

**Specific Instance Complaint Submitted to the United States and Peru National Contact
Points Pursuant to the OECD Guidelines for Multinational Enterprises**

Concerning:

The Operations of Doe Run Peru Corporation and The Renco Group in La Oroya, Peru

February 24, 2011

Submitted by:

Juan Carlos Sueiro
Cooperacion
jcsueiro@cooperacion.org.pe

Rosa Noemi Toykin
Movimiento por la Salud de La Oroya (MOSAO)
Ronat_1@yahoo.es

Rómulo Torres
Forum Solidaridad
Romulo@psf.org.pe

Misael Campos Mallqui,
Red Uniendo Manos Perú
misaelcm1612@hotmail.com

Frank Boeren
Oxfam America/Peru
fboeren@oxfamamerica.org

Keith Slack
Oxfam America/Washington
kslack@oxfamamerica.org

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United States OECD National Contact Point
Office of Investment Affairs EB/OIA
Department of State
Attn: Ms. Diane Reimer Bean
2201 C Street, N.W.
Room 4820
Washington D.C., 20520
United States

PROINVERSION – Private Investment Promotion Agency
Attn: Jorge León Ballén
OCDE Punto Nacional de Contacto en el Perú
Paseo de la República 3361 - Piso 9
San Isidro, Lima
Perú

Re: Specific Instance of Conduct in La Oroya, Peru by Doe Run

Dear Ms. Bean and Mr. Ballén:

We, El Movimiento por la Salud de La Oroya (“MOSAO”), Cooperación, Forum Solidaridad, Red Uniendo Manos-Peru, and Oxfam America hereby submit this Specific Instance of Conduct jointly to the OECD National Contact Points (“NCPs”) for the United States and Peru, requesting your good offices for assistance resolving the dispute between residents of La Oroya, Peru, Doe Run Peru (“DRP”), and its parent company The Renco Group (“Renco”). Renco/DRP’s conduct is in violation of the OECD Guidelines for Multinational Enterprises (“OECD Guidelines”). We request that the U.S. and Peruvian NCPs act quickly to encourage significant improvements in Renco/DRP’s operations of the La Oroya Metallurgical Complex through the NCPs’ assistance in resolving the following disputes that constitute violations of OECD Guidelines for Multinational Enterprises (“OECD Guidelines”). Specifically, we seek an agreement that:

- Renco/DRP act immediately to comply with the OECD Guidelines, all provisions of the Environmental Management and Mitigation Program (PAMA), other agreements by which DRP is bound, and all Peruvian environmental and public health regulations.
- Establishes an updated and transparent timetable for implementation of the PAMA and all other related obligations.
- Renco/DRP adhere to improved standards of corporate social responsibility and to demonstrate good faith in their efforts to fulfill Renco/DRP’s legal obligations in La Oroya.

A. LIST OF VIOLATIONS AND RELEVANT OECD GUIDELINES

As detailed further in Section E below, Renco/DRP are in violation of the following OECD Guidelines:

1. Renco/DRP has failed to meet its obligations under Peruvian and international standards in the areas of air quality, water quality, and human health and environmental protection.

Guidelines Violated: Chapter II, Section 1 ; Chapter V, Section 8.

2. Renco/DRP has failed to meet monitoring, information gathering and dissemination, and self-management requirements.

Guidelines Violated: Chapter II, Section 7; Chapter V, Sections 1(a), 2, and 3.

3. DRP has failed to meet disclosure requirements.

Guidelines Violated: Chapter III, Sections 2, 4(e), 5(a) and (b).

4. DRP has contributed to human rights violations.

Guidelines Violated: Chapter II, Section 2; Chapter V, Sections 3 and 5.

B. FACTUAL BACKGROUND

The city of La Oroya is located at an altitude of 12,300 feet above sea level in the central Andes of Peru, approximately 175 km from Lima. Having developed without formal urban planning from the edge of the metallurgical complex of the same name, La Oroya's city center is situated only meters from the smelter. Because of the topography of the region, temperature inversions prevent environmental contamination from dispersing beyond the mountains and instead cause pollution to blanket the city and remain in place for long periods of time. La Oroya has a population of approximately 30,500, with a high population density of 16 inhabitants per sq. km. High rates of poverty and a lack of social services also characterize the city.¹

¹ ANNA CEDERSTAV & ALBERTO BARANDIARÁN, LA OROYA CANNOT WAIT 19 (Peruvian Society for Environmental Law & Interamerican Association for Environmental Defense eds., 2002). Basic services in La Oroya are scarce, and sanitation is of very low quality; for example, only 63.8% of homes have indoor water and only 21.2% have toilet facilities.

The La Oroya metallurgical complex is one of the largest polymetallic processing facilities in the world, producing silver, copper, zinc, and lead.² The complex is operated by DRP and until recently has been the main source employment and income in the city.³ DRP was, until 2007, a subsidiary of The Doe Run Company (“Doe Run”), based in St. Louis, Missouri, and owned by Renco, headquartered in New York. Immediately after its acquisition of La Oroya in 1997, Doe Run established DRP.⁴ In 2007, DRP was restructured and became an affiliate of Doe Run.⁵ The restructuring, according to DRP, was a way to free itself “from the liabilities of its former parent, allowing to nearly doubling [sic] its credit facility⁶ Since 2007, DRP has been an independent affiliate of Doe Run, although still owned by Renco. Doe Run is the largest integrated lead producer in the United States.

