



Citation for published version:

Valencia, A 2012 'Human rights trade-offs in a context of systemic unfreedom: the case of the smelter town of La Oroya, Peru' Bath Papers in International Development and Wellbeing, no. 15, Centre for Development Studies, University of Bath, Bath, U. K.

Publication date:
2012

Document Version
Publisher's PDF, also known as Version of record

[Link to publication](#)

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bath papers in international development
and well-being
ISSN 2040-3151

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context of systemic unfreedom:
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of La Oroya, Peru**

Areli Valencia

Working Paper no. 15
January 2012



Bath Papers in International Development and Wellbeing
A working paper series of the
Centre for Development Studies, University of Bath
<http://www.bath.ac.uk/cds/>

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Published by:
The Centre for Development Studies
University of Bath
Claverton Down
Bath, BA2 7AY, UK
<http://www.bath.ac.uk/cds/>

ISSN 2040-3151

Series Editor:
Graham K. Brown

HUMAN RIGHTS TRADE-OFFS IN A CONTEXT OF SYSTEMIC UNFREEDOM: THE CASE OF THE SMELTER TOWN OF LA OROYA, PERU

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Bath Papers in International Development and Well-Being no. 15

March, 2012

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Areli Valencia

Abstract

This paper examines the interconnecting causes that have placed residents of the community of La Oroya, in Peru's central Andes, in the dilemma of having to sacrifice their human right to health in order to preserve job opportunities at the town's smelter. Using the lens of a "capability-oriented model of human rights", the paper shows how a constellation of environmental, social, institutional and personal factors have resulted in structuring a context of systemic unfreedom in La Oroya. This is a context in which human rights abuses reproduce systemically, affecting the overall wellbeing of individuals and communities, and in turn, diminishing their ability to transform their reality of unfreedom. The paper argues that to understand fully why some residents of the La Oroya community acquiesced in forfeiting their own rights, particular attention has to be paid to the pernicious manner in which living under unfreedom has historically trapped individuals of this community in a vicious cycle of disadvantage.

Keywords: human rights, extractive industry, capability approach, structural injustice, environment.

Acknowledgements

Part of the research for this paper was undertaken at CDS, Bath; this was made possible thanks to the Michael Smith Foreign Study Supplement granted by the Social Science and Humanities Research Council of Canada (SSHRC). An earlier version of this paper was presented at a seminar hosted at the Centre for Development Studies (CDS), University of Bath, UK, April 2011. I wish to thank Séverine Deneulin and the participants in this seminar for their thoughtful comments and suggestions.

1 Introduction

Over the last few years, the town of La Oroya, in Peru's central Andes, has received significant international attention due to the alarming number of children suffering from high levels of lead poisoning as a result of pollution from the town's smelter. Paradoxically, instead of collectively unifying voices to protect their health and the environment, a significant portion of members of this community opted to minimize the problem with a view to defending job opportunities at the smelter. In light of this, the La Oroya case became known as emblematic of the problem of human rights trade-offs between health and work (Scurrah, Lingan and Pizarro, 2009).

To assess the myriad complexities of the La Oroya trade-offs case, the paper uses an analytical integrated framework which it calls "a capability-oriented model of human rights". Conceptually, this model builds upon structural approaches to human rights and Sen's capability approach. Methodologically, a salient feature of this model is its incorporation of voices of affected community members as an important source of knowledge. The paper shows that a constellation of environmental, social, institutional and personal factors from the past to the present structures a context of systemic unfreedom in La Oroya. This is a context in which human rights abuses reproduce historically and systemically, affecting the overall wellbeing of individuals and communities and, in turn, diminishes their ability to transform their reality of unfreedom. The empirical fieldwork conducted in La Oroya suggests that living under systemic unfreedom has created the fundamental conditions for members of the La Oroya community to acquiesce in forfeiting their own rights.

The paper is organized into three sections. It begins by narrating the most relevant events leading to the seemingly intractable conflict between health and work in La Oroya. The second section introduces the rationale and main tenets of a "capability-oriented model of human rights" and justifies its use for analyzing the human rights trade-offs in La Oroya. The third section unveils the constellation of environmental, social, institutional and personal factors sustaining a context of unfreedom in La Oroya. The paper concludes by further reflecting upon on the extent to which living under systemic unfreedom relates to the trade-offs of health for work; in doing so, it elaborates on the need to advance both short-term restorative and long-term transformative measures to overcome the predicament of systemic unfreedom in La Oroya and other contexts with similar features.

2 The seemingly intractable conflict between "health" and "work"

The smelter town of La Oroya is located at the heart of Peru, in the midst of the central Andes at 3,740 metres above sea level. The La Oroya territory forms part of the Department of Junín, an area historically known for its agricultural richness and abundant mineral resources.

On a regular day in La Oroya, life seems to unfold at a normal pace for the town's eighteen thousand inhabitants. Children play on the streets after school while a group of retired smelter workers, talking together on a street corner, enjoy a sunny afternoon. Vegetables and meat products are sold in street markets; small restaurants are busy in the main square; and on the main highway in town, convoys of big trucks transport commuters and industrial products from different parts of the country. All these events may well typify an ordinary day in the community of La Oroya, except that activities of the metallurgic refinery—the most important smelter in the

country and the main source of economic development in the town—have been suspended since June 2009.

This suspension followed a dramatic period of social conflict in La Oroya, which peaked between 1999 and mid-2009. During that time, community members in La Oroya faced a discomfoting reality: smelter pollution, a visible and dangerous problem they had lived with since the smelter was built in 1922, was finally proven to be having serious health consequences for the people living in the area.

In 1999, a few years after the privatization of the smelter to the US-based Doe Run Resources Corporation/The Renco Group Inc. (Doe Run), the Peruvian Ministry of Health's Environmental Health Directorate (DIGESA) released the results of the first governmental study on blood lead levels (BLL) in La Oroya. The findings were conclusive: 99.1% of the children under 10 years who were tested reported blood lead levels higher than 10ug/dl, the maximum permissible level established by the World Health Organization (WHO).¹ Adverse effects of childhood lead poisoning are linked to neurological system damage, poor intellectual performance, gastrointestinal and respiratory diseases, cancer and early death (Bellinger, 2006; Lidsky, 2006). The study confirmed that the smelter was the principal source of pollution. The recommendation was straightforward: unless the principal source of pollution was effectively controlled, or the affected population removed from the polluted areas, medical treatment would remain ineffective.

