



Commentary on Case Law and Health Legislation

Residents of La Oroya v. Peru: Inter-American Court of Human Rights attacks the environment

Caso Moradores de La Oroya contra o Peru: Corte Interamericana de Direitos Humanos atenta ao meio ambiente

Caso Habitantes de La Oroya contra Perú: Corte Interamericana de Derechos Humanos atenta al medio ambiente

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Submitted on: 05/09/2024

Revision on: 05/10/24

Approved on: 05/10/24

Abstract

Aspects of the decision of the Inter-American Court of Human Rights are discussed, in the case of Residents of La Oroya against Peru, affirming the justiciability of the right to the environment as a diffuse right and recognizing the international responsibility of Peru (State party) for omission in relation to prevention measures and the provision of information to the exposed population. This is a highly relevant precedent for the defense of the environment and human rights, opening up promising possibilities for a new and effective space for the affirmation of principles dear to Health Law and the preservation of life.

Keywords: Human Ecology; Human Rights Abuses.

Resumo

Abordam-se aspectos da decisão da Corte Interamericana de Direitos Humanos, no caso Moradores de La Oroya contra o Peru, publicada em março de 2024, afirmando a justiciabilidade do direito ao meio ambiente como um direito difuso e reconhecendo a responsabilidade internacional do Peru (Estado parte) pela omissão em relação às medidas de prevenção e na prestação de informações à população exposta. Trata-se de precedente de relevância emitido pela Corte Internacional para a defesa do meio ambiente e dos direitos humanos, abrindo alvissareiras possibilidades de um novo e efetivo espaço para a afirmação de princípios caros ao Direito Sanitário e a preservação da vida.

Palavras-chave: Meio ambiente humano; Violações aos Direitos Humanos.

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Resumen

Se discuten aspectos de la decisión de la Corte Interamericana de Derechos Humanos, en el caso de Residentes de La Oroya contra Perú, afirmando la justiciabilidad del derecho al medio ambiente como un derecho difuso y reconociendo la responsabilidad internacional del Perú (Estado parte) por omisión en relación con las medidas de prevención y suministro de información a la población expuesta. Se trata de un precedente de gran relevancia para la defensa del medio ambiente y de los derechos humanos, abriendo posibilidades prometedoras para un nuevo y eficaz espacio de afirmación de principios queridos por el Derecho de la Salud y la preservación de la vida.

Palabras clave: Ecología Humana; Violaciones de los Derechos Humanos.

A forgotten village in the middle of the ocean or in the mountains can be the scene of serious human rights violations. It can also give rise to decisions of extreme importance for civilization and the consolidation of these rights.

In addition to the beautiful images, Scott Hicks' film "Snow on the Cedars" (1999)⁽¹⁾, a drama set on an island in the North Pacific, has its high point in the cutting argument of an old defense lawyer, who sensitizes the jurors:

You might think: is this a small trial in a small town? No! From time to time, somewhere in the world, humanity goes on trial. Just like integrity and decency. From time to time, ordinary people are called upon to grade the human race.⁽¹⁾

The cut of the cinematographic plot allows a parallel with the trial of the environmental tragedy that took place in the Southern Hemisphere, in the Peruvian highlands, 176 km from Lima and 3,750 meters above sea level, in the small town of La Oroya, which boasts a metallurgical complex, in operation since 1922, processing minerals extracted from the Andes. The minerals, "pure and of superior commercial value", justify the title of "metallurgy capital of Peru and South America"⁽²⁾.

The NGO Justiça Global⁽³⁾ reports that in 2011 the city was considered one of the most polluted places in the world, with a life expectancy of around 40 years, in a situation of irreversible damage to health:

The city, located in central-western Peru, was considered one of the ten most polluted places in the world by the Blacksmith Institute/Pure Earth in 2011, alongside Chernobyl (Ukraine) and Dzerzhinsk (Russia). The International Federation for Human Rights (FIDH) reported in 2013 that 97% of children in La Oroya between the ages of six months and six years had high levels of lead in their blood, and 98% between the ages of seven and 12. As a result, many suffer from malformations and blindness.⁽³⁾

On March 22, 2024, the Inter-American Court of Human Rights published its judgment, dated November 27, 2023, regarding the case of the Residents of La Oroya against Peru⁽⁴⁾. In the judgment, the Inter-American Court of Human Rights (IACtHR) pointed out: I) the Peruvian state's failure to take measures to prevent environmental pollution (lead, cadmium, arsenic and sulphur dioxide) resulting from the exploitation of minerals in the La Oroya Metallurgical Complex (CMLO); and II) the failure to provide information to the exposed population.