In 2000, the U.S. Environmental Protection Agency (“EPA”) issued administrative orders to Doe Run, demanding that the company implement strict environmental improvements to reduce contamination in Herculaneum, Missouri, the site of the country’s largest lead smelter.⁷ With less stringent environmental controls than those imposed in the United States, La Oroya’s smelter generated *seventeen times* the emissions of the smelter in Herculaneum in 1998.⁸ Doe Run’s execution of various programs to protect public health in Herculaneum suggests that the company knew about the health risks associated with smelting operations and was in possession of technologies and management plans that could have been quickly implemented in La Oroya, as well.

The negative public health effects caused by smelter contamination have been exhaustively documented.⁹ When the DRP lead smelter is in operation, contaminant levels in La Oroya

² Doe Run Resources Corp., Annual Report (Form 10-K) (Mar. 21, 2006), *available at* http://www.sec.gov/Archives/edgar/data/1061112/000110465906018264/a06-5938_110k.htm [hereinafter DRP Annual Report].

³ CEDERSTAV & BARANDIARÁN, *supra* note 1, at 19.

⁴ Doe Run, Company Information, <http://www.doerun.com/ABOUTUS/COMPANYINFORMATION/tabid/60/language/en-US/Default.aspx> (last visited Aug. 5, 2010).

⁵ For a detailed account of the changing corporate structures of the Doe Run Company, Doe Run Peru, and the Renco Group, see Plaintiff’s Memo in Opposition to Defendants’ Renewed Motion to Dismiss Based on *Forum Non Conveniens* and Lack of Standing to Sue as Next Friend at 3-9, A.O.A. v. Doe Run Resources (Mo. Cir. Ct. City of St. Louis filed Nov. 25, 2008) (No. 0822-CC08086) [hereinafter Plaintiff’s Motion, A.O.A. v. Doe Run].

⁶ DRP Annual Report, *supra* note 2. *See also* Simon Romero, *In the Andes, a Toxic Site Also Provides a Livelihood*, N.Y. TIMES, June 24, 2009, at A6, *available at* <http://www.nytimes.com/2009/06/25/world/americas/25peru.html>.

⁷ Doe Run Resources Corp., Nos. RCRA-7-2000-0018, CERCLA-7-2000-0029 (U.S. Env’tl. Prot. Agency Sep. 29, 2000) (admin. order of consent).

⁸ CEDERSTAV & BARANDIARÁN, *supra* note 1, at 57.

⁹ *See, e.g.*, Doe Run Resources Corp., 65 Fed. Reg. 77,877 (Env’tl. Prot. Agency Dec. 5, 2000) (proposed admin. agreement), *available at* http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2000_register&docid=fr13de00-55; F. VALDÉZ PEREZGASGA & V.M. CABRERA MORELOS, HEAVY METAL CONTAMINATION IN TORREÓN, COAHUILA, MÉXICO (Sep. 1999), *available at* <http://www.texascenter.org/publications/torreon.pdf>; F. Diaz-Barriga et al., *The El Paso Smelter 20 Years Later: Residual Impact on Mexican Children*, 77 ENVTL. RES. 11, 1997.

greatly exceed the international standards established by the World Health Organization,¹⁰ with lead particle concentration at four times the “level of concern,”¹¹ cadmium particles at 20 times the standard safe level,¹² sulfur dioxide at four times the safe level,¹³ and arsenic particles at six times the level found in European cities.¹⁴ Studies conducted in 1999, 2000, 2001, and 2005 found that average levels of lead, cadmium and arsenic in the blood of La Oroya residents were above levels recommended for public safety by the World Health Organization and the U.S. Centers for Disease Control (“CDC”).¹⁵

Operation of the smelter in La Oroya causes both acute and chronic exposure of the population of the community to highly toxic contaminants. The resulting effects on the health of La Oroya’s citizens are severe and include irreversible damage to the respiratory system, cancers, adverse effects on the reproductive system, and damage to vital organs; the impact on the intellectual and physical development of young children is of particular concern.¹⁶ The city’s two health centers lack adequate equipment and medicines, and residents’ access to health care is limited, as 43% of them are not enrolled in social service programs.¹⁷ Treatment required for lead poisoning involves chelation therapy and prolonged hospitalization, neither of which is available to the average citizen in La Oroya. Renco/DRP has not fully and adequately disclosed to citizens of La Oroya the consequences of contamination. Whereas some of the most critically contaminated children have received basic medical care, food assistance, and daycare in a site installed by Renco/DRP, this program benefits only children under the age of six with extreme blood lead levels. (The daycare is no longer operational.) The company has not provided assistance to the vast majority of individuals affected by the company’s smelting operations.¹⁸

History of Smelter Ownership: 1922-1997

The smelter in La Oroya began operating in 1922 under the ownership of the U.S. Cerro de Pasco Corporation, with three main metallurgical circuits coming into operation in subsequent

¹⁰ Solicitud de Medidas Cautelares [Petition for Precautionary Measures], Inter-Am. C.H.R., redacted copy furnished by EarthJustice, AIDA and CEDHA ¶ 7 (Mar. 30, 2005) [hereinafter IACHR Petition for Precautionary Measures].

¹¹ *Id.* at ¶ 8. See also Supreme Decree No. 074-2001-PCM, Reglamento de Estandares Nacionales de Calidad Ambiental del Aire [Regulation of National Air Quality Environmental Standards] (Mar. 24, 2001) (Peru).

¹² IACHR Petition for Precautionary Measures, *supra* note 9, at ¶ 11.

¹³ *Id.* at ¶ 12.

¹⁴ *Id.* at ¶ 9.