More evidence surfaced in the following years. The Consortium for Sustainable Development in La Oroya yielded similar results with regard to children and reported that similar levels were also present in pregnant women. Children tested reported an average of BLL of 39.49ug/dl, whereas the average for pregnant women was even higher, at 41.81ug/dl (UNES, 2000). In addition to air pollution, evidence of contamination was also found inside people's homes, bringing to the fore the long-term housing problem in La Oroya (Cornejo and Gottesfeld, 2004). Another study conducted from June 2004 to June 2005 determined that even newborns in La Oroya had an average of 8.84ug/dl BLL (Pebe, *et al.*, 2008). Finally, a 2005 study conducted by the School of Public Health from the University of Saint Louis, Missouri, found high concentrations of cadmium and arsenic, in addition to lead, in residents' blood (School of Public Health, Saint Louis University, 2005).

The initial response of Doe Run, the smelter operator, was to blame historical contamination and automobile pollution as the fundamental causes of the presence of lead and other toxic metals in children's blood in La Oroya, but a study entitled *La Oroya Cannot Wait* quickly dismantled the company's hypothesis (Cederstav and Barandiaran, 2002). Based on official environmental monitoring reports submitted by Doe Run to the Peruvian Ministry of Energy and Mines from 1996-2000, the study concluded that levels of sulphur dioxide contamination at the time of the evaluation were much worse than those considered during the development of the 'Environmental Management and Mitigation Program' ("PAMA" in Spanish) adopted for the complex (Ibid: 41, 44).

¹ Ministerio de Salud—Environmental Health Directorate, "Estudio de plomo en sangre en una población seleccionada de La Oroya" (Lima, 23-30 November 1999). The study tested 364 children between 2 to 10 years of age and 201 people over 10 years of age.

The implementation of the latter program lies at the core of the La Oroya social conflict. PAMA is a technical instrument containing a set of legal obligations for long-term operators, such as the La Oroya smelter, to comply progressively with the new environmental standards established for the extractive industry in the context of the privatizations of the 1990s.² Under PAMA, which was expected to be completed within *10 non-renewable years*, expiring on January 13, 2007,³ the Peruvian state agreed to take responsibility for the historical pollution and, in turn, to implement a soil remediation plan for La Oroya. Doe Run agreed to implement the following projects to modernize the smelter: (a) treatment of water effluent, and management and proper storage of solid waste; (b) control of gas emissions and the application of technologies for concentrating sulfur dioxide; and (c) construction and completion of two new sulfuric acid plants (Pajuelo, 2005).

From the beginning, controversial technical decisions undermined the effective implementation of PAMA. To illustrate, in response to a request by Doe Run, the Environmental Affairs Directorate for the Ministry of Energy and Mines authorized the construction of the sulphuric acid plants as the last of all projects to be completed, when in fact these projects — although the most expensive — were the ones that would have had a real impact on reducing air pollution (Ibid: 112). Equally controversial was the decision of the Peruvian state to postpone the design and implementation of the soil remediation plan until Doe Run met its obligations under PAMA. In addition, as noted earlier, studies showed that contamination levels in La Oroya increased in direct response to increased increments in smelting production, evidencing an open infringement of existing environmental legislation.⁴

In response to this lack of implementation of environmental protection, a grassroots movement for the health of La Oroya (“MOSAO” in Spanish) emerged. This movement, a partnership between community members and human rights activists, put the La Oroya public health crisis on the public agenda. The MOSAO drew international attention to the La Oroya health crisis, prompting US media outlets to probe the business reputation of the owner of Doe Run, Ira Rennert, who showed embarrassing records of non-compliance with U.S. environmental regulations (Shnayerson, 2002: 128).⁵

Nonetheless, the efforts of the MOSAO remained insufficient in the face of Doe Run’s impressive political lobby to request a deadline extension to PAMA, arguing economic hardship. In parallel, the company spread word that a denial of the referred extension would make it impossible to continue with its smelting operations—jeopardizing the jobs and subsistence of almost 4,000 workers and their families (Scurrah, Lingan and Pizarro, 2009). In a community where the majority of the population depends directly or indirectly on the smelter, it was not hard for Doe Run to gain the support of local authorities, along with many smelter workers and their families. Accordingly, what began as a conflict between the community, the state, and the smelter operator over the protection of the environmental health of the community turned instead into

² Although technically incipient and in many cases below international standards, this new regulatory framework allowed the Peruvian state to supervise companies’ compliance with environmental obligations for the first time in history.

³ According to article 9, *General Mining Law, Supplementary Regulation Regarding the Environment* (Supreme Decree No. 016-93-EM) (1 May 1993).

⁴ Results of the first external audit of Doe Run in 2003 by Golden Associated Brasil Ltd.

⁵ See the video ‘House of Lead: A Story of Greed. La Oroya, Peru’ posted on YouTube.

a conflict among residents of La Oroya, many of whom went into the streets to support the company and defend their jobs.

Local support offered to Doe Run helped persuade national governmental authorities to grant not just one but two consecutive PAMA deadline extensions. In practical terms, such extensions meant that the initial goal to reduce air pollution and human health risks by 2007 has been controversially delayed for many additional years.⁶

These extensions are startling in light of the following facts. Between the first and second extensions, a 2006 judgment from the Constitutional Tribunal of Peru⁷ acknowledged the Ministry of Health's delay in implementing a comprehensive emergency plan aimed at tackling the lead poisoning epidemic in La Oroya; similarly, the Inter-American Commission of Human Rights also granted precautionary measures to a group of citizens from La Oroya who complained against the inaction of the Peruvian state.⁸ Yet, none of these measures resulted in improving the governmental monitoring system to ensure Doe Run's compliance with existing environmental legal standards. Evidencing such a failure, the study conducted by the civil association Labor demonstrated that in 2006 "[o]nly 5 days could have been considered as breathable or clean according to the WHO standards," and in January 2007 "[o]nly one day could have been considered a clean day using the same standards. If using the weaker Peruvian standards, still only 7 days could be deemed as breathable" (Abanto, 2007). Nevertheless, none of these facts were seriously taken into account at the political level when deliberating for a second extension to PAMA.