The decision of the IA Court in the case of Residents of La Oroya v. Peru (Series C N°. 511)⁽⁴⁾ is relevant for the affirmation of Environmental Law and Human Rights, going beyond the borders of Peru by recognizing the justiciability of the right to the environment as a diffuse right.

As noted elsewhere⁽⁵⁾, the environment was seen as an inexhaustible source of resources until the 1960s. It was the marine biologist Rachel Carson who alerted us to modern environmental awareness, in a book published in 1962 - *Silent Spring*⁽⁶⁾ - and pointed out the environmental damage caused by synthetic pesticides.

With 19 principles and a concern about ignorance and indifference to the environmental consequences of human actions, the 1972 Stockholm Declaration⁽⁷⁾ marks the entry of the environmental issue onto the agenda of world leaders. The UN Environmental Manifesto highlights:

Through ignorance or indifference we can cause massive and irreversible damage to the environment, on which our lives and well-being depend; urging the spread of knowledge and wiser actions as a roadmap for achieving a better life, now and in the future, with an environment in tune with human needs and hopes.⁽⁷⁾

This was followed by many international meetings, documents and standards focusing on human action. Man attacks the environment and then suffers the consequences of environmental imbalance. This is the main theme of discussions between world leaders: The World Commission on Environment and Development of 1983; the report *Our Common Future* of 1987, with the concept of sustainable development - incorporated into our 1988 Constitution; the Conference on Environment and Development - Rio 92, which adopted “Agenda 21”, to move the world away from the economic growth model, seen as unsustainable; Rio+10 in 2002; Rio+20 in 2012; and the Sustainable Development Summit of 2015, in which countries defined the new Sustainable Development Goals - Agenda 2030⁽⁸⁾.

Recent meetings such as COP26/2021, in Scotland, and COP27/2022, in Egypt, were motivated by the worrying report of the Intergovernmental Panel on Climate Change (IPCC), which portrays extreme climate events, unprecedented and with devastating impacts, with human action as the central concern of the discussions⁽⁹⁾.

The concept of sustainable development, derived from the Brundtland Commission's “Our Common Future” report⁽¹⁰⁾, translates the idea of commitment to the future: “development that meets current needs without compromising the ability of future generations to meet their own needs”. The document goes on to diagnose the scourge of inequality:

A world where poverty and inequality are endemic will always be prone to ecological crises, among others... Sustainable development requires societies to meet human needs both by increasing productive potential and by ensuring equal opportunities for all.⁽¹⁰⁾

Environmental concerns prompted the UN Human Rights Council⁽¹¹⁾ to warn of the “triple planetary crisis of climate change, loss of nature and biodiversity, pollution and waste”. Thus, in 2021, it recognized that a clean, healthy and sustainable environment is a human right⁽¹¹⁾.

Two important recent decisions by the international community are worth noting. The first - United Nations Resolution 76-300, adopted by the General Assembly at the end of July 2022 - states that everyone on the planet has the right to a clean and healthy environment⁽¹²⁾. The UN decision is

considered an important step towards building a healthier and safer planet. The other, approved at the 110th International Labor Conference in June 2022, added safety and health to the Fundamental Principles and Rights at Work. Thus, ILO member states undertake to respect and promote the fundamental right to a safe and healthy working environment, regardless of whether they ratify the relevant Conventions⁽¹³⁾.

The UN's definition of the environment as the set of physical, chemical, biological and social elements that can cause direct or indirect effects on living beings and human activities is in harmony with our domestic legal system's definition of the legal concept of the environment - Article 3, I, of Law No. 6.938/1981⁽¹⁴⁾ - defining it as the "set of goods, influences and interactions of a physical, chemical and biological order, which allows, shelters and governs life in all its forms".

In particular, when analyzing the acute or chronic damage to the health and lives of (vulnerable) workers exposed to aggressive chemicals (health of the work environment), it is important to consider that work relationships are marked by social interactions of inequality and that "work can become a real laboratory for experimenting and learning about injustice and inequity"⁽¹⁵⁾.

It is worth noting that our legal system has regulated the right to health, in line with the constitutional magnitude of a fundamental right, in art. 2 of the Organic Health Law, "Health is a fundamental right of the human being, and the State must provide the indispensable conditions for its full exercise"⁽¹⁶⁾.

In today's complex society, in which examples of widespread environmental accidents proliferate, with acute or chronic damage that could be contained or mitigated by observing the principles of environmental law, there are concrete threats that demand effective intervention by the institutions and bodies legitimized to preserve the ecologically balanced environment, recognized by the Constitution as essential to a healthy quality of life (art. 225)⁽¹⁷⁾.