¹⁵ DIRECCIÓN GENERAL DE SALUD AMBIENTAL [GENERAL DIRECTORATE OF ENVIRONMENTAL HEALTH], CENSUS HAEMIC LEAD-EPIDEMIOLOGICAL AND CLINICAL EVALUATION IN SELECTED POPULATIONS OF LA OROYA ANTIGUA (2005) (Peru). See also CONSORTIUM FOR SUSTAINABLE DEVELOPMENT UNION, EVALUATION OF LEAD LEVELS AND EXPOSURE FACTORS AMONG PREGNANT WOMEN AND CHILDREN UNDER 3 YEARS OLD IN THE CITY OF LA OROYA (2000).

¹⁶ U.S. CENTERS FOR DISEASE CONTROL, DEVELOPMENT OF A INTEGRATED INTERVENTION PLAN TO REDUCE EXPOSURE TO LEAD AND OTHER CONTAMINANTS IN THE MINING CENTER OF LA OROYA, PERU (May, 2005), available at http://www.cdc.gov/NCEH/ehs/Docs/la_orya_report.pdf.

¹⁷ IACHR Petition for Precautionary Measures, *supra* note 8, at ¶ 4.

¹⁸ CEDERSTAV & BARANDIARÁN, *supra* note 1, at 13.

years (copper in 1922, lead in 1928, and zinc in 1952).¹⁹ In 1974, the Peruvian government nationalized the complex, and the Central Peru Mining Company, S.A. (“CENTROMIN”) took over operations. In the mid-1990s, in an agreement with the Peruvian Ministry of Energy and Mines (“MEM”), CENTROMIN outlined the Environmental Management and Mitigation Program (“PAMA”) to address significant environmental concerns caused by the operation of the complex. Doe Run Peru purchased the La Oroya metallurgical complex in 1997 and assumed the obligation of complying with the mitigation projects outlined in the PAMA.²⁰

The PAMA and Renco/DRP’s Continual Failure to Execute Environmental Promises

Under the purchase agreement between Renco/DRP and the Peruvian government, Renco/DRP agreed to modernize and reduce emissions to acceptable levels by January 13, 2007. Renco/DRP committed to significantly reduce the company’s environmental impact, and the changes required to reach the company’s environmental goals were expected to cost about \$107.5 million.²¹ In exchange for assuming these obligations, Renco/DRP was indemnified by CENTROMIN, under Supreme Decree No. 042-97-PCM, against any environmental liability arising from pre-purchase operations of the complex.²²

Despite the severe public health crisis in La Oroya, Renco/DRP has yet to meet the PAMA’s environmental obligations to which it agreed more than thirteen years ago. Renco/DRP has made frequent requests for extensions of the PAMA, and as of 2004, the company had invested a mere \$33.2 million of the \$174 million it originally pledged to spend on environmental cleanup.²³ In February 2004, Renco/DRP approached the MEM with a request for an extension of the PAMA deadline for construction of sulfuric acid plants, which are necessary to curtail the harmful sulfur dioxide emissions created by the smelting process. The sulfuric acid plants would also significantly reduce emissions of toxic metal particulates from the chimneys at the complex. On December 29, 2004, the government issued Supreme Decree No. 046-2004 EM, which permitted the extension of one or more PAMA projects under exceptional circumstances. The Decree permits a three-year extension of the PAMA’s environmental deadlines; the Decree also provides for the possibility of a fourth year if a health-risk assessment deems that it is necessary.²⁴ DRP applied for an extension on December 20, 2005,²⁵ and its request was granted on May 26, 2006, thus postponing the PAMA deadline until October 2009.²⁶

After months of severe financial difficulties, in April 2009 a Renco/DRP request for a bail-out with funds from the Peruvian government was denied. However, the government did grant

¹⁹ Milagros Salazar, *Company Offers Bandaid Solutions to a Polluted Town*, IPS, Dec. 14, 2006, available at <http://www.ipsnews.net/news.asp?idnews=35846>.

²⁰ CEDERSTAV & BARANDIARÁN, *supra* note 1.

²¹ Doe Run Resources Corp., SEC Registration Statement (Form S-4) (May 8, 1998), available at <http://www.sec.gov/Archives/edgar/data/1061112/0001047469-98-018990.txt>.

²² Doe Run Resources Corp., Quarterly Report (Form 10-Q) (Sep. 13, 1999), available at <http://www.secinfo.com/dVut2.612kr.htm>.

²³ *Id.*

²⁴ DRP Annual Report, *supra* note 2.

²⁵ *Id.*

²⁶ Petición de Caso, Comunidad de La Oroya [Petition for the Case of the Community of La Oroya], Inter-Am. C.H.R., copy furnished by AIDA/Earthjustice (Dec. 2006) [hereinafter La Oroya Petition].