The reactions of the ministers on duty during the peak of the conflict are particularly revealing: the Minister of Environment declared that "a deadline extension was necessary," whereas the Minister of Production affirmed that such an extension "would help to avoid a systemic harm to the mining sector" (Uceda, 2009: para. 61). Further, former Peruvian President Alan Garcia (2006-2011) affirmed that, "[i]f some irresponsible people let Doe Run—the most important refinery in Central Peru—go down, then we will have between 10,000 and 12,000 unemployed inhabitants blocking important highways."⁹

Due to ongoing financial problems, Doe Run ultimately failed to meet the second deadline extension, resulting in the temporary suspension of smelting activities since July 2009. As a result, the last PAMA project — the construction of a sulphuric acid plant for the processing of copper — was left unfinished. Since then, and due to a special union-Doe Run agreement,

⁶ The first PAMA extension approved by Supreme Decree No. 046-2006-EM and Ministerial Resolution No. 257-2006-MEM/DM granted an extension of three years to complete the sulphuric acid plant projects for processing zinc, lead and copper with an environmentally-friendly technology. A second PAMA extension was approved by Law No. 29410, which officially granted a 20-month extension to secure financial support (by July 2010) and to finish the remaining portion of the PAMA (by April 2011).

⁷ Pablo Miguel Fabian Martinez, et al. v. The Peruvian Ministry of Health (2006), Exp. 2002-2006-PC/TC, Constitutional Tribunal of Perú.

⁸ *Community of La Oroya v. Peru*, Petition 1473-06 (Admissibility Report, 5 August 2009), Annual Report of the Inter-American Commission on Human Rights: 2009-76, OAE/Ser.L/V/II.Doc.51, (corr.1.), online: Organization of American States <http://www.cidh.oas.org/annualrep/2009eng/Peru1473.06eng.htm>.

⁹ Garcia's assertion was widely reported in the media. See, for example, "Minera Doe Run anuncia paralización del 95% de sus operaciones" *Diario el Comercio* (25 March 2009), online: El Comercio <<http://elcomercio.pe/economia/264280/noticia-minera-doe-rum-anuncia-paralizacion-95-sus-operaciones>> at para. 9 [translation by author].

smelting workers have continued to receive 70% of their salaries. The suspension of smelting operations was followed by a local bankruptcy proceeding against Doe Run. Under this bankruptcy procedure, Doe Run recently received a favourable ruling for restructuring the company. Doe Run's executive directors are already lobbying the Peruvian Congress to grant them a third extension to PAMA. In other words, they are lobbying to delay their environmental and health obligations towards the people of La Oroya. As in past years, smelter workers, their families and politicians alike are forcefully supporting such an extension.¹⁰

3 A capability-oriented model of human rights

The events narrated above reveal the poor governmental responses to the environmental-health crisis in La Oroya. While the interplay of individual economic needs and the state's failure to enforce environmental legal obligations are indeed associated with the seemingly intractable human rights conflict between "health" and work", the paper argues that such factors disclose only one layer of the La Oroya predicament. Rather, a more complex network of interacting causes are behind the La Oroya dilemma. Examining such multiple causes will help answer the following questions: Why did smelter workers, their families, and other sympathizers refrain from supporting mobilization to defend community health? Why were these individuals blindly loyal to the smelter company when their own health — and that of their children — was at risk from smelter pollution?

To this end, the paper develops an analytical model which builds upon structural approaches to human rights and combines them with Amartya Sen's capability approach. The rationale behind this "capability-oriented model of human rights" rests on the following considerations. Proponents of structural approaches to human rights argue that, to understand human rights abuses, we need to look beyond the sole identification of a concrete act of harm perpetuated by an identifiable actor, the unjust outcome of which deserves immediate redress. This analysis, which primarily points to the identification of *consequences* of harm, drives our attention away from more complex processes and less visible *causes* triggering human rights abuses (Evans, 2005; Teeple, 2004). Illustrating the latter cases are forms of human rights abuses manifested in poverty, famines, environmental degradation, discrimination and various other forms of substantive inequalities. According to Paul Farmer (2003), these cases mirror processes of "structural violence", which refers to the kinds of abuses resulting from the historical interaction of economic and political power.¹¹ The egregious nature of human rights abuses also reveals that harm is unequally distributed in society (Ibid). As Farmer puts it, "human rights can and should be declared universal, but the risk of having one's rights violated is not universal" (Ibid at 231). Structural approaches to human rights contend that, to address injustices, we need to go beyond the mere implementation of short-term immediate redress and consider long-term measures aimed at fostering structural transformation (Fraser, 2003, 2007).

¹⁰ See, "Congreso ampliaría una vez mas el plan ambiental a Doe Run Perú" *Diario el Comercio* (16 February 2012), online: El Comercio <<http://elcomercio.pe/economia/1375219/noticia-congreso-ampliaria-vez-mas-plan-ambiental-doe-run-peru>>.

¹¹ The term "structural violence" was originally coined by Johan Galtung in "Violence, Peace, and Peace Research" (1969) 6:3 J. Peace Research 167.

While structural approaches to human rights provide compelling arguments and evidence for scrutinizing more closely the fundamental causes underlying human rights abuses, such approaches still lack a comprehensive analytical model. In order to elucidate how such causes converge from the past to the present, intersecting the macro, meso and micro spheres of our lives, the present research integrates the structural approaches to human rights with Amartya Sen's capability approach.

Sen's capability approach stands out as an alternative to utilitarian economic theory. At its core is the argument that when assessing people's wellbeing, preferences and incomes by themselves are inadequate measures. Quality of life lies in the living, in what people are able to be or do (Sen, 1992, 1999, 2009). Robeyns (2005) summarizes the capability approach as follows: "[o]ur evaluation and policies should focus on what people are able to do and be, on the quality of their lives, and on removing obstacles in their lives so that they have more freedom to live the kind of life that, upon reflection, they have reason to value".