Returning to the case judged by the IA Court, confirmation of the significant risk to the health of the workers and inhabitants of La Oroya, with severe impacts on the quality of life, especially affecting the most vulnerable, justified recognizing the failure of the Peruvian state, which did not provide complete information on the pollution caused by the mining company and did not enable the effective participation of the victims in the environmental decisions that were of interest to them⁽¹⁸⁾.

The decision of the IA Court opens up promising possibilities for protection to prevent or repair damage. By stating that the international normative framework makes it possible to recognize that "the obligation to protect the environment is a norm of *jus cogens*, giving it imperative character (§ 82 and 91-94 of the judgment), under the terms of the 1969 Vienna Convention":

The Peruvian state was declared internationally responsible for violations of rights related to the environment, health, personal integrity, dignified life, access to information, political participation, judicial guarantees and judicial protection, which concretely affected 80 victims (38 women and 42 men) living in La Oroya.⁽¹⁸⁾

It is important to note that the Inter-American Court of Human Rights is part of the Inter-American Human Rights System, with jurisdiction recognized by the States Parties:

The American Convention, also known as the Pact of San José de Costa Rica, is an international treaty that provides for rights and freedoms that must be respected by the States Parties. In addition, the Convention establishes that the Commission and the IA Court are competent bodies to recognize matters relating to compliance with

commitments entered into by States Parties to the Convention and to regulate their functioning.⁽¹⁸⁾

In this case⁽¹⁸⁾, the IA Court acted in its contentious role, determining that the State incurred international responsibility for the violation of rights enshrined in the American Convention and other human rights treaties applicable to the Inter-American System⁽¹⁹⁾. In its judgment declaring the international responsibility of the State for the violation of the rights of the American Convention, the Court ordered a series of reparation measures, taking into account both the reparation needs of the victims in the case, as well as those structural or normative aspects that caused the violation and need to be modified by the State in order to avoid a repetition of the same type of violations. This will be followed by a process of supervision, aimed at materializing the protection of the right recognized in the sentence.

This has also been the position adopted by Brazil's Supreme Court (STF), which has highlighted, in specific cases, the need to adjust domestic practices to the international commitments made by the Brazilian state, particularly in relation to the goals of the 2030 Agenda for Sustainable Development. This is the case, for example, of the reasons for decision invoked in the assessment of the constitutionality of the Zé Maria do Tomé Law - Law No. 16.820/2019 -, which prohibits the dumping of poison by airplanes in Ceará (ADI 6.137)⁽⁶⁾.

In the same vein, defending the guidelines of prevention, precaution and the prohibition of socio-environmental retrogression in relation to the environment and life, the Supreme Court banned asbestos (ADI 3406)⁽²⁰⁾. The Court, recognizing the evidence that there is no safe limit for human exposure to the product and that controlled use of the dangerous substance is impossible, declared the unconstitutionality of provisions that allowed the economic use of the carcinogenic mineral.

With its decision in the case of Residents of La Oroya v. Peru, the IA Court has shown that it is attentive and in sync with the attention that the civilized world is paying to environmental concerns. What's more, it signals ways to defend human rights and life, even when the threats and aggressions occur in distant and almost forgotten corners, affecting the most vulnerable.

Acknowledgments

Possible mentions include institutions that in some way made it possible to carry out the research and/or people who collaborated with the study but did not meet the criteria to be co-authors.

Conflict of interest

The authors declare that there is no conflict of interest.

Authors' contribution

Daroncho L contributed to the conception/design of the article, data analysis and interpretation, writing of the article, critical revision of its content and approval of the final version. Alves SMC contributed to the critical review of its content and approval of the final version.