Renco/DRP an additional three months to comply with the PAMA.²⁷ The company eventually filed for bankruptcy in August 2009. Smelting activities temporarily stopped in June 2009 after the company claimed that banks had frozen its finances; Renco/DRP has yet to resume its activities, despite the Peruvian National Congress's request that the smelting operations recommence by January 27, 2010, and having obtained financing to restart the smelter from a Swiss commodities trader, Glencore International AG, in March 2010.²⁸ In September 2009, DRP was granted yet another extension of 30 months to comply with the PAMA.²⁹

Previous Actions Taken Against DRP by Civil Society Organizations, Individuals, NGOs, and Other Associations

Public health and environmental NGOs the Interamerican Association for Environmental Defense ("AIDA"), Earthjustice, and the Center for Human Rights and Environment ("CEDHA") along with Peruvian lawyers filed a Request for Precautionary Measures with the Organization of American States' Inter-American Commission on Human Rights (IACHR) in 2005 and Petition for Admissibility of the case in 2006. The 2005 Petition for Precautionary Measures called for the Peruvian government to protect the health and livelihoods of the individuals harmed by DRP's environmentally harmful smelting activities.³⁰ The 2005 Petition requested that the Peruvian government grant citizens of La Oroya injunctive relief against Renco/DRP's corporate activities affecting the environment. The 2006 Petition for Admissibility of the case requested that the IACHR accept the NGOs' case against the government, declare the State of Peru to be responsible for the violations of international human rights law that Renco/DRP's environmental practices have caused, and require the State of Peru to take effective measures to solve the problems created by the smelting activities.³¹ In August 2009, the IACHR accepted the 2006 Petition for Admissibility, and held a public hearing in March 2010. The Commission has requested that the Peruvian government give expert medical examinations and treatment to the citizens of La Oroya while the Commission continues to review the case.

Citizens of La Oroya have opposed the PAMA extensions and Renco/DRP's overall failure to conduct its operations according to basic environmental human rights norms. A group of La Oroya residents created the MOSAO in 2002, and this organization has staged protests and a public awareness campaign against Renco/DRP's failure to execute its environmental promises.³² MOSAO's advisory committee consists of representatives of several local NGOs and leaders from the Catholic and Presbyterian Churches. Although MOSAO received significant media coverage for its activities, Renco/DRP did not respond to the group's 2004

²⁷ Milagros Salazar, *Bailout of Mining Company Eclipses Environmental Disaster*, IPS, Apr. 8, 2009, available at <http://ipsnews.net/news.asp?idnews=46445>.

²⁸ <http://www.reuters.com/article/idUSN0925808720100309> and <http://doerunperumedia.com.pe/2010/08/10/doe-run-peru-en-vias-de-reiniciar-sus-operaciones-en-el-complejo-metalurgico-la-oroya/?cth=pr>

²⁹ Bloomberg Business Week, *Doe Run Peru S.R.L.: Private Company Information*, available at <http://investing.businessweek.com/research/stocks/private/snapshot.asp?privcapId=3596773> (last visited Aug. 5, 2010).

³⁰ IACHR Petition for Precautionary Measures, *supra* note 8.

³¹ La Oroya Petition, *supra* note 24.

³² IACHR Petition for Precautionary Measures, *supra* note 8, at ¶ 107.

protests.³³ Furthermore, as of 2005, Renco/DRP was the defendant in more than 198 lawsuits brought by Renco/DRP employees alleging harm resulting from industrial diseases.³⁴ As noted in the Petition for Precautionary Measures to the IACHR, Renco/DRP also sued a group of employees and environmental activists who expressed their disapproval of the company's environmental management.³⁵

Lastly, Peru's National Society of Mining, Petroleum, and Energy ("SNMPE"), a voluntary industry association, suspended DRP in June 2009 for its failure to comply with basic mining and environmental regulations. Formal expulsion from the association followed in January 2010, and the association issued a statement declaring that DRP "has not shown . . . any willingness to comply with its environmental commitments and its obligations to the country, its workers, the La Oroya population and its creditors."³⁶

C. JURISDICTIONAL ISSUES

This complaint meets admissibility requirements for both the Peruvian and U.S. NCPs, and we request that it be jointly accepted by both.

The specific instance of conduct at issue in this complaint merits further examination due to the material and substantial breaches of the OECD Guidelines. In this case, it is appropriate for the U.S. and Peruvian NCPs to offer their good offices to assist us in resolving this dispute with DRP and Renco. Not only do these issues have direct bearing on the company's adherence to the OECD Guidelines, but there is a pattern of persistent disregard that the company has shown in its history of failing to address these breaches.

The U.S. NCP has declared as its "fundamental principle" that multinational enterprises comply with the national law of the country in which they are situated.³⁷ In this case, the company has blatantly violated applicable law and procedures, as detailed above.

Participation by the Peruvian and U.S. NCPs is essential to address the ongoing violations by DRP and Renco in this specific instance because they have a unique mandate to assist in resolving just such disputes regarding compliance with the OECD Guidelines. Failure to address violations of the OECD Guidelines in this case will undermine the effectiveness of the Guidelines in general. Moreover, the work of the NCPs in improving corporate conduct provides essential guidance and direction that extends beyond the case at hand.

Suitability of Joint Collaboration between the U.S. and Peruvian NCPs

³³ *Id.* at ¶ 110.

³⁴ DRP Annual Report, *supra* note 2.

³⁵ IACHR Petition for Precautionary Measures, *supra* note 8.

³⁶ http://www.snmpe.org.pe/DocSNMPE/NotaPrensa/archivos/ndp_29-01-2010.pdf

³⁷ OECD Guidelines for Multinational Enterprises and the U.S. National Contact Point, *available at* <http://www.state.gov/documents/organization/140823.pdf> (last visited Aug. 9 2010).

The origins of DRP, its close relationship with Doe Run until at least 2007, and its continued relationship with Renco call for the involvement of the U.S. NCP in this specific instance request. To the extent that parent companies exercise control over the activities of their subsidiaries, such companies have a responsibility for those subsidiaries' observance of the OECD Guidelines.

Other NCPs have not shied away from hearing complaints against companies whose subsidiaries are based in foreign jurisdictions.

