



PUNTA CATALINA THERMOELECTRIC POWER PLANT, BODY OF THE CRIME: VIOLATIONS OF CHILDREN’S RIGHTS IN THE DOMINICAN REPUBLIC AND THE CARIBBEAN

Alternative report was presented to the Committee on the Rights of the Child for its 94th session, for evaluation of the state of the Dominican Republic on its progress in compliance with the Convention on the Rights of the Child.

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1. INTRODUCTION

This report analyzes the violations of children's rights caused by the Punta Catalina Thermoelectric Power Plant (hereinafter "CTPC", "Plant", or "Power Plant"), which is an electrical company owned by the state of the Dominican Republic¹, under the leadership and coordination of the Ministry of Energy and Mines². The company is not only the largest in the country³, but also one of the largest state investments in the electricity sector⁴.

The Power Plant is located in the municipal district of Catalina, in the area of La Noria, Peravia province⁵, a few kilometers from the municipality of Nizao, where schools, a hospital and other basic services are located. Santo Domingo, the capital of the Dominican Republic, is located less than an hour from the Plant.

The operation of the Power Plant began in 2019 and consists of two plants that generate electricity from the combustion of mineral coal⁶. Its supply is estimated to provide for around 30% of the national demand for electricity⁷.

Both the project and the Power Plant itself have been the subject of numerous protests due to the acts of corruption that surrounded its bidding and construction process, and the negative impacts on health and the environment caused by its operation. The pollution produced by the Power Plant has even impacted the population of Haiti, Cuba and Jamaica. Despite this, the Plant is still in operation, and the environmental and human impacts have not been adequately addressed or repaired by the Dominican authorities.

The CTPC was built by the government, through the Dominican Corporation of State Electric Companies (hereinafter "CDEEE"), through an international public bidding process⁸. The business consortium selected in the process was accused of bribery and other acts of corruption in the bidding and construction of the CTPC. Neither these acts of bribery and corruption – nor the network of those responsible for them – have been criminally investigated.

In 2021, the Dominican government approved a study regarding the pollution of the Power Plant (hereinafter "CTPC Pollution Study")⁹. According to the president, the study was to serve as a first step to solving the pollution and damage caused by the Plant. However, shortly after, the Ministry of the Environment abandoned the study¹⁰. Civil society¹¹, with the support of an interdisciplinary team of

1. Presidency of the Dominican Republic. "Punta Catalina will remain as State property". 15 January 2022. Available at: <https://presidencia.gob.do/noticias/punta-catalina-se-mantendra-como-propiedad-del-estado>

2. Through Decree 342-20 of August 16, 2020, the Presidency of the Dominican Republic ordered the liquidation of the Dominican Corporation of State Electric Companies (CDEEE) and transferred its functions and powers to the Ministry of Energy and Mines. In accordance with Article 38 of the General Electricity Law, one of the functions of the CDEEE was to lead and coordinate the electrical companies of the Dominican Republic. Subsequently, through Decree 142-23 of April 3, 2023, the *Empresa de Generación Eléctrica Punta Catalina* (CGEPC) was established as a public company.

3. Punta Catalina Thermoelectric Power Plant. Project description. Available at: <https://puntacatalina.cdeee.gob.do>

4. Patrimonial Fund of the Reformed Companies (FONPER). "Punta Catalina is a sustainable country project". Available at: <https://fonper.gob.do/fonper-punta-catalina-proyecto-pais-sostenible/>

5. Punta Catalina Thermoelectric Power Plant. Project description. Available at: <https://puntacatalina.cdeee.gob.do>

6. *Ibid.*

7. Inter-American Development Bank (IDB). Economic Evaluation of the Decarbonization of the Electricity Subsector in the Dominican Republic Final Report. 2023, p. 11.

8. Free Journal. "President Medina inaugurates this Wednesday the Punta Catalina plant". 27 July 2020. Available at: <https://www.diariolibre.com/economia/presidente-medina-inaugura-este-miercoles-la-central-punta-catalina-HJ20385020>

9. On August 3, 2021, the current President of the Republic, Luis Abinader, received in the company of the Minister of Environment and Natural Resources, at the National Palace, representatives of the Peravia province, the Institute of Lawyers for Environmental Protection Environment (INSAPROMA) and the National Committee to Fight Climate Change (CNLCC), to hear their claims about the impact of the Power Plant in the Peravia province and the country. In response, the President ordered a Study on the Contamination of the Punta Catalina Thermoelectric Power Plant. See *Coalición por la Defensa de la Salud y el Medio Ambiente de la provincia Peravia, Instituto de Abogados para la Protección del Medio Ambiente (INSAPROMA) and Comité Nacional de Lucha Contra el Cambio Climático (CNLCC). Estudio sobre la Contaminación de la Central Termoeléctrica Punta Catalina*. Final report. Baní, Peravia province. 12 May 2022 (hereinafter "CTPC Pollution Study 2022"), p. 10.

10. *Ibid.*

11. The Coalition for the Defense of Health and the Environment of the Peravia province, the CNLCC and INSAPROMA continued to promote the Study, carried out between 3 August 2021 and 12 May 2022. *Ibid.*

experts¹² and international academic institutions¹³, continued to carry it out independently. The resulting study provides scientific evidence regarding the serious impact on the environment, health and life caused by the CTPC's pollution¹⁴, and concludes that the Power Plant must be closed immediately¹⁵.

The present report, prepared by the International Federation for Human Rights (hereinafter "FIDH"), the National Committee to Fight Climate Change, (hereinafter "CNLCC")¹⁶, and the Institute of Lawyers for Environmental Protection Environment, (hereinafter "INSAPROMA"), details how the environmental damage caused by the CTPC represents an urgent and systematic threat to the rights of children in the Dominican Republic, including their rights to life, survival and development, the highest attainable standard of health, access to safe drinking water and adequate nutrition, and the enjoyment of safe environments for play and education.

This report is based on information collected and verified in the field by the CNLCC and INSAPROMA. Likewise, it analyzes the data published in the CTPC Pollution Study from the standpoint of international human rights law and the obligations of the state as set forth in the Convention on the Rights of the Child (hereinafter "CRC" or "Convention"), as well as other international treaties.

12. The report was led by experts Raúl Cabrera Peña, an electrical mechanical engineer, trained in Germany on thermal, hydroelectric and gas plants; Adrián Gutiérrez Cepeda, a Chemistry graduate, with a master's degree in research and a doctorate in Chemistry and Chemical Engineering; Milton Martínez, an agronomist with a master's degree in Horticultural Sciences and a university