environment or its components, because the international community as a whole is interested in its protection and care, since the elements of the State are contained therein and because international security, among other things, depends on its protection. It is a norm that embodies the supreme values of the community of States, given that the support and continuity of the international community as we know it depends on the integrity of the environment.

165. The obligation to protect the environment therefore has the characteristics of a *jus cogens* norm, extending its effects to the whole system of international law. Each State can demand compliance and hold any other State accountable, if necessary, since all are equally interested and equally entitled to the environment as the common heritage of humankind.

166. Secondly, it has implications for the Law of Treaties - both those already in force as well as future treaties, which must adjust their content to this norm.

167. Third, each State must adjust its conduct and refrain from any practice, act or omission that violates this norm; otherwise, it will incur international responsibility *vis-à-vis* the rest of the community of States and will be unable to invoke its status as a persistent objector.

168. The right to sustainable development is enshrined in Articles 31 to 34 of the Charter of the Organization of American States and enjoys conventional protection under Article 26 of the American Convention, in addition to the 1986 declaration of the human right to development.

169. As a state obligation, sustainable development requires, in the first place, the adaptation of production, exploitation and consumption models in such a way that they are designed to ensure their continuity over time, without detriment to the quality of the environment for future generations. It is therefore important to recall its close link with the principle of intergenerational equity. This does not imply that States should reject development, but rather that they should adopt a "green" perspective based on the harmonization of present needs and future opportunities.

170. States should be mindful that sustainable development requires consideration of three areas: ecological, social and economic, which must be promoted in an integrated manner and not in isolation. They should also take into account the most vulnerable groups, including children, women, people with disabilities and indigenous communities, among others.

171. Consideration of the environment as the common heritage of humanity and its connection with a *jus cogens* norm, imposes on States the duty to foster international cooperation or solidarity - also derived from the OAS Charter - in formulating policies, conducting research, and monitoring and protecting the environment. It is also necessary to coordinate efforts between individuals, companies and States to achieve a true perspective of sustainable development.

172. One of the aspects of the principle of intergenerational equity is its link to the environment. This implies the duty of present generations to administer and manage the environment in such a way as to hand over to future generations an environment in at least the same conditions in which it was handed over to us by the generations that preceded us. It is similar to managing a trust whose beneficiaries are the next generations and is based on the autonomous protection of the components of the environment, as well as on a duty of solidarity toward the species, as a human family.

173. Intergenerational equity ultimately seeks to preserve the freedom of future generations. It could be summarized as trying to strike a balance between two extremes: on the one hand, the State's duty to ensure the maximum welfare of the present population, but limited or counterbalanced by the duty not to unduly or disproportionately threaten the welfare and survival of future generations. Thus, any measures that might bring current benefits but that threaten the integrity of the environment in any of its aspects, should be regarded as lacking in solidarity and contrary to this principle.

174. Intergenerational equity in environmental matters imposes three specific duties on States: conservation of options; conservation of quality; and conservation of access. These considerations must also take into account the impact that our current management of the environment has on children, as a group that is particularly vulnerable to environmental degradation.

175. In weighing current needs against future prospects, the States must take into account not only the principles of precaution and prevention, but also the *in dubio pro natura* rule, as a hermeneutic guideline for administrative or judicial authorities which, in cases of regulatory gaps or interpretative uncertainties, requires them to opt for the most environmentally friendly solution.

176. Given the unique significance of protecting the future generations, States must ensure that organizations or individuals defending human rights, present generations

or the ombudsperson or similar institutions, have standing in legal proceedings and claims for environmental protection.

177. In conclusion, the *Case of the Inhabitants of La Oroya* is yet another decision in the evolution of the Inter-American Court's case law on the direct justiciability of ESCER - at a time of special global concern for the future of humanity— which will surely be complemented by the Court in the recent request for an advisory opinion presented by Colombia and Chile, on the *Climate Emergency and Human Rights* in the inter-American system.

Ricardo C. Pérez Manrique
Judge

Eduardo Ferrer Mac-Gregor
Judge

Rodrigo Mudrovitsch
Judge

Pablo Saavedra Alessandri
Registrar

PARTIALLY DISSENTING OPINION

OF JUDGE HUMBERTO SIERRA PORTO AND JUDGE PATRICIA PÉREZ GOLDBERG

INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF THE INHABITANTS OF LA OROYA V. PERU

JUDGMENT OF NOVEMBER 27, 2023
(Preliminary Objections, Merits, Reparations and Costs)

1. With our customary respect for the majority decision of the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court"), we issue this partially dissenting opinion[1] in order to explain the reasons why we disagree with several issues analyzed and decided in the *Judgment on preliminary objections, merits, reparations and costs,* delivered in the *Case of the Inhabitants of La Oroya v. Peru.*

2. For the purpose of presenting our considerations, our arguments are organized around the following aspects.

I. Regarding the declaration of State responsibility for the violation of the right to a healthy environment, based on the provisions of Article 26 of the American Convention

3. In its Advisory Opinion on the environment,[2] the Inter-American Court had occasion to rule on the right to a healthy environment, highlighting three central elements. First, the relationship that the Court has established between this right and other human rights within the framework of its jurisprudence on the land rights of indigenous and tribal peoples. Indeed, the Court has considered that the right to collective property of these communities is linked to the protection of and access to the resources found in their territories, given that the natural resources are necessary for their survival, development and the continuity of their way of life, also recognizing the close link that exists between the right to a decent life and the protection of ancestral lands and natural resources.