In 2006, a complaint was filed against Royal Dutch Shell at the Dutch NCP for alleged breaches of the OECD Guidelines by Pilipinas Shell Petroleum Corporation and Shell's holding in Brazil, subsidiaries of Royal Dutch Shell. The complainants acknowledged "the procedural guidance that states that specific instances should be filed at the NCP in the country where the alleged breaches occurred" but offered reasons that the Brazilian NCP may not have been effective in handling the case. These included a lack of resources in the Brazilian NCP to address the concerns swiftly and the Brazilian NCP's concern that political issues would make resolving the complaint difficult were it to act by itself. Thus, the complainants asked instead for "the Dutch NCP to actively follow and participate in resolving the case."³⁸ The Dutch NCP agreed to assist the Brazilian NCP in resolving the case.³⁹

Scholars of international corporate law and of the OECD Guidelines, in particular, have recognized that an effective system of corporate responsibility must hold companies responsible for the activities of their foreign subsidiaries.⁴⁰ They analogize the situation to piercing the corporate veil of companies that use foreign subsidiaries to distance themselves from their human rights or financial obligations; many national courts pierce the corporate veil in such circumstances.⁴¹ At least until 2007, Doe Run and Renco were intimately involved in assessing DRP's activities. This highlights the appropriateness of the U.S. NCP's involvement. The very

³⁸ Complaint on the Violations of Pilipinas Shell Petroleum Corporation Pursuant to the OECD Guidelines for Multinational Enterprises 1 (May 15, 2006), *available at* http://oecdwatch.org/files/shell_complaint_brazil_philippines.

³⁹ OECD Watch, CAVE and FoE Netherlands vs. Royal Dutch Shell, http://oecdwatch.org/cases/Case_92/?searchterm=shell+brazil (last visited April 13, 2010). For more examples of NCPs agreeing to consider such cases, see JERNEJ LETNAR CERNIC, *Corporate Responsibility for Human Rights: A Critical Analysis of the OECD Guidelines for Multinational Enterprises*, 4 HANSE L. REV. 87 (2008), *available at* <http://www.hanselawreview.org/pdf6/Vol4No1Art05.pdf>.

⁴⁰ See generally ROBERT MCCORQUODALE & PENELOPE SIMONS, *Responsibility Beyond Borders: State Responsibility for Extraterritorial Violations by Corporations of International Human Rights Law*, 70 MOD. L. REV. 598 (2007), which reviews this literature.

⁴¹ See, e.g., *Adams v. Cape Industries plc*, [1990] Ch. 433 (U.K.). English veil-lifting laws are also applicable to the majority of Commonwealth countries through national legislation like Kenya's Judicature Act, a point made explicit in *Mosi v. National Bank of Kenya Ltd*, [2001] K.L.R. 333, 336 (Kenya). For U.S. treatments of the questions, see *Doe v. Unocal*, 395 F.3d 932 (9th Cir. 2002); *Bowoto v. Chevron Texaco*, 312 F. Supp.2d (N.D. Cal. 2004); *Minton v. Cavaney*, 364 P.2d 473 (Cal. 1961). For treatments of this question specifically in the context of human rights obligations, see MCCORQUODALE & SIMONS, *supra* note 44, at 616-23; Joseph Kiarie Mwara, *Corporate Human Rights Norms and the Clog of Limited Liability Within Corporate Groups: Towards an International Convention* 14-17 (Hum. Rts. Prog. at Harv. L. Sch., Working Paper, Oct. 2008), *available at* http://www.law.harvard.edu/programs/hrp/Mwaura_Working_Paper.pdf.

flexibility and cooperation that the OECD Guidelines are designed to foster supports the U.S. NCP's involvement in this case.

Importance of the U.S. NCP's Involvement

During most of its operations, DRP was owned and controlled by Doe Run Resources, a U.S.-based company, which is owned and controlled by Renco Holdings and The Renco Group, also U.S.-based companies. Consequently, the U.S. NCP offers an essential complementary forum to the Peruvian NCP, as the Peruvian NCP would lack influence over the U.S.-based companies that have made essential decisions regarding the operations of DRP.⁴²

Given DRP's connections to the United States via its sister company, Doe Run, and its holding company, Renco, the U.S. NCP is an appropriate venue for consideration of this specific instance.

D. PARALLEL PROCEEDINGS

The 2008 Annual Meeting of the OECD NCPs report noted that the existence of parallel proceedings “should not be used as an excuse for not considering or [for] postponing consideration of a specific case.” Instead, NCPs should focus on the “value-added” of an OECD proceeding.⁴³ The following sections argue that the proceedings currently before the IACHR and a Missouri state court do not eliminate the value-added of an investigation by the Peruvian and U.S. NCPs of violations by Renco/DRP in this specific instance. The U.S. and Peruvian NCPs are in a unique position to help improve the situation in La Oroya. This case provides the U.S. and Peruvian NCPs with an opportunity to demonstrate that the OECD Guidelines can be an effective mechanism for promoting corporate social responsibility.