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References

1. Snow on the Cedars [movie]. Directed by: Scott Hicks. United States: Universal Pictures; 1999.
2. Provincial Municipality of Yaulu - La Oroya. History of Oroya [Internet]. 2024 [cited Apr. 3, 2024]. Available from: https://munilaoroya-gob-pe.translate.google.com/translate?x_tr_sl=es&x_tr_tl=pt&x_tr_hl=pt-BR&x_tr_pto=sc
3. Almeida E. Comunidade de La Oroya versus Peru: Justiça Global é amicus curiae na Corte IDH. Justiça Global [internet]. 2022 [cited April 2, 2024]. Available from: <https://www.global.org.br/blog/comunidade-de-la-oroya-versus-peru-justica-global-compoe-amicus-curiae-do-caso-na-corte-idh/>
4. Corte IDH. Caso Habitantes de La Oroya Vs. Perú. Excepciones Preliminares, Fondo, Reparaciones y Costas. Sentencia de 27 de noviembre de 2023. Serie C N°. 511 [internet], 2024 [cited on April 2, 2024]. Available from: <https://jurisprudencia.corteidh.or.cr/serie-c/sentencia/980571899>
5. Daroncho L. Não olhe para cima, olhe para o ser humano. Rede Brasil Atual [internet]. 2022. [cited Apr. 4, 2024]. Available from: <https://www.redebrasilatual.com.br/blogs/blog-na-rede/nao-olhe-para-cima-olhe-para-o-ser-humano/>
6. Carson R. Primavera Silenciosa. São Paulo: Editora Melhoramentos, 1969.
7. Nações Unidas Brasil. A ONU e o meio ambiente [internet]. 2020 [cited Apr. 4, 2024]. Available from: <https://brasil.un.org/pt-br/91223-onu-e-o-meio-ambiente>
8. Daroncho L. Meio ambiente do trabalho – acidentes ampliados. ENAMAT [internet]. 2023 [cited on Apr. 4, 2024]. Available at: http://www.enamat.jus.br/wp-content/uploads/2023/04/Colecao_Estudos_ENAMAT_Vol2_Seguranca_Trabalho.pdf
9. Ministério da Ciência, Tecnologia e Inovações. Painel Intergovernamental sobre Mudança do Clima [internet]. 2022 [cited on May 8, 2021]. Available from: https://antigo.mctic.gov.br/mctic/opencms/ciencia/SEP_ED/clima/ciencia_do_clima/painel_intergovernamental_sobre_mudanca_do_clima.html
10. Brundtland GH. Nosso futuro comum: Comissão Mundial sobre Meio Ambiente e Desenvolvimento. 2a. ed. Rio de Janeiro: FGV, 1991.
11. ONU Programa para o Meio Ambiente. Momento histórico: ONU declara que meio ambiente saudável é um direito humano [internet]. 2022 [cited 2024 Apr. 4]. Available from: <https://encurtador.com.br/hmnT2>
12. ONU News. ONU aprova resolução sobre meio ambiente saudável como direito humano [internet]. 2022 [cited May 8, 2024]. Available from: <https://news.un.org/pt/story/2022/07/1796682>
13. OIT. Conferência Internacional do Trabalho termina com uma "notável colheita de realizações". 2022 [cited May 8, 2024]. Available from: <https://www.ilo.org/pt-pt/resource/news/conferencia-internacional-do-trabalho-termina-com-uma-notavel-colheita-de>
14. Brasil. Lei nº 6.938, de 31 de agosto de 1981. Dispõe sobre a Política Nacional do Meio Ambiente, seus fins e mecanismos de formulação e aplicação, e dá outras providências. Casa Civil Subchefia para Assuntos Jurídicos [internet]. 1981 [cited Apr. 4, 2024]. Available from: http://www.planalto.gov.br/ccivil_03/leis/l6938.htm
15. Dejours C. A banalização da injustiça social. 7. ed. Trad. de Luiz Alberto Monjardim. Rio de Janeiro: FGV, 2006, p. 140.
16. Brasil. Lei nº 8.080, de 19 de setembro de 1990. Dispõe sobre as condições para a promoção, proteção e recuperação da saúde, a organização e o funcionamento dos serviços correspondentes e dá outras providências. Casa Civil Subchefia para Assuntos Jurídicos [internet]. 1990 [citado em 8 mai. 2024]. Disponível em: https://www.planalto.gov.br/ccivil_03/leis/l8080.htm
17. Brasil. Constituição da República Federativa do Brasil de 1988. Casa Civil Subchefia para Assuntos Jurídicos [internet]. 1988 [cited on May 8, 2021]. Available from: https://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm
18. Aras V. O direito ao meio ambiente saudável no sistema interamericano: o caso La Oroya vs. Peru. Blog do Vlad [internet]. 2024 [cited Apr. 5, 2024]. Available from: <https://vladimiraras.blog/2024/03/23/o-direito-ao-meio-ambiente-saudavel-no-sistema-interamericano-o-caso-la-oroya-vs-peru/>
19. Corte IDH. Sistema Interamericano de Direitos Humanos. [internet]. 2024 [cited April 2, 2024]. Available from: https://www.corteidh.or.cr/que_es_la_corte.cfm?lang=pt
20. Daroncho L. Leivas LL. O STF e a ferida aberta do amianto. Associação Nacional dos Procuradores e das Procuradoras do Trabalho [internet]. 2023 [cited on 7 Apr. 2024]. Available from: <https://anpt.org.br/attachments/article/4215/O%20STF%20E%20A%20FERIDA%20ABERTA%20DO%20AMIANTO.pdf>

How to quote

Daroncho L, Alves SMC. Residents of La Oroya v. Peru: Inter-American Court of Human Rights attacks the environment. *Cadernos Ibero-Americanos de Direito Sanitário*. 2024 abr./jun.;13(2):98-104

<https://doi.org/10.17566/ciads.v13i2.1267>

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