4. The Court also pointed out that –as a result of the close connection existing between environmental protection, sustainable development and human rights- many systems for the protection of human rights, including the Inter-American System of Human Rights, recognize the right to a healthy environment as a right in itself.

5. In addition, the Court held that the human right to a healthy environment has been understood as a right with both individual and collective connotations. In its

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[1] Article 65(2) of the Rules of Procedure of the Inter-American Court: "Any Judge who has taken part in the consideration of a case is entitled to append a separate reasoned opinion to the judgment, concurring or dissenting. These opinions shall be submitted within a time limit to be fixed by the Presidency so that the other Judges may take cognizance thereof before notice of the judgment is served. Said opinions shall only refer to the issues covered in the judgment."

[2] *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), in relation to Articles 1(1) and 2 of the American Convention on Human Rights)*. Advisory Opinion OC-23/17 of November 15, 2017. Series A No. 23.

collective dimension, the right to a healthy environment is of universal interest, and is a right applicable to both present and future generations. In its individual dimension, its violation may clearly have a direct or indirect repercussions on people, due to its connection with other rights, such as the right to health, personal integrity and life, among others. In short, environmental degradation may cause irreparable harm to human beings, which is why a healthy environment is a fundamental right for the existence of humanity.

6. We certainly agree that the right to a healthy environment is a right in and of itself and must be protected. Such protection must be provided both at the level of national jurisdictions (through the mechanisms provided for in the respective domestic legal systems), as well as in the context of the international jurisdiction of this Court (through the interpretation of this right in connection with those explicitly established in the Convention, such as the right to life, personal integrity and human dignity).

7. However, the fact that this right exists and is worthy of protection does not mean that its justiciability is derived from the provisions of Article 26 of the American Convention.

8. We need not reiterate here the arguments we have already raised in our respective opinions[3] to refute the jurisprudential change that occurred after the

[3] Judge Humberto Sierra Porto has expressed his position on Article 26 of the American Convention in the following cases: *Case of the Dismissed Employees of PetroPeru et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2017. Series C No. 344; *Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs*. Judgment of February 8, 2018. Series C No. 348; *Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of March 6, 2019. Series C No. 375; *Case of Hernández v. Argentina. Preliminary objection, merits, reparations and costs*. Judgment of November 22, 2019. Series C No. 395; *Case of the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB-SUNAT) v. Peru*. *Preliminary objections, merits, reparations and costs*. Judgment of November 21, 2019. Series C No. 394; *Case of Indigenous Communities Members of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs*. Judgment of February 6, 2020. Series C No. 400; *Case of the Workers of the Fireworks Factory of Santo Antônio de Jesus v. Brazil*. *Preliminary objections, merits, reparations and costs*. Judgment of July 15, 2020. Series C No. 407; *Case of Casa Nina v. Peru*. *Preliminary objections, merits, reparations and costs*. Judgment of November 24, 2020. Series C No. 419; *Case of Guachalá Chimbo et al. v. Ecuador. Merits, reparations and costs*. Judgment of March 26, 2021. Series C No. 423; *Case of National Federation of Maritime and Port Workers (FEMAPOR) v. Peru. Preliminary objections, merits and reparations*. Judgment of February 1, 2022. Series C No. 448; *Case of Guevara Díaz v. Costa Rica. Merits, reparations and costs*. Judgment of June 22, 2022. Series C No. 453; *Case of Mina Cuero v. Ecuador. Preliminary objection, merits, reparations and costs.* Judgment of September 7, 2022. Series C No. 464; *Case of Valencia Campos et al. v. Bolivia. Preliminary objection, merits, reparations and costs.* Judgment of October 18, 2022. Series C No. 469; *Case of Brítez Arce v. Argentina. Merits, reparations and costs.* Judgment of November 16, 2022. Series C No. 474; *Case of Nissen Pessolani v. Paraguay. Merits, reparations and costs*. Judgment of November 21, 2022. Series C No. 477; *Case of Aguinaga Aillón v. Ecuador. Merits, reparations and costs*. Judgment of January 30, 2023. Series C No. 483; *Case of Gonzales Lluy et al. v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of September 1, 2015. Series C No. 298; *Case of Poblete Vilches et al. v. Chile. Merits, reparations and costs*. Judgment of March 8, 2018. Series C No. 349; *Case of Cuscul Pivaral et al. v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of August 23, 2018. Series C No. 359; *Case of the Miskito Divers (Lemoth Morris et al.) v. Honduras*. Judgment of August 31, 2021. Series C No. 432; *Case of Vera Rojas et al. v. Chile. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2021. Series C No. 439; *Case of Manuela et al. v. El Salvador. Preliminary objections, merits, reparations and costs.* Judgment of November 2, 2021. Series C No. 441; *Case of Former Employees of the Judiciary v. Guatemala. Preliminary objections, merits and reparations.* Judgment of November 17, 2021. Series C No. 445; *Case of Palacio Urrutia et al. v. Ecuador. Merits, reparations and costs*. Judgment of November 24, 2021. Series C No. 446; *Case of Pavez Pavez v. Chile. Merits, reparations and costs*. Judgment of February 4, 2022. Series C No. 449; *Case of Rodríguez Pacheco et al. v. Venezuela. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2023. Series C No. 504. For her part, Judge Patricia Pérez Goldberg has expressed her position on the same matter in the following cases: *Case of Guevara Díaz v. Costa Rica. Merits, reparations and costs*. Judgment of June 22, 2022. Series C No. 453; *Case of Mina Cuero v. Ecuador. Preliminary objection, merits, reparations and costs*. Judgment of September 7, 2022. Series C No. 464; *Case of Benites Cabrera et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of October 4, 2022. Series C No. 465; *Case of Valencia Campos et al. v. Bolivia. Preliminary objection, merits, reparations and costs*. Judgment of October 18, 2022. Series C No. 469;