Missouri court

Two personal injury cases, *A.O.A. v. Doe Run Resources*, No. 0822-CC08086 (Mo. Cir. Ct. City of St. Louis filed Aug. 7, 2008), and *K.G.C. v. Doe Run Resources*, No. 0822-CC08088 (Mo. Cir. Ct. City of St. Louis filed Aug. 7, 2008), have been brought under Missouri state law against Doe Run, D.R. Acquisition Corp., Renco, and named officers of these companies. Both cases have been brought on behalf of children living near the lead smelter in La Oroya that is operated by DRP and allege claims of joint and several liability arising under Missouri state law. Both are based on theories of negligence and strict liability for injuries resulting from exposure to toxic substances that was proximately caused by decisions made by Doe Run, D.R. Acquisitions, and Renco, all U.S.-based companies, and their officers. Both cases seek punitive and compensatory damages, costs and expenses, and “such further relief as the Court deems appropriate.”⁴⁴

⁴² See generally, Petition for Damages – Personal Injury, *A.O.A. v. Doe Run Resources* (Mo. Cir. Ct. City of St. Louis filed Nov. 25, 2008) (No. 0822-CC08086) [hereinafter Petition for Damages, *A.O.A. v. Doe Run*].

⁴³ 2008 Annual Meeting of the National Contact Points, Report by the Chair 16 (June 24-25, 2008), available at <http://www.oecd.org/dataoecd/48/38/41721195.pdf>.

⁴⁴ Petition for Damages, *A.O.A. v. Doe Run*, *supra* note 46.

The outcomes of these cases will in no way reduce or eliminate the value-added of an investigation by the NCPs of violations by DRP and its parent, affiliate, and holding companies in the United States. If the plaintiffs prevail in this case, only they will recover and they would only be awarded damages specific to their injuries alone. This would not bring about the changes that are urgently needed in the operation of the plant in La Oroya or the measures needed to address the environmental and health effects of the plant's operations. In addition, because these cases have been brought under Missouri state law, and because DRP has not been named as a defendant, the outcome of these cases cannot address the ongoing environmental contamination and health hazards posed by smelter operations in La Oroya. In summary, breaches of the OECD Guidelines at issue in this complaint are not addressed by the Missouri proceedings.

The OECD NCP remains an essential forum for addressing the ongoing violations by DRP and its U.S. affiliates because its focus is on improving corporate conduct to bring about compliance with the OECD Guidelines, rather than providing monetary compensation. In this way, an NCP proceeding would help to fill the regulatory gap left by the Peruvian government's failure to enforce the PAMA. The work of the NCP in improving corporate conduct and bringing about compliance with the OECD guidelines provides essential guidance and direction that extends beyond the case at hand. Moreover, failure to address violations of the OECD guidelines undermines the guidelines' effectiveness. The Missouri proceedings, based on Missouri law, do not address these violations.

Involvement by the NCPs in this instance will assist in resolution of issues that complement the Missouri proceedings.

Inter-American Commission on Human Rights

Currently, the IACHR is reviewing Peru's alleged violations in La Oroya of rights guaranteed by the American Convention on Human Rights and the Additional Protocol to the American Convention in the Area of Economic, Social, and Cultural Rights. At issue is the Peruvian government's inaction in response to the environmental contamination in La Oroya caused by Renco/DRP's operations. The IACHR proceeding is directed at the Peruvian government, not at DRP or its holding company, Renco; the IACHR has jurisdiction only over state parties, not over companies.⁴⁵ Therefore, it does not directly engage the primary actors responsible for bringing about the ongoing environmental, public health, and human rights violations at La Oroya – namely, DRP and Renco. The Peruvian government has not taken the requisite actions, despite a 2006 ruling by Peru's Constitutional Tribunal ordering the Ministry of Health to implement certain remediation and mitigation measures in La Oroya.⁴⁶

The outcome of the IACHR proceedings against the Peruvian government will not directly address the issue of Renco/DRP's violation of the OECD Guidelines outlined in Section B,

⁴⁵ Petition 1473-06, Inter-Am. C.H.R., Report 76/09, OEA/Ser/L/V/II.135, doc. 23 (Aug. 5, 2009) (on the admissibility of the La Oroya case) [hereinafter IACHR Report on Admissibility].

⁴⁶ In re: Pablo Miguel Fabían Martínez and others, Sentencia del Tribunal Constitucional [Decision of the Constitutional Tribunal], No. 2002-2006-PC/TC (May 12, 2006) (Peru), available at http://www.aida-americas.org/sites/default/files/Sentencia_Tribunal_Constitucional_LaOroya_MAY06_1.pdf.

above, and detailed in Section F, below. Renco/DRP is a separate and distinct agent, and its violations are of a different nature than those of the Peruvian government. The most direct actor on the ground in La Oroya remains Renco/DRP. As yet, Renco/DRP has not been held accountable for its actions in La Oroya, which include violations of the OECD guidelines. Renco/DRP must not be allowed to use the existence of a proceeding against the Peruvian government as an excuse to continue violating the OECD Guidelines.

The outcome of the IACHR petition, if successful, will be an order to the Peruvian government to undertake various actions, including educational, remedial, environmental, and regulatory ones.⁴⁷ No direct order to Renco/DRP can result. Since companies are not within the jurisdiction of IACHR, the Peruvian and U.S. OECD NCPs remain the appropriate mechanism for resolving these disputes related to the OECD Guidelines for this specific instance of conduct.

E. BREACHES OF THE OECD GUIDELINES

The facts demonstrate Renco/DRP's failure to meet the OECD Guidelines concerning the principles and standards of good practice consistent with applicable laws and failure to uphold Renco/DRP's contractual obligations. Renco/DRP is subject to the OECD Guidelines as both Peru and the United States are signatories to the OECD Declaration on International Investment and Multinational Enterprises.