The capability approach builds upon four main concepts (Alkire and Deneulin, 2009): capabilities, agency, functionings and conversion factors. "Capabilities" (or freedom of opportunity) refers to the opportunities people have to lead the kind of lives they have reason to value. "Functionings" (or wellbeing outcomes) are states of being and doing that make up a person's overall wellbeing (e.g. being healthy, well-nourished, sheltered, feeling safe, having access to meaningful employment, being able to voice personal views, participating in community decisions, etc.). For instance, we may all be born with the capability to achieve health, but in order to effectively have good health we need to be well-nourished, live in a clean environment, and have access to sanitation and health care services. Likewise, we may all be born with the capability for meaningful work but while some people may have opportunities to undertake such work, others may not have any other option but to accept work that is exploitative and not fulfilling. From a capability perspective, the aim of development is to expand the opportunities to be or do what people have reason to value (Nussbaum, 2011).

Another important tenet of the capability approach is the notion of "agency" or process of freedom. Individuals—and I would also add communities—are regarded as the designers of their own lives and promoters of social change rather than mere "[p]assive recipients of dispensed benefits" (Sen, 1999: xiii).

A way to illuminate how capabilities and the exercise of agency lead to wellbeing outcomes (functionings) is to look at the role of "conversion factors". In other words, human capabilities, agency and functionings do not come into being in isolation, for their expansion or suppression is largely influenced by the social, political and economic contexts in which individuals interact and relate to each other. The capability literature considers three types of conversion factors: (a) personal conversion factors (e.g. mental and physical characteristics, aspects of identity such as age, gender); (b) social conversion factors (e.g. social institutions, social norms, discriminatory practices, traditions, and the behaviour of others in society); and (c) environmental conversion factors (e.g. climate change, geographical location, urban settings, infrastructure).

The identification of conversion factors is crucial in unveiling the barriers impeding people's opportunities to lead meaningful lives. Nevertheless, the role of conversion factors remains purely instrumental for the capability approach. This is because, according to Sen's elaboration of the approach, the focus of our moral concern for evaluating states of affairs should be

primarily the individual. For the most part, this view can be problematic when assessing cases of conflict in communities such as La Oroya. To evaluate situations marked by conflict, in which the individual and the collective spheres are deeply interrelated; we need to shift into thicker interpretations of the capability approach. Deneulin (2006) argued that the evaluative space of the capability approach should be expanded or include what she calls “structures of living together”. This entails assessing structures beyond their impact on individuals alone to also determine “[w]hether they promote the collective structures which help individuals to flourish” (Deneulin, 2008: 114). Endorsing “structures of living together” as part of a policy evaluative framework ultimately suggests a shift from the capability approach *telos* of “living well” to one of “living well together” (Deneulin and McGregor, 2010). Furthermore, it suggests a more demanding perspective, one that places concerns about power and politics at the heart of the capability approach (Deneulin, 2011).

Borrowing from French philosopher Paul Ricoeur, Deneulin defines structures of living together as “[s]tructures which belong to a particular historical community, which provide the conditions for individual lives to flourish, and which are irreducible to interpersonal relations and yet bound up with these” (Deneulin, 2006: 56). Given that such structures emerge from our reality of living together, they can have both *positive* and *negative* effects on people’s lives (Ibid). The assessment of such structures is aimed at leading either to the identification and subsequent promotion of positive structures, or, by contrast, to the transformation of structures that have a negative impact on individuals’ and communities’ wellbeing. Unveiling such negative structures requires identifying all the conversion factors sustaining what I call a “context of systemic unfreedom”, a context in which individuals and communities are trapped historically and systemically into vicious cycles of disadvantage which deny them opportunities to live flourishing human lives.

A structural interpretation of the capability approach as advanced by Deneulin provides a more suitable framework for identifying and analyzing the constellation of conversion factors that have historically structured a “context of systemic unfreedom” in La Oroya.

To sum up, a capability-oriented model of human rights, built upon structural approaches to human rights and the capability approach, is designed as a multilayered framework to identify the constellation of conversion factors forming a “context of systemic unfreedom” in La Oroya. It is this context of systemic unfreedom which explains why some residents of the La Oroya community acquiesced in forfeiting their own rights.¹² Methodologically, a distinctive feature of this model is its commitment to people’s voices. As a model that is rooted in *what people have reason to value being and doing in life*, it cannot privilege the researcher’s internal values and discipline-based assumptions. In this sense, a capability-oriented model of human rights promotes an “epistemological inversion” (Goodale, 2009) in terms of incorporating testimonies of the inhabitants of La Oroya as an important source of knowledge.

¹² It is beyond the scope of this paper to provide a fully-fledged elaboration of how human capabilities and human rights are conceptualized. It suffices to indicate here that the notions of rights and capabilities are not reified as identical concepts but conceived as acting in a symbiotic relationship. While the idea of capabilities is constructed to refer to the bundle of internal powers necessary for people to lead lives of wellbeing, the notion of rights makes the goal of capability expansion (to lead such lives of wellbeing) an ethical-political demand for justice.

4 Unveiling systemic unfreedom in La Oroya

In order to be all-encompassing and responsive to the diverse claims and “voices” existing in this community, forty-seven semi-structured interviews were conducted among residents of La Oroya¹³ with three subgroups: those who publicly advocate for the defence of environmental health (18 participants); those who are/were involved in the defence of job opportunities at the La Oroya smelter (13 participants); and those embracing a moderate stance (15 participants) in that they have not been involved in activism favouring either of these two groups. An additional 15 open-ended interviews were also conducted among human rights activists and public servants involved in decision-making process related to the La Oroya case.¹⁴ Interviews were carried out in La Oroya and Lima from October-December, 2010. Results from these interviews were subsequently analyzed in tandem with other sources of data (e.g. historical literature, medical studies, legislation and documentary films). The main objective was to trace the socio-historical roots and politico-economic dimensions of systemic unfreedom in La Oroya. This assessment has led to the identification of the following institutional, environmental, social and personal conversion factors that, *taken together*, convey the components sustaining the context of systemic unfreedom in this community.