judgment handed down in the *Case of Lagos del Campo v. Peru,* when the Court began to consider that economic, social, cultural and environmental rights were directly justiciable before the Court, completely ignoring the provisions of the Protocol of San Salvador, which states in Article 19(6) that only the right to education and the right to freedom of association can be litigated before this Court.

II. Regarding the declaration of the State's responsibility for the violation of the right to health, based on Article 26 of the American Convention

9. We also disagree with this decision, inasmuch as the sound doctrine on the interpretation of the Treaty (comprising both the American Convention and its Additional Protocol), requires us to assess the effects on the right to health in connection with the rights to life or personal integrity that have been impaired as a result of an action or omission by the State in the specific case.

10. Our conclusion is supported by the analysis made in the judgment regarding the violation of the victims' right to personal integrity.

11. The two paragraphs concerning the right to personal integrity read as follows:

> 137. Regarding the right to personal integrity, the Court reiterates that the violation of an individual's right to physical and mental integrity has various connotations of degree and ranges from torture to other types of ill-treatment or cruel, inhuman or degrading treatment, the physical and mental effects of which vary in intensity according to endogenous and exogenous factors (such as duration of the treatment, age, sex, health, context and vulnerability) that must be examined in each specific situation.
>
> 138. The Court has indicated that although each right contained in the Convention has its own sphere, meaning and scope, there is a close relationship between the right to life and the right to personal integrity. Thus, there are times when the lack of access to conditions that ensure a dignified life may also constitute a violation of the right to personal integrity, for example, in cases involving human health. Moreover, the Court has recognized that certain projects and interventions in the environment in which people live can constitute a risk to their life and personal integrity.

12. If one looks carefully at the issue raised, it is clear that there is no explanation as to how the health violations are distinct and separate from the violations of the victims' personal integrity. This occurs precisely because that particular point has not been properly assessed i.e., by evaluating the violation of the right to health in connection with, and within the framework of, the analysis of the right to personal integrity. As explained previously, this way of proceeding, in addition to being incorrect, is detrimental to the interpretation of the right to personal integrity, which, as a result of this practice, is irremediably deprived of its content.

13. Furthermore, the present case offered an alternative way for the Court to analyze the effects on health and the environment without acting outside its material jurisdiction. The Constitutional Court delivered a judgment on May 12, 2006, in which it ordered a series of measures for the protection of health and a healthy environment in the face of the contamination produced by the metallurgical industry in La Oroya. Compliance with these orders was a suitable mechanism to ensure the constitutional protection of the inhabitants of La Oroya and, by not enforcing these orders, the State failed to fulfill its obligation to guarantee an effective judicial remedy for the protection of the victims' human rights, in accordance with Article 25(2)(c) of the American Convention.

Case of Brítez Arce et al. v. Argentina. Merits, reparations and costs. Judgment of November 16, 2022. Series C No. 474; *Case of Nissen Pessolani v. Paraguay. Merits, reparations and costs*. Judgment of November 21, 2022. Series C No. 477; *Case of Aguinaga Aillón v. Ecuador. Merits, reparations and costs*. Judgment of January 30, 2023. Series C No. 483; *Case of Rodríguez Pacheco et al. v. Venezuela. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2023. Series C No. 504.

14. The analysis of the instant case based on the connection between the rights to an effective judicial remedy and the rights to health and the environment, would have offered additional lines of argument to those already mentioned. It would have made it possible to link constitutional protection to the rights to the environment and health, and international protection, without this entailing an overreach in the exercise of the Court's jurisdiction. This is so because Article 25 of the Convention recognizes the right of individuals to a remedy that protects them against acts that violate their fundamental rights, as recognized by the country's Constitution and laws or by the Convention. The right to health and to a healthy environment are rights protected by the Peruvian Constitution; thus, this Court could have analyzed the consequences for the rights at stake resulting from non-compliance with the ruling of the Constitutional Court.

Humberto A. Sierra Porto
Judge

Patricia Pérez Goldberg
Judge

Pablo Saavedra Alessandri
Registrar