1. Failure to Meet Environmental and Health Standards

Renco/DRP has failed to meet Peruvian and international standards in the areas of air quality, water quality, and human health and environmental protection. In this regard, Renco/DRP has violated the following OECD Guidelines, which state that enterprises should:

- “Contribute to economic, social and environmental progress with a view to achieving sustainable development.” (Chapter II, Section 1)
- “Support and uphold good corporate governance principles and develop and apply good corporate governance practices. (Chapter II, Section 6)
- Contribute to the development of environmentally meaningful and economically efficient public policy, for example, by means of partnerships or initiatives that will enhance environmental awareness and protection.” (Chapter V, Section 8)

Even after the Peruvian government granted several extensions to Renco/DRP to comply with PAMA requirements, Renco/DRP has failed to satisfy its stated objectives for environmental and health standards in the operation of its complex in La Oroya. First, Renco/DRP has not complied with stated air-quality standards, as outlined in the PAMA. Acceptable PM10 lead concentrations should have been achieved by December 2006, and acceptable sulfur dioxide concentrations should have been achieved by October 2009. Second, Renco/DRP did not comply with stated water quality standards by the contractual deadline of December 2006. Third, Renco/DRP has not complied with stated human-health standards. By October 2009, the incremental risk of cancer from arsenic was to be reduced to 1:10,000, the average blood lead

⁴⁷ IACHR Petition on Admissibility, *supra* note 49.

levels in children younger than 6 years of age were supposed to have reached 15 ug/dL and none of those children were supposed to have blood lead levels greater than 45 ug/dL. Three years after the remediation of lead levels in soil, which the PAMA declares should have been begun by 2008, 95% of children younger than 6 years were supposed to have blood lead levels less than 10 ug/dL. Testing has shown that blood metallic levels are still too high; some testing has not been initiated at all, and soil remediation has not even begun.

2. Failure to Meet Monitoring, Information Gathering and Dissemination, and Self-Management Requirements

Renco/DRP has violated the following OECD Guidelines, which state that enterprises should:

- Develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate. (Chapter II, Section 7)
- Establish and maintain a system of environmental management appropriate to the enterprise, including:
 - (a) collection and evaluation of adequate and timely information regarding the environmental, health, and safety impacts of their activities. (Chapter V, Section 1 (a))
- Taking into account concerns about cost, business confidentiality, and the protection of intellectual property rights:
 - (a) provide the public and employees with adequate and timely information on the potential environment, health and safety impacts of the activities of the enterprise, which could include reporting on progress in improving environmental performance;
 - (b) engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation. (Chapter V, Section 2)
- Assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle. Where these proposed activities may have significant environmental, health, or safety impacts, and where they are subject to a decision of a competent authority, prepare an appropriate environmental impact assessment. (Chapter V, Section 3)

The OECD Guidelines and the 2006 PAMA require Renco/DRP to create and maintain a system of environmental monitoring and information collection designed to better control pollution levels. Under the 2006 PAMA agreement, DRP was required to: 1) improve its air quality and meteorological monitoring networks by September 2006; 2) establish, by June 2006, a system to monitor dust and soil contamination levels; 3) carry out, by March 2008, a complementary study of dispersion modeling for air quality; and 4) complete, by August 2008, a complementary study of health risks associated with its activities.

3. Failure to Protect Human Rights

Renco/DRP has violated the following OECD Guidelines, which state that enterprises should:

- “Respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments.” (Chapter II, Section 2)
- “Assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle. Where these proposed activities may have significant environmental, health, or safety impacts, and where they are subject to a decision of a competent authority, prepare an appropriate environmental impact assessment.” (Chapter V, Section 3)
- “Maintain contingency plans for preventing, mitigating, and controlling serious environmental and health damage from their operations, including accidents and emergencies; and mechanisms for immediate reporting to the competent authorities.” (Chapter V, Section 5)

The majority of La Oroya residents have very limited access to health care, and many are unable to receive the necessary treatments required to address medical problems resulting from chronic and acute exposure to the pollutants produced by the smelter. Many of the risks associated with this type of environmental pollution are entirely foreseeable, and Renco/DRP consequently has a responsibility to take preventive and corrective measures to minimize the community’s health risks. In accordance with the PAMA and Renco/DRP’s agreement with the Peruvian Ministry of Health⁴⁸ (“the MINSA-DRP agreement”), Renco/DRP has several obligations to ensure the treatment of La Oroyans who have already been exposed to dangerous levels of pollution. These commitments include:

1. Facilitating medical care for children with blood lead levels over 10 ug/dL; children with blood lead levels exceeding 70 ug/dL were to be transported to Lima for hospitalization at the company’s expense, while those with levels from 45-69 ug/dL were eligible for nutrition intervention and hygiene training.⁴⁹
2. Ensuring the provision of medical attention for pregnant mothers in the community,

⁴⁸ Convenio MINSA/Doe Run Peru [Ministry of Health/Doe Run Peru Agreement] (July 4, 2003) (Peru).

⁴⁹ Informe Final sobre la Solicitud de Prórroga Excepcional del Proyecto “Plantas de Ácido Sulfúrico” del Programa de Adecuación y Manejo Ambiental del Complejo Metalúrgico La Oroya de Doe Run Perú S.R.L. [Final Report on the Request for an Exceptional Extension for the “Acid Sulfur Plant” Project in the Environmental Management Program for the Doe Run Peru Metallurgical Complex at La Oroya], Report No. 040-2006-MEM-AAM/LS/FV/AL/HS/EA/PR/AV/FQ/CC/AA (Ministerio de Energía y Minas, Dirección General de Asuntas Ambientales Mineros, May 25, 2006) (Peru) [hereinafter “MEM Report No. 040-2006”].