4.1 Environmental conversion factors

Environmental conversion factors describe how living in a historically polluted environment has impacted La Oroya residents’ awareness of environmental health hazards; and, how this in turn, has determined residents’ willingness to take actions against pollution.

Although the issue of smelter pollution in La Oroya only recently became a matter of international concern, pollution in La Oroya has been endemic since the construction of the smelter in 1922. While stories about the negative effects of pollution have been passed down from one generation to the next, awareness of and reaction against these effects have varied through the history of this community. Drawing upon participants’ narratives, three marked stages of environmental hazard awareness are identified:¹⁵ 1) initial period of awareness about pollution and its negative impact on traditional sources of livelihood; 2) seeming passivity towards pollution, presumably due to an emphasis on demanding better wages and living conditions of smelter workers and their families; and, 3) an “awakening of awareness” resulting from new medical evidence of the effects of pollution on human health in La Oroya and the realization that something should be done.

The arrival of the U.S.-based company Cerro de Pasco Corporation (CPC) at the beginning of last century initiated the era of capitalist development in the central Andes leading to the emergence of large-scale mining in Peru. Mining and smelter activities were established on the basis of a series of abuses, including the dismantling of the relatively autonomous socio-economic structure of the community, the unjust dispossession of *comuneros* land (or collective

¹³ To preserve anonymity and confidentiality of responses, names of participants of the community of La Oroya were replaced by codes ranging from MC1 to MC 47, where MC signifies “member of the community”.

¹⁴ Participants in these two groups were given the option to either disclose their names or remain anonymous.

¹⁵ These temporal stages coincide with the three different administrations of the smelter: Cerro de Pasco Corporation (private owner, 1922-1974); Centromin Peru (national company, 1974-1997); and Doe Run Peru (private owner, 1997—activities suspended since 2009).

ownership of land) and the imposition of a new economic activity on local people (Laite, 1978). As a result, residents from central Andes became trapped in relationships of dependency and domination. With the construction of the smelter in 1922, the once agricultural territory of La Oroya was abruptly transformed into an industrial site. In just a few years following the construction of the smelter, between 100 and 125 tons of arsenic, sulphur dioxide, lead, bismuth, and other poisons began to fall each day on neighbouring communities (Mallon, 1983: 225). This led to the perishing of livestock and the destruction of many hectares of land, forcing some residents to leave La Oroya (Laite, 1978). Although lawsuits were filed against CPC in what is known as “the smoke damage controversy”, the outcomes of judicial decisions did not adequately respond to the amount of loss in terms of land, traditions and sustainable livelihoods. As a Huaynacancha community member recalls:

I am a descendent of the farming community of Huaynacancha . . . [O]ur community organized to counteract the effects of contamination by means of a legal process against the company that we ultimately won . . . [B]ut we were not satisfied with the result [of the legal process] because our losses were higher than the minimal compensation we gained. This [compensation] was not enough to fully recover our agricultural land, you know? Huaynacancha has not been an agricultural community ever since; you can only grow grass there.¹⁶

Pollution was not only fundamental in dismantling the traditional socio-economic organization of La Oroya, it also resulted in the progressive absorption of peasants into the full-time smelter workforce. To illustrate, a participant explains how his youth was transformed by the presence of the smelter:

[I]n my youth I used to fish for trout in the Mantaro River and sell them for my subsistence. Then, around 1953, shamefully, the Cerro de Pasco Corporation started to use the water of the river and contaminated it. I clearly remember trout dying and floating... [A]fter that, I had to survive by doing something different. This is how I started to work in the smelter.¹⁷

CPC was nationalized in 1974. Centromin Peru operated the smelter between 1974 until its privatization to Doe Run in 1996. Environmental contamination continued when Centromin Peru operated the smelter (Alarcon, 1995), as inhabitants of La Oroya put it:

[I knew about pollution] since the time of Centromin . . . I used to live and study in La Oroya Antigua [“old” La Oroya]. [I remember] during school days I often felt my throat burning around 11 am every day, a time when the company released toxic metals into the air. We had to cover our mouths with a handkerchief to avoid the burning sensation.¹⁸

¹⁶ Interview with MC 9 (27 October 2010), La Oroya, Peru.

¹⁷ Interview with MC 25 (15 November 2010), La Oroya, Peru.

¹⁸ Interview with MC 14 (13 November 2010), La Oroya, Peru.

[I first knew about pollution] around 1985 when I was 13 years old, during the time of Centromin. The company spread gases that fell down on the earth as snowflakes; however, nobody said anything [nobody complained].¹⁹

While these testimonies reveal the governmental politics of denial of the problem of pollution in La Oroya, it remains puzzling why community members who, decades before struggled against pollution to defend their lands and livelihoods, passively reacted to its dramatic effects during the reign of Centromin Peru. It is likely that the proletarianization of workers and the class discourse during the 1970s (Krujit and Vellinga, 1979) focused smelter unions on enhancing wages and securing better living conditions rather than on pollution. Interviewees describing the years of Centromin Peru as a “bonanza” indicated that jobs at the smelter turned into the primary source of economic subsistence in La Oroya.

When the smelter complex was later privatized to Doe Run in 1996, the reported bonanza ceased. The privatizations which took place during the neoliberal government of Alberto Fujimori (1990-1995/1995-2000) to attract new foreign capital included massive lay-offs of workers, resulting in the virtual disappearance of much of the labour movement of the 1960s and '70s. The La Oroya smelter suffered a drastic reduction in its labour force. Access to employment at the smelter became available to only a few. In this context, studies on blood lead levels in local children, along with replacement of the discourse of class with the discourse of the environment (Hechter, 2004), contributed to what I call the “awakening of awareness” during the 1990s. Nevertheless, residents of La Oroya did not respond evenly to environmental health hazards. For instance, while some participants began to map connections between smelter pollution and their health problems, others remained less alert to the health risks of pollution:

People started talking about environmental pollution in 1990. Before then, nobody said anything about pollution despite the fact that many workers had lead poisoning and others even died from pollution. So, if nobody [from the local population] complained about pollution then we cannot expect to protect the environment overnight. It is indeed our moral obligation to protect the environment but we have to do it progressively.²⁰

As it can be inferred from the historical accounts discussed above, there has been a systematic institutional unwillingness and the state’s denial to address the problem of pollution in La Oroya, which has had a direct impact on residents’ perceptions about the severity of the problem. To an important extent, such a denial has determined residents’ responses to the problem of environmental health deprivation in La Oroya.

4.2 Institutional conversion factors

By tracing the history of large-scale mining in Peru, a recurrent pattern of power imbalances, economic dependency and domination between the state, mining companies and communities becomes evident. This explains that what is behind the state’s unwillingness to effectively deal with the problem of pollution and its health effects in La Oroya is a historical and enduring partnership between the state and the extractive industry. This partnership, manifested in the

¹⁹ Interview with MC 30 (17 November 2010), La Oroya, Peru.

²⁰ Interview with MC 47 (20 December 2010), Lima, Peru.

state's tendency to align with private investors' interests rather than protecting the interests of affected citizens, has created an unpromising context for the realization of human rights.

Since the introduction of large-scale mining at the beginning of the last century, the penetration of foreign capital in this sector has always been facilitated by favourable laissez-faire mining codes (Mallon, 1983). This legal framework has set the tone for an enduring supportive partnership between the Peruvian state and private investors. Large-scale mining industry gained such strategic economic importance in Peru that even when a revolutionary government came into power in 1968, reforms in the mining sector simply amounted to a change from private to public ownership and did not alter the power imbalances between industry and mining communities (Dore, 1998). The neoliberal reforms of the 1990s merely revived the historical bases of economic dependency. This is why, despite an increasing number of socio-environmental conflicts in Peru related to mining activities (De Echave, et al., 2009), the Peruvian state is still blind to the cultural and historical dimensions of such conflicts. Evidencing this claim is the "dog in the manger" doctrine advanced during the second government of Alan Garcia (2006-2011).²¹ The recently elected President Ollanta Humala (2011-2016), who in his electoral campaign held a very critical view of former governments' systematic neglect of mining conflicts, is now aligning his discourse with the requirements of the mining industry and demands for economic growth.

In this context, the realization of constitutionally recognized human rights is possible only if it conforms to the prevailing politico-economic system. This reveals the institutional fragility of human rights in Peru, notwithstanding the state's rhetoric that it seeks to ensure maximum standards of wellbeing for *all* citizens. The La Oroya case is a remarkable example of this unfortunate reality. For example, throughout the process of monitoring the implementation of PAMA, the Peruvian Ministry of Energy and Mines was blatantly lenient towards Doe Run, and granted extensions for meeting the environmental targets set out in PAMA. While affected people sought health justice in the international sphere, the former President of the Council of Ministers for Peru, Jorge del Castillo, was reported to be lobbying to persuade U.S. courts to withdraw jurisdiction over any legal claims against Doe Run related to lead-poisoned children from La Oroya.²²

Eventually, the problem of toxic metal pollution was confronted via a joint agreement between the Peruvian Ministry of Health and Doe Run to test blood lead levels in children and treat affected populations. However, as noted by the interviewees, since Doe Run acted as a principal funder, the company significantly influenced the design and objectives of the agreement.²³ The agreement included the implementation of a "health promotion" plan to educate citizens about personal hygiene and nutrition. While important, these measures alone are insufficient to

²¹ Any political actors or organized communities resisting the brutal imposition of extractive activities were equated with obstructionist "dogs" who rejected progress both for themselves and for the whole country.

²² Letter published in the local newspaper *La Republica* (16 January 2008), available online at <http://www.conflictosmineros.net/contenidos/19-peru/4103?format=pdf>. Del Castillo's intervention was directly related to a series of lawsuits filed in the Circuit Court of the State of Missouri against Doe Run/the Renco Group to legally respond to health damage suffered by 107 children from La Oroya.

²³ Interview with César Gutiérrez, former Mayor of La Oroya (16 December 2010); Interview with Ivan Lanegra, Vice Minister for Interculturality, Ministry of Culture, formerly Director of Environment, Public Services and Indigenous Peoples of the Peruvian Ombudsman's Office (22 December 2010), Lima.

protect people from long-term health risks of contaminant exposure when the main source of pollution is not adequately targeted (Buchanan, et al., 2005).

As the agreement was dependent on the “good will” of the company, it is not surprising that as soon as the company temporarily suspended its smelting operations in 2009, it suspended the implementation of the agreement. To date, there is an absence of much-needed evaluations regarding neurological development of affected children. Equally problematic is the lack of a clinical database of cancer deaths in La Oroya, given that medical evidence suggests a strong correlation between the presence of toxic metals in blood and certain types of cancer (Patlolla, et al., 2003; Schwartz and Reis, 2000).

All this further evidences the argument that the lack of people’s opportunities to live well, in this case, opportunities to live healthy lives, has been carved historically and is insidiously reinforced by the current political and economic trends in Peru.

4.3 Social conversion factors

Social conversion factors illustrate how the historical transformation of La Oroya into an industrial location has influenced the degree to which a collective community identity has formed and how socio-economic and gender inequalities are reinforced. Both these factors acted as powerful barriers for residents of La Oroya to defend collectively health and work in a unified manner, as an expression of the town’s common interest.

Over the years, constant waves of migrants seeking jobs at the smelter turned La Oroya into a distinctive multi-identity space. This has resulted in a division between “authentic” and “circumstantial residents”. “Authentic residents” were described by interviewees as people born in La Oroya or direct descendants of original residents, called *comuneros* or *oroyinos netos*. They generally are descended from agriculturalists. The perception is that authentic residents are more engaged in resolving La Oroya’s problems and consider themselves as being more sensitive to environmental health issues. On the other hand, “circumstantial citizens” refer to smelter workers and those who migrate to La Oroya primarily for economic reasons. Residents in this group are perceived as having a sense of belonging, loyalty and identity with the smelter operator rather than with the community. The following quotes are particularly revealing in this regard:

[What identifies La Oroya] is the town’s relationship with the transnational corporation. Such a relationship blurs the very notion of what it truly means to live in a community and has turned people into more individualistic beings.²⁴

Current inhabitants in La Oroya are not natives who fight for preserving their identity. In many cases they are not even interested in the social, cultural and economic situation of this town. They simply seek to gain economic resources.²⁵

Those who are [authentic] residents of La Oroya identify themselves with the community in contrast to those who come from outside. They [migrants] usually

²⁴ Interview with MC 4 (27 October 2010), La Oroya, Peru.

²⁵ Interview with MC 27 (16 November 2010), La Oroya, Peru.

*come, take their money and leave the town. They are often the ones who mistreat the rest of the community and do not care about the environment.*²⁶

This distinction is further reinforced by existing socio-economic inequalities in La Oroya. Smelter workers have higher socio-economic status than the rest of the community. In some instances, this socio-economic cleavage has resulted in episodes of mistreatment of and discrimination against less affluent community members. Some participants described community tensions as follows:

*There has been a permanent tension between smelter workers and the rest of the population because smelter workers have always had better salaries, better clothing, better access to health care and educational opportunities. Those who do not work for the smelter company are often discriminated against.*²⁷

*We ourselves have created the current indifference of our own neighbours, perhaps as a result of our socio-economic status . . . When our wives go grocery shopping they often buy a whole chicken while other people can only afford part of one. Situations like this are what have ultimately generated the historical divorce between smelter workers and the rest of the population.*²⁸

Interestingly, the higher socio-economic status of smelter workers is related to higher income and occupational prestige, not to higher levels of education. This may help explain workers' lack of interest in the Ministry of Labour's proposal to re-train them in view of the possible permanent closure of the smelter. In this regard, a bureaucrat with the Ministry of Labour indicated that issues of age and level of education in La Oroya made thinking about alternative employment problematic.²⁹ For instance, 300 smelter workers are 25 to 39 years old; 850 are 40 to 49 years old; and 1,100 of them are above 50 years old—close to retirement age. On the other hand, only 41% of smelter workers have completed secondary education; 21% have incomplete secondary education; and only 7% have technical training.

While smelter workers have declined the Labour Ministry's proposal, there are other groups within La Oroya whose capacity-building and training needs are being neglected: youth and women. Women compose only 30% of the economically active population in La Oroya.³⁰ The commonly held assumption that the work-related needs of smelter workers in La Oroya are most important dangerously dismisses the work-related needs of other members of the community. In this sense, a youth community member stated, "I have studied accounting because it was my only option and I did not want to live far away from my family."³¹ She then explained that there is only one technological institute in La Oroya and it only offers a narrow range of career vocations, such as accounting, nursing, and computer programming

Since smelting activities are perceived in La Oroya as male-oriented, it is not surprising to observe a sharp division between traditional gender roles. Males are seen as the breadwinners;

²⁶ Interview with MC 33 (30 November 2010), La Oroya, Peru.

²⁷ Interview with MC 28 (16 November 2010), La Oroya, Peru.

²⁸ Interview with MC 39 (2 December 2010), La Oroya, Peru.

²⁹ Interview with public functionary at the Ministry of Labour (15 October 2010), Lima, Peru.

³⁰ Peruvian National Institute of Statistics (INEI-Junin). *Estudio socio-económico 2001: La Oroya, Peru.*

³¹ Interview with MC 33, *supra* note 27.

meanwhile, the majority of women are housewives, or engage in “feminized” part-time jobs, such as selling food in the local market or hand-washing clothes for more affluent members of the community. These types of jobs not only perpetuate traditional gender roles but also reinforce socio-economic status differences, blinding people to socio-economic subordination. The following quote illustrates this problem:

There are people who, although they do not directly benefit from the company [Doe Run], do so indirectly; for instance, by washing our clothes . . . [S]ome people often say that the economic advantages of smelter workers do not benefit them whatsoever, but that is not true—there is a trickle-down benefit.³²

In other instances, women in La Oroya regularly assume leading roles in local committees formed either to support smelter workers or to defend the community’s environmental health; however, when they do so, they do so without pay. A female participant leading a committee proudly describes herself as a “self-enterprising woman”. Yet, as much as she loves being a leader, she admits to not being completely satisfied because of the lack of economic reward for her efforts. When asked what she would need in order to enhance her satisfaction in life, she did not hesitate to respond:

[In order to be completely satisfied with my life] I need to have a job suited to my capacities, that is, a paid job that would be more compatible with my role as a community leader. I came to terms with the fact that being a leader is my vocation, right? I have been working on this over the past years. I would like to continue working at the institutional and political levels for my community.³³

Despite the crucial role of women in the social organization of La Oroya, their living circumstances, aspirations and needs tend to be significantly overlooked when assessing the “health” versus “work” conflict.

Contributing to reinforcing socio-economic inequalities and exacerbating the stigmatization against the poor in La Oroya was the bifurcated manner in which stakeholders disseminated information regarding the health impacts of pollution. This has led the community to embrace two contrasting interpretations of the problem. On the one hand, MOSAO and the (Catholic and Evangelical) Church — often referred to as “environmental NGOs” — played a significant role in informing parents about the potential neurological effects, including brain damage, in children. On the other hand, officials implementing the cooperation agreement between the Peruvian Ministry of Health and Doe Run highlighted the link between better personal hygiene, nutritional habits and overcoming environmental pollution. The effect of this was to discredit the information advanced by MOSAO. For instance, an interviewee, recalling a public conversation between mothers and the first coordinator of the Convenio MINSAs-Doe Run agreement, stated, “Your children are not mentally retarded as the NGOs say. Not if you provide them with proper nutrition.”³⁴ Another participant whose children were tested under the agreement shared a similar story:

³² Interview with MC 41 (10 December 2010), La Oroya, Peru.

³³ Interview with MC 42 (16 December 2010), La Oroya, Peru.

³⁴ Interview with MC 1 (22 October 2010), Lima, Peru.

The doctor told us, your children's blood lead levels are going to be reduced when you clean your rooms better, clean your children toys, regularly clean your own children, and also drink a lot of milk and orange juice.³⁵

A doctor's suggestion to a participant that her hygiene habits during pregnancy were to blame for her daughter's lead poisoning prompted deep indignation:

As soon as I received the diagnosis [of high lead levels in my daughter's blood], doctors asked me where I lived. More specifically, where did I live while pregnant?... Then they suggested, "Maybe your house is not hygienic." I quickly replied saying, "Excuse me, but I clean my house every day"... I am telling you, [lack of] hygiene is not the reason behind my daughter's lead poisoning; rather, this is the product of contamination. I am sure of it... I have always taken care of my little girl; I have always taken good care of her nutrition.³⁶

Doe Run and the government's focus on hygiene and nutrition has reinforced the belief that having a child who suffers from lead poisoning in La Oroya is likely to be evidence of poor parenting. This is clearly reflected in the ongoing stigmatization of poor families with children affected by lead poisoning, who struggle to provide better nutrition despite limited resources. Some participants expressed derogatory reactions: "There are fewer educated people who live in conditions of poverty, which are obviously going to make them sick from the same conditions in which they live, right?"³⁷

Families of smelter workers seek to draw a line between themselves and the rest of the population, arguing that the media often err by generalizing that all children from La Oroya suffer from lead poisoning. They argue that the media should clarify that only some of the children are affected—those of the less affluent and "less responsible" families.

4.4 Personal conversion factors

In addition to environmental, institutional and social conversion factors, personal conversion factors also shape a context of unfreedom in La Oroya. This sub-section reflects upon the meaning and value residents of La Oroya assign to notions of "health" and "work", which arguably also influences residents' response to the problem of environmental health in La Oroya. To this end, the interview process investigated how the conflict between health and work was internalized. In general, interview responses did not advance a hierarchy or priority between health and work. However, responses did indicate that people in La Oroya construct the meaning of these concepts based on information received during the recent social conflict. For instance, while interviewees from the subgroup defending environmental health embraced a view of health that encompasses physical and emotional wellbeing, interviewees from the subgroup defending employment linked the meaning of health either to only physical aspects or to being "well-nourished and clean". This response clearly mirrors the narrow understanding of health largely promoted by Doe Run and the Ministry of Health. A dangerous result of this understanding was that some participants refrained from testing their children's blood because they thought this would be unnecessary, since good nutrition was provided.

³⁵ Interview with MC 35 (1 December 2010), La Oroya, Peru.

³⁶ Interview with MC 42, *supra* note 34.

³⁷ Interview with MC 30, *supra* note 20.

On the other hand, the need for “having a job” was equally valued by employment opportunity defenders and environmental health defenders. However, the former group mentioned the value of having a “good” salary, whereas participants in the latter were more likely to value a “fair” salary. The latter response encompasses the case of school teachers, whose salaries are lower than those of some smelter workers. Social conversion factors again come in to play to explain the extent to which having a “good salary” has influenced people’s perceptions that job opportunities at the smelter are the pathway for achieving a better quality of life. Such a perception, to an important extent, has contributed to distorting the consciousness of subordination of smelter workers. Unlike during the class struggles of the 1970s and 1980s, smelter workers now perceive themselves as having a significant advantage over other community members. Other community members can be said to be “doubly subordinated”, to the power of the smelter company and to that of the unions who represent smelter workers.

5 Conclusions

This paper aimed to show that the La Oroya human rights trade-offs of health for work respond to a complex interconnection of environmental, institutional, social and personal conversion factors resulting from the predicament of living in a context of systemic unfreedom. This is a historically, politically, and economically shaped context that reduces the possibility of “living well together” (Deneulin, 2008) and jeopardizes the full realization of human rights.

As in other contaminated communities (Edelstein, 2003), the La Oroya case uncovers institutional denial of responsibility for pollution (Kroll-Smith, et al., 2000); unequal distribution of environmental hazards in society (Pinderhughes, 1996); and confrontations among residents due to contradictory interpretations about pollution (Auyero and Swistun, 2007). However, while all these issues are separately addressed in different case studies, the added value of using a capability-oriented model of human rights is to show how all these factors interconnect. Indeed, as has been demonstrated, a constellation of conversion factors at the macro, meso and micro levels has reinforced and created new conditions of disadvantage among members of this community over time.

Based on these findings, it has been argued that residents of La Oroya acquiesced in forfeiting their own rights not only because of economic dependency and the constant threats of losing jobs at the smelter. Additional key contributing factors include: their experiences of living in a historically polluted environment; the community’s awareness of hazards (or lack thereof); the persistence of inequalities; the lack of collective identities undermining the collective defence of health and work in a unified manner; the enduring supportive partnership between the Peruvian state and private mining investors; the economic system that favours work claims and economic development over health claims; the state’s leniency in enforcing Doe Run’s environmental obligations; and, equally insidiously, the Ministry of Health’s campaign that focuses solely on enhancing hygiene and nutrition to overcome environmental pollution. The limiting official information about the negative effects of pollution has not only induced residents to embrace a limited understanding of the meaning and value of health but also it has resulted in blaming the victims of pollution.

A salient contribution of the multilayer analysis provided by a capability-oriented model of human rights lies in its ability to show all the different angles that need to be addressed to

overcome systemic unfreedom in La Oroya. In this sense, both short-term restorative and long-term transformative measures are required. In terms of short-term measures, these include the immediate implementation of a soil remediation plan, the completion of the PAMA that the current smelter operator has continually delayed, and a thorough study of neurological impairment among children in La Oroya, since lead poisoning is known to seriously affect the development of the brain. It is also imperative to build a clinical database of cancer deaths in La Oroya. Moreover, there is a need to compile data on mortality/morbidity rates in La Oroya to compare with non-mining or non-smelter communities.

Long-term measures aimed at structural transformation are also necessary. At the macro level, this means addressing current patterns of power, economic dependency, and domination, which largely depend upon changes in the state's vision of development. At the meso and micro levels, structural transformation also requires reversing entrenched socio-economic and gender inequalities, the reconstitution of the community's collective identity and reconciliation of the community's social relationships. Overall, structural transformation in La Oroya is about dismantling the barriers causing unfreedom—and thus allowing people to be the ultimate designers of their own destinies.

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