

**AMICUS CURIAE BRIEF REGARDING
HUMAN RIGHTS AND THE ENVIRONMENT
BEFORE THE HONORABLE SUPREME COURT OF CHILE**

Case No. 5888-2019

Captioned Francisco Chahuan Chahuan versus Empresa Nacional de Petróleos, ENAP S.A

Human Rights Watch has prepared this *amicus curiae* in collaboration with the **Cyrus R. Vance Center for International Justice** of the New York City Bar Association and the international law firm of **Weil, Gotshal & Manges LLP** as counsel. The *amicus curiae* addresses issues of international law and jurisprudence on human rights and the environment for this honorable Supreme Court to consider when ruling on the issues that are currently before it in this matter.

Interest of Human Rights Watch

Human Rights Watch is a non-profit, non-governmental, non-partisan international organization devoted to defending the rights of human beings worldwide, including, among others, the human right to a healthy environment wherever individuals are located. Human Rights Watch has documented and exposed violations of the human right to a healthy environment worldwide. Established in 1978, Human Rights Watch is known for its accurate fact-finding, each year reporting on human rights conditions in about 90 countries. With roughly 400 staff around the world, Human Rights Watch employs human rights professionals, country experts, lawyers, journalists, and academics of diverse backgrounds and nationalities. Human Rights Watch meets with governments, the United Nations, regional groups such as the Organization of American States, the African Union and the European Union, financial

institutions, and corporations to press for changes in policy and practice that promote human rights and justice around the world.

TABLE OF CONTENTS

| | Page |
|--|-------------|
| I. Introduction..... | 1 |
| II. International Law On Human Rights And The Environment Should Provide Guidance For The Interpretation And Application Of The Human Right To A Pollution-Free Environment Embodied In Chile’s Constitution | 1 |
| III. The United Nations Framework Principles And International Jurisprudence Describe Human Rights Obligations On States To Prevent And Redress Toxic Environmental Conditions That Interfere With The Full Enjoyment Of The Right To A Pollution-Free Environment | 2 |
| a. Key Framework Principles | 2 |
| b. Related Legislation and Jurisprudence | 3 |
| IV. The Right To A Healthy Environment Provides Protection Even In The Absence Of Specific State Regulation..... | 8 |
| V. The Human Right To A Pollution-Free Environment Includes The Right To Effective Remedies | 10 |
| VI. Conclusion | 13 |

TABLE OF AUTHORITIES

| Cases | Page(s) |
|---|---------|
| <i>Băcilă v. Romania</i> , European Court of Human Rights, no. 19234/04, 2010 | 6, 7 |
| <i>Barragán, et al. v. The Presidency of the Republic, et al.</i> , STC4360-2018 (Supreme Court of Justice of Colombia, Bogotá, April 5, 2018)..... | 13 |
| <i>Beatriz Silvia Mendoza, et al. v. National State of Argentina</i> (Supreme Court of Argentina, July 8, 2008)..... | 12 |
| Cour Administrative d’Appel de Nantes, No. 07NT03775 (Dec. 1, 2009), available at https://www.legifrance.gouv.fr/affichJuriAdmin.do?oldAction=rechJuriAdmin&idTexte=CETATEXT000021497008&fastReqId=855409526&fastPos=1 | 5 |
| Decision of the German Federal Administrative Court dated February 27, 2018 (7 C 30/17) | 6 |
| Decision of the Higher Administrative Court of Mannheim dated March 21, 2017 (10 S 413/15)..... | 6 |
| Decision of the German Federal Constitutional Court dated November 29, 1995 (1 BvR 2203/95) | 6 |
| Decision of the German Federal Constitutional Court dated February 17, 1997 (1 BvR 1658/96) | 6 |
| <i>Dover District Council v. CPRE Kent</i> [2017] UKSC 79 (appeal taken from Eng.) | 4 |
| <i>The Environment and Human Rights (State Obligations in Relation to the Environment in the Context of the Protection and Guarantee of the Rights to Life and to Personal Integrity – Interpretation and Scope of Articles 4(1) and 5(1) of the American Convention on Human Rights)</i> , Advisory Opinion OC- 23/17, Inter-Am. Ct. H.R. (ser. A) No. 23, paras. 47-51, 108-122 (Nov. 15, 2017), available at http://www.corteidh.or.cr/docs/opiniones/seriea_23_esp.pdf | 8 |
| <i>Fadeyeva v. Russia</i> , European Court of Human Rights, no. 55724/00, 2005 | 7 |
| <i>López Ostra v. Spain</i> , European Court of Human Rights, no.16798/90, 1994 | 7, 8 |
| <i>Onyerildiz v. Turkey</i> , European Court of Human Rights, no. 48939/99, 2004 | 7 |