- whose special health needs are particularly aggravated by exposure to pollutants.⁵⁰
3. Providing health assistance for those exposed to high levels of sulfur dioxide.⁵¹
 4. Cleaning homes, streets, and critical areas that were particularly affected by the metallurgical complex's production of dust and other chemicals.⁵²
 5. Improving the network of basic health services available in La Oroya.⁵³

Renco/DRP's failures to meet these responsibilities show a longstanding pattern of human rights abuses and violations of its obligations and commitments under its agreements with the Peruvian government. Renco/DRP has known that its conduct and failure to abide by the PAMA have contaminated the environment and damaged the human health of La Oroya, but they have continued such conduct and failures nonetheless.

F. REMEDIES REQUESTED

The undersigned respectfully submit this complaint and request that the U.S. and Peruvian NCPs act quickly to encourage significant improvements in Renco/DRP's operations of the La Oroya Metallurgical Complex. We encourage the United States and Peru, as signatories to the OECD Guidelines, to work with Renco and DRP to ensure timely compliance with the Guidelines. Given the gravity of the above violations and the urgency of the health and environmental problems facing La Oroya, we respectfully request that the NCPs assist with negotiation of an agreement with Renco/DRP to:

1. Act immediately to comply with all provisions of the PAMA, the OECD Guidelines, other agreements by which Renco/DRP is bound, and all Peruvian human health and environmental regulations. To that end, we request that Renco/DRP:
 - Meet air quality, water quality, soil quality and human health standards as established in the PAMA and under Peruvian law.
 - Construct and modernize sulfuric acid plants, as outlined in the PAMA, and guarantee their actual operation.
 - Take special complementary measures, as outlined in the PAMA, to reduce particulate material from chimney (point source) and fugitive emissions.
 - Provide the health protections outlined in the MINSA-DRP agreement, and any other health care treatment that may be necessary,, including:
 - Special services for high-risk populations, including young children with elevated blood lead levels and pregnant mothers;
 - Provide adequate, accurate, and complete local health education;
 - Remediate contamination in houses, schools, exposed soils, and other affected areas;
 - Create and maintain a basic services and health network. This network should be sufficient to maintain appropriate hygiene and minimize

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

damage from exposure and to address health problems caused by the contamination generated by the smelter.

- If not already completed, undertake the health studies and pollution monitoring and alert systems outlined in the PAMA. Make results publicly available and act to address any disparities between identified and target contamination levels.
 - Undertake the social responsibility programs and general commitments to constant improvement outlined in the PAMA.
2. Work with environmental regulatory agencies in Peru and civil society groups in La Oroya to establish an updated and transparent timetable for immediate PAMA compliance, as the deadlines for compliance with most provisions have already passed.
- We ask Renco and DRP to recognize the urgency of the public-health crisis created by their continued delays, and we request that Renco and DRP enter into good-faith discussions with regulators, civil society representatives, and residents of La Oroya to establish a realistic and enforceable timetable that includes strict penalties for further delays.
 - We further request that Renco /DRP, recognizing that they have repeatedly failed to meet PAMA deadlines, collaborate with governmental organs and regulatory bodies to design the most efficient solutions to the urgent problems in La Oroya. We further urge the NCPs to advocate bilateral solutions and direct Renco/DRP to cooperate with environmental and health regulatory agencies, including the Peruvian agencies charged with monitoring PAMA compliance and the relevant U.S. governmental agencies, such as the EPA and CDC.
3. Adhere to improved standards of corporate social responsibility and demonstrate good faith in their efforts to fulfill Renco/DRP's legal obligations in La Oroya. The violations described above, as well as Renco/DRP's repeated requests for PAMA extensions, suggest that Renco/DRP have not exhibited a pattern of good faith in their conduct in La Oroya. Furthermore, DRP was recently expelled from the SNMPE, a voluntary association that sets guidelines for members' conduct and establishes minimum standards of corporate social responsibility, who issued a statement calling Renco/DRP's "rebellious attitude . . . not harmonious with [SNMPE's] code of conduct."⁵⁴ We urge Renco and DRP to adhere to the corporate social responsibility standards outlined in the OECD Guidelines and established by other industry members. We further urge Renco/DRP to act in good faith and to ensure full and prompt compliance with their legal obligations.

⁵⁴ *U.S. firm kicked out of Peru mining group*, *supra* note 33. See also, e.g., *La ética y Doe Run* [Ethics and Doe Run], SNMPE, available at http://www.snmpe.org.pe/0/snmpe/NOT_DetallarNoticia.aspx?id=74572 (Aug. 10, 2010) (Peru); *Doe Run insiste en poner excusas para prorrogar reinicio de operaciones, señala MEM* [Doe Run insists on making excuses to delay restarting operations, says the Ministry of Energy], SNMPE, available at http://www.snmpe.org.pe/0/snmpe/NOT_DetallarNoticia.aspx?id=73050 (June 6, 2010) (Peru).

G. CONCLUSION

We may be contacted at the email addresses listed below. We look forward to hearing from you soon.

Sincerely,

Juan Carlos Sueiro
Cooperacion
jcsueiro@cooperacion.org.pe

Rosa Noemi Toykin
Movimiento por la Salud de La
Oroya (MOSAO)
Ronat_1@yahoo.es

Rómulo Torres
Forum Solidaridad
Romulo@psf.org.pe

Misael Campos Mallqui,
Red Uniendo Manos Perú
misaelcm1612@hotmail.com

Frank Boeren
Oxfam America/Peru
fboeren@oxfamamerica.org

Keith Slack
Oxfam America/Washington
kslack@oxfamamerica.org