| | |
|--|------------|
| <i>Taşkin and Others v. Turkey</i> , European Court of Human Rights, no. 46117/99, 2004 | 7 |
| <i>Tatar v. Romania</i> , European Court of Human Rights, no. 67021/01, 2009 | 7 |
| Other Authorities | |
| Article 19(8) of the Chilean Constitution | 1, 2 |
| Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (UNEP 1989), available at https://www.basel.int/portals/4/basel%20convention/docs/text/baselconventio ntext-e.pdf | 9 |
| Charte de L’Environnement, available at http://www.conseil-constitutionnel.fr/le- bloc-de-constitutionnalite/charte-de-l-environnement-de-2004 | 4 |
| Conseil d’Etat, No. 243802 (July 5, 2004), available at https://www.legifrance.gouv.fr/affichJuriAdmin.do?idTexte=CETATEXT000 008172673 | 5 |
| <i>Constitution Of The World Health Organization</i> , July 22, 1946, available at https://www.who.int/governance/eb/who_constitution_en.pdf | 10 |
| Environment and the European Convention on Human Rights (March 2019), https://www.echr.coe.int/Documents/FS_Environment_ENG.pdf | 6 |
| German Environmental Information Act, <i>Umweltinformationsgesetz</i> , “UIG” | 6 |
| German Emission Control Act, <i>Bundes-Immissionsschutzgesetz</i> , “BImSchG” | 6 |
| German Soil Protection Act, <i>Bundes-Bodenschutzgesetz</i> , “BBodSchG” | 6 |
| Basic Law for the Federal Republic of Germany, Article 20a, translation available at http://www.gesetze-im-internet.de/englisch_gg/index.html | 5 |
| Marcos Orellana, <i>Quality Control of the Right to a Healthy Environment</i> , in <i>The Human Right to a Healthy Environment</i> 174 (John H. Knox & Ramin Pejan eds., 2018)..... | 9 |
| Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (the “ <u>Escazú Agreement</u> ”), Mar. 4, 2018, United Nations publication, available at https:// repositorio.cepal.org/bitstream/handle/11362/43583/1/S1800428_en.pdf | 11, 12, 13 |

| | |
|--|----------|
| Report Of The United Nations Conference On Environment And Development, Aug. 12, 1992, United Nations General Assembly, available at http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm | 10, 12 |
| <i>The Right To Health: Key Facts</i> , Dec. 29, 2017, World Health Organization, available at https://www.who.int/news-room/fact-sheets/detail/human-rights-and-health | 11 |
| Stockholm 1972, Declaration of the United Nations Conference on the Human Environment, available at https://digitallibrary.un.org/record/523249 | 10 |
| <i>UN Conference on Environment and Development (1992)</i> , in UN Briefing Papers/ <i>The World Conferences: Developing Priorities for the 21st Century (1997)</i> , available at http://www.un.org/geninfo/bp/enviro.html | 10 |
| UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the “ <u>Aarhus Convention</u> ”)..... | 4 |
| UN General Assembly, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: resolution / adopted by the General Assembly, 8 March 1999, A/RES/53/144, Arts. 1 & 2, available at https://www.ohchr.org/en/professionalinterest/pages/rightandresponsibility.aspx | 9 |
| UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, Art. 2, available at https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx | 9 |
| United Nations Framework Convention On Climate Change, (UN 1992), available at https://unfccc.int/resource/docs/convkp/conveng.pdf | 9 |
| United Nations, Human Rights Council, Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, A/HRC/37/59 (24 January 2018), available at http://undocs.org/A/HRC/37/59 | 2, 3, 11 |
| United Nations, Human Rights Council, Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, A/HRC/40/55 (8 January 2019), available at http://undocs.org/A/HRC/40/55 | 10 |
| Vienna Convention for the Protection of the Ozone Layer, March 1985, available at https://treaties.un.org/doc/Treaties/1988/09/19880922%2003-14%20AM/Ch_XXVII_02p.pdf | 9 |

I. Introduction

Plaintiffs allege that, in August 2018, toxic environmental conditions in the municipalities of Quintero and Puchuncaví caused at least 90 minors and 43 adults to require medical treatment. The presence of comotrichloroethane, nitrobenzene, and isobutane—which can cause liver damage, effects on hormones, and cell death—was reported. On September 4, 2018, another pollution incident occurred that resulted in approximately 67 intoxication cases, mostly of minors, with additional intoxication cases reported in subsequent days.

The Quintero and Puchuncaví region has been the site of intensive industrial development over the last 50 years, hosting refineries, power plants, and factories, and the region is commonly referred to as a “sacrifice zone,” referencing the extensive contamination from industrial development.

Article 19(8) of the Chilean Constitution provides that citizens of Chile have the right to live in a pollution-free environment. Moreover, the Constitution mandates that the State must protect this right and ensure the conservation of nature. Plaintiffs argue that the State has failed to adopt adequate measures to secure the effective enjoyment of the right to a pollution-free environment for the residents of Quintero and Puchuncaví. *Amicus curiae* Human Rights Watch respectfully submits that international law and standards relating to human rights and the environment as set forth below should be considered by this honorable Court in its application of the Chilean Constitutional right to a pollution-free environment to the claims made by plaintiffs.

II. International Law On Human Rights And The Environment Should Provide Guidance For The Interpretation And Application Of The Human Right To A Pollution-Free Environment Embodied In Chile’s Constitution

In this short submission, we set forth a summary of international law on human rights and the environment for this Court’s consideration. In March 2018, the United Nations Special

Rapporteur on Human Rights and the Environment presented sixteen framework principles (the “Framework Principles”) in his report to the UN Human Rights Council which provide useful guidance in this area of law.¹ The Special Rapporteur explained that the Framework Principles “set out basic obligations of States under human rights law as they relate to the enjoyment of a safe, clean, healthy and sustainable environment.”²

The Framework Principles and accompanying commentary aim to “reflect the application of existing human rights obligations in the environmental context.”³ They are derived from international treaties or binding decisions from human rights tribunals, as well as other human rights bodies.⁴ As such, Human Rights Watch believes they are highly relevant to the interpretation of Article 19(8) of the Chilean Constitution. The most pertinent of these Framework Principles are set forth in Section III below.

III. The United Nations Framework Principles And International Jurisprudence Describe Human Rights Obligations On States To Prevent And Redress Toxic Environmental Conditions That Interfere With The Full Enjoyment Of The Right To A Pollution-Free Environment

a. Key Framework Principles

The Framework Principles set forth by the United Nations Special Rapporteur call on States to take affirmative steps to prevent environmental harm and to implement effective regulation to address environmental risks.⁵ To that end, Framework Principle 1 provides that

¹ United Nations, Human Rights Council, Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, A/HRC/37/59 (24 January 2018), available at <http://undocs.org/A/HRC/37/59>.

² *Id.* at paragraph 8.

³ *Id.*

⁴ *Id.*

⁵ See United Nations, Human Rights Council, Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, *supra* note 2, at Framework Principle 1, Framework Principle 8, Framework Principle 11.

“States should ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfill human rights.” Likewise, Framework Principle 8 cautions states “[t]o avoid undertaking or authorizing actions with environmental impacts that interfere with the full enjoyment of human rights, [and] States should require the prior assessment of the possible environmental impacts of proposed projects and policies, including their potential effects on the enjoyment of human rights.” Additionally, Framework Principle 11 maintains, “States should establish and maintain substantive environmental standards that are non-discriminatory, non-retrogressive and otherwise respect, protect and fulfil human rights.” Crucially, the Framework Principles provide that individuals should have access to timely and accurate information on environmental conditions. Specifically, Framework Principle 7 affirms that “States should provide public access to environmental information by collecting and disseminating information and by providing affordable, effective and timely access to information to any person upon request.”⁶

These Framework Principles encapsulate current international law and are instructive to courts around the world. Human Rights Watch believes they can provide guidance to this Honorable Court in its interpretation and application of Chile’s Constitution.

b. Related Legislation and Jurisprudence

International agreements and jurisprudence from international tribunals, as well as jurisprudence from the United Kingdom, France, and Germany demonstrate that governments and courts around the world have recognized these principles.

For example, the European Union (along with many states) has signed and accepted the UNECE Convention on Access to Information, Public Participation in Decision-making and

⁶ *Id.*

Access to Justice in Environmental Matters (the “Aarhus Convention”). In turn, the Supreme Court of the United Kingdom has cited the Aarhus Convention as authority for the human right to a healthy environment, the duty to protect the environment for the benefit of present and future generations, and the right to environmental information, public participation, and a requirement to conduct environmental impact assessments, all corresponding to Framework Principles 1, 7, and 8. *See, e.g., Dover District Council v. CPRE Kent* [2017] UKSC 79 (appeal taken from Eng.) (citing the preamble to the Aarhus Convention in a case concerning a local planning authority’s decision to grant permission for a controversial development).

French legislation and jurisprudence similarly has recognized and enforced the human right to a healthy environment. Specifically, France has adopted the Charte de l’Environnement, which has been endowed with “constitutional value” and recognizes that “everyone has the right to live in a balanced and healthy environment,” Article 1, and that “everyone has a duty to participate in the preservation and improvement of the environment,” Article 2.⁷ Moreover, Article 5 sets forth an explicit “duty of vigilance” for the French State to ensure that risk assessment procedures are carried out and that provisional and proportionate measures are adopted to prevent environmental damage from occurring, even in the face of scientific uncertainty.⁸

French courts have found the French State liable for violating this duty of vigilance. In a case decided on July 5, 2004, the *Conseil d’Etat*, France’s highest administrative court, found the State liable for failure to adequately monitor water treatment facilities and awarded the plaintiff

⁷ Charte de L’Environnement, available at <http://www.conseil-constitutionnel.fr/le-bloc-de-constitutionnalite/charte-de-l-environnement-de-2004> (translation).

⁸ Conseil d’Etat, No. 243802 (July 5, 2004), available at <https://www.legifrance.gouv.fr/affichJuriAdmin.do?idTexte=CETATEXT000008172673> (translation).

damages for disturbance of his living conditions. Likewise, the *Cour Administrative d'Appel de Nantes* in a case decided December 1, 2009, found the French State liable for breach of its “duty of vigilance” for a failure to properly implement legal requirements for agricultural installations that resulted in water contamination; the administrative court of appeals there found that the plaintiffs had suffered a significant infringement to their “collective environmental interests.”⁹

Germany also has implemented numerous legal safeguards to protect the right to a healthy environment. For example, Article 20a of the German Constitution explicitly codifies the protection of the environment (as translated into English, “Mindful also of its responsibility toward future generations, the state shall protect the natural foundations of life and animals by legislation and, in accordance with law and justice, by executive and judicial action, all within the framework of the constitutional order.”).¹⁰ Moreover, Germany has statutes that protect against harm caused by air pollution and soil contaminants (the German Emission Control Act and the German Soil Protection Act),¹¹ and citizens have the right to acquire information about the environmentally hazardous operations conducted by industrial facilities (the German Environmental Information Act).¹²

Judicial decisions in Germany similarly have enforced the principle that the government is required to protect citizens’ right to a healthy environment and access to environmental information. *See, e.g.*, Decision of the German Federal Administrative Court dated February 27,

⁹ Cour Administrative d’Appel de Nantes, No. 07NT03775 (Dec. 1, 2009), available at <https://www.legifrance.gouv.fr/affichJuriAdmin.do?oldAction=rechJuriAdmin&idTexte=CETATEXT000021497008&fastReqId=855409526&fastPos=1> (translation).

¹⁰ Basic Law for the Federal Republic of Germany, Article 20a, translation available at http://www.gesetze-im-internet.de/englisch_gg/index.html.

¹¹ German Emission Control Act, *Bundes-Immissionsschutzgesetz*, “BImSchG”; German Soil Protection Act, *Bundes-Bodenschutzgesetz*, “BBodSchG.”

¹² German Environmental Information Act, *Umweltinformationsgesetz*, “UIG.”

2018 (7 C 30/17) (holding that the government is obligated to take measures to ensure that the nitrogen dioxide air pollution limits mandated by the EU are complied with); Decision of the Higher Administrative Court of Mannheim dated March 21, 2017 (10 S 413/15) (holding that access to environmental information concerning emissions has to be guaranteed and cannot be denied because of business or trade secrets); Decisions of the German Federal Constitutional Court dated November 29, 1995 (1 BvR 2203/95) and dated February 17, 1997 (1 BvR 1658/96) (holding that the German constitution requires the government to take appropriate measures to protect and strengthen the constitutionally protected rights to life and physical well-being). Moreover, jurisprudence from the European Court of Human Rights similarly has recognized that as harm to the environment and exposure to environmental risks can damage many protected rights such as those to life, bodily integrity and personal, family and home life, the European Convention on Human Rights effectively encapsulates many aspects of the right to a healthy environment.¹³ See, e.g., *Băcilă v. Romania*, European Court of Human Rights, no. 19234/04, 2010 (recognizing that environmental sanctions imposed on a metals business would impact local employment, but that “this interest could not have prevailed over the rights of the inhabitants to enjoy a stable and healthy environment”) (translation); *Tatar v. Romania*, European Court of Human Rights, no. 67021/01, 2009 (in a case concerning the environmental and health hazards of a dam breach which released cyanide contaminated water into the environment, holding that: (1) authorities have a duty to inform the public and guarantee the right of the public to participate in the decision-making process concerning environmental issues;

¹³ For additional jurisprudence from the European Court of Human Rights involving environmental issues, see Environment and the European Convention on Human Rights (March 2019), https://www.echr.coe.int/Documents/FS_Environment_ENG.pdf (“[T]he European Court of Human Rights has been called upon to develop its case-law in environmental matters on account of the fact that the exercise of certain Convention rights may be undermined by the existence of harm to the environment and exposure to environmental risks.”).

(2) governments should assess risks and make impact assessments public so that the public can challenge the results; and (3) governments must take suitable measures to protect citizens); *Fadeyeva v. Russia*, European Court of Human Rights, no. 55724/00, 2005 (holding that the State was obligated to provide the applicant with solutions to leave a polluted area and to design and apply effective measures to stop a steel plant from breaching domestic environmental standards, even where no actual damage to the applicant's health was proven); *Taşkin and Others v. Turkey*, European Court of Human Rights, no. 46117/99, 2004 (in a case involving environmental damage as a result of the development and operation of a gold mine, holding that it was not necessary to show serious endangerment to health from environmental pollution to engage the right to respect for private and family life); *Onyerildiz v. Turkey*, European Court of Human Rights, no. 48939/99, 2004 (emphasizing that public access to clear and complete information is a basic human right and that human rights obligations can compel governments to regulate environmental risks, enforce environmental laws, and disclose information); *López Ostra v. Spain*, European Court of Human Rights, no.16798/90, 1994 (finding the State accountable for pollution caused by a private tannery waste treatment plant where three years of continuing smells, fumes, and contamination forced applicant to move from the area).

In its 2017 advisory opinion, *The Environment and Human Rights (State Obligations in Relation to the Environment in the Context of the Protection and Guarantee of the Rights to Life and to Personal Integrity – Interpretation and Scope of Articles 4(1) and 5(1) of the American Convention on Human Rights)*, the Inter-American Court of Human Rights affirmed the strong relationship between protection of the environment, and the realization of human rights (including the right to life).¹⁴ The Court also found that Article 26 of the American Convention

¹⁴ *The Environment and Human Rights (State Obligations in Relation to the Environment in the Context of the Protection and Guarantee of the Rights to Life and to Personal Integrity – Interpretation and Scope of Articles 4(1)*

on Human Rights protects the right to a healthy environment.¹⁵ *Inter alia*, where activities may cause significant environmental damage, states must: regulate the activities; supervise the activities, including through both preventive and punitive measures; require the completion of an independent environmental impact assessment; establish contingency plans; and mitigate significant damage.¹⁶ States are also required to secure procedural rights of public participation and access to justice for those whose rights have been violated.¹⁷

As articulated by the Inter-American Court of Human Rights, the right to a healthy environment can be characterized as a fundamental umbrella human right that brings together the normative content of the law on human rights and the environment. It is indissolubly linked with human dignity, and it is a precondition for the enjoyment of other basic human rights, including the rights to life, health, water, food, housing, standard of living, property, privacy, participation, information, self-determination, and culture.¹⁸

IV. The Right To A Healthy Environment Provides Protection Even In The Absence Of Specific State Regulation

International organizations have long have recognized that individuals are entitled to the protection of their human rights and the implementation and enforcement of internal State regulation consistent with those rights.¹⁹ Moreover, World Health Organization (“WHO”)

and 5(1) of the American Convention on Human Rights), Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (ser. A) No. 23, paras. 47-51, 108-122 (Nov. 15, 2017), available at http://www.corteidh.or.cr/docs/opiniones/seriea_23_esp.pdf.

¹⁵ *Id.* at para. 57.

¹⁶ *Id.* at para. 174.

¹⁷ *Id.* at paras. 213-240.

¹⁸ Marcos Orellana, *Quality Control of the Right to a Healthy Environment*, in *The Human Right to a Healthy Environment* 174 (John H. Knox & Ramin Pejman eds., 2018).

¹⁹ *See, e.g.*, UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, Art. 2, available at

standards can help supply the normative content for the right to a pollution-free environment where State regulation is inadequate or nonexistent. This includes WHO standards relating to acceptable limits of chemicals in the air and water.

The 1972 Declaration of the United Nations Conference on the Human Environment (the “Stockholm Declaration”) explicitly links environmental protection to human rights norms, stating that human beings have the fundamental right to adequate conditions of life in an environment of a quality that permits a life of dignity and well-being and bear a responsibility to protect and improve the environment for present and future generations.²⁰

Two decades after Stockholm, in June 1992, the UN Conference on Environment and Development (“UNCED”) was held in Rio de Janeiro. The purpose of the conference was to elaborate on strategies and measures to halt and reverse the effects of environmental degradation and to strengthen national and international efforts to promote sustainable and environmentally sound development in all countries.²¹ Principle 1 of the Rio Declaration states that human beings are “at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.”²²

<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>; UN General Assembly, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: resolution / adopted by the General Assembly, 8 March 1999, A/RES/53/144, Arts. 1 & 2, available at <https://www.ohchr.org/en/professionalinterest/pages/rightandresponsibility.aspx>. See also Vienna Convention for the Protection of the Ozone Layer, March 1985, available at https://treaties.un.org/doc/Treaties/1988/09/19880922%2003-14%20AM/Ch_XXVII_02p.pdf; Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (UNEP 1989), available at <https://www.basel.int/portals/4/basel%20convention/docs/text/baselconventiontext-e.pdf>; United Nations Framework Convention On Climate Change, (UN 1992), available at <https://unfccc.int/resource/docs/convkp/conveng.pdf>.

²⁰ Stockholm 1972, Declaration of the United Nations Conference on the Human Environment, available at <https://digitallibrary.un.org/record/523249>.

²¹ See *UN Conference on Environment and Development (1992)*, in UN Briefing Papers/The World Conferences: Developing Priorities for the 21st Century (1997), available at <http://www.un.org/geninfo/bp/enviro.html>.

²² Report Of The United Nations Conference On Environment And Development, Aug. 12, 1992, United Nations General Assembly, available at <http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>.

More recently, the U.N. Special Rapporteur himself has expressed that the human right to a pollution-free environment is best met through adoption of the WHO standards. In his January 8, 2019, report to the United Nations Human Rights Council, the Rapporteur called on States to incorporate the WHO “guidelines for ambient air quality as well as indoor air quality” as “legally binding national standards.”²³

The WHO Constitution (1946) envisages “the highest attainable standard of health as a fundamental right of every human being.”²⁴ Accordingly, states should ensure appropriate conditions for the enjoyment of health for all people without discrimination. Indeed, the WHO considers the right to health to extend not only to timely and appropriate healthcare but also to the underlying determinants of health, such as access to potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information.²⁵

V. The Human Right To A Pollution-Free Environment Includes The Right To Effective Remedies

The human right to a healthy environment also includes the right to effective remedies for toxic conditions and any harm suffered. Framework Principle 10 provides that “States should provide for access to effective remedies for violations of human rights and domestic laws relating to the environment.”²⁶

²³ United Nations, Human Rights Council, Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, A/HRC/40/55 (8 January 2019), available at <http://undocs.org/A/HRC/40/55>.

²⁴ *Constitution Of The World Health Organization*, July 22, 1946, available at https://www.who.int/governance/eb/who_constitution_en.pdf.

²⁵ See *The Right To Health: Key Facts*, Dec. 29, 2017, World Health Organization, available at <https://www.who.int/news-room/fact-sheets/detail/human-rights-and-health>.

²⁶ United Nations, Human Rights Council, Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, *supra* note 2, at Framework Principle 10.

Moreover, on March 4, 2018, over a dozen Latin American and Caribbean countries, under the co-leadership of Chile and Costa Rica, adopted the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (the “Escazú Agreement”) in an effort to protect people and groups that defend the environment.²⁷ This regional agreement reaffirmed Principle 10 of the 1992 Rio Declaration on Environment and Development, which established that “[e]nvironmental issues are best handled with the participation of all concerned citizens, at the relevant level. . . . [Thus] [e]ffective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”²⁸

Under the Escazú Agreement, the parties undertake several guarantees. For example, Article 8.1 provides that “each Party shall guarantee the right of access to justice in environmental matters in accordance with the guarantees of due process.”²⁹ The Agreement further instructs that States “shall ensure, in the framework of its domestic legislation, access to judicial and administrative mechanisms to challenge and appeal, with respect to substance and procedure . . . (c) any other decision, *action or omission that affects or could affect the environment adversely* or violate laws and regulations related to the environment.”³⁰

The Escazú Agreement builds on regional court decisions regarding the right to an effective remedy for environmental harm. In *Beatriz Silvia Mendoza, et al. v. National State of Argentina* (Supreme Court of Argentina, July 8, 2008), for example, the Supreme Court of

²⁷ Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, Mar. 4, 2018, United Nations publication, available at https://repositorio.cepal.org/bitstream/handle/11362/43583/1/S1800428_en.pdf.

²⁸ Report Of The United Nations Conference On Environment And Development, Aug. 12, 1992, *supra* note 22 at Principle 10.

²⁹ Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, *supra* note 18.

³⁰ *Id.* [emphasis added].

Argentina required the federal government and local municipalities to take measures to improve residents' quality of life, remedy environmental damage, and prevent future damage. The Court established an action plan requiring the government agency responsible for the affected area to fulfill specific measures, including: (i) producing and disseminating public information; (ii) controlling industrial pollution; (iii) developing an emergency sanitation plan; and (iv) adopting an international measurement system to assess compliance with the plan's goals.³¹ Further, in order to ensure enforcement, the Court delegated oversight to a federal court and created a working group formed by the national Ombudsman and the NGOs that had been involved in the case as non-litigant parties, seeking to strengthen and enable citizen participation in monitoring enforcement of the decision.³²

Similarly, just last year, the Supreme Court of Justice of Colombia — in response to a legal action filed on behalf of 25 children that claimed that deforestation in the Amazon and the increase of the average temperature in the country threatened their rights to a healthy environment, life, health, food, and water — gave the Colombian government four months to present an action plan to reduce deforestation in the Amazon, the main source of greenhouse gas emissions driving climate change in the country. The Colombian Supreme Court not only agreed with the plaintiffs' arguments, but also stressed that the government had been ineffective in addressing climate change. The Court ordered the Presidency and the Ministries of Environment and Agriculture to create an “intergenerational pact for the life of the Colombian Amazon,” with the participation of the plaintiffs, affected communities, and research and scientific organizations, in order to reduce deforestation to zero and mitigate greenhouse gas emissions.

³¹ *Id.* at 11.

³² *Id.* at 9, 11.

See Barragán, et al. v. The Presidency of the Republic, et al., STC4360-2018 (Supreme Court of Justice of Colombia, Bogotá, April 5, 2018).

These cases from Argentina and Colombia are instructive and provide a model for this Court—showing the weight and importance courts around the world place on the requirement that governments remedy toxic conditions as well as the role of civil society in monitoring compliance with judicial decisions.

VI. Conclusion

This Court may find guidance in the growing body of international law on human rights and the environment in its interpretation and application of Chile’s constitutional right to live in a pollution-free environment.

Dated: New York, New York
April 10, 2019

WEIL, GOTSHAL & MANGES LLP

By: _____

Richard L. Levine
Amy Suehnholz
Jay Minga
Lauren Wands
Amama Rasani
767 Fifth Avenue
New York, NY 10153
Tel: (212) 310-8000
Fax: (212) 310-8007
richard.levine@weil.com
amy.suehnholz@weil.com
jay.minga@weil.com
lauren.wands@weil.com
amama.rasani@weil.com

-and-

CYRUS R. VANCE CENTER FOR
INTERNATIONAL JUSTICE

Susan Kath
Sam Bookman
42 West 44th Street
New York, NY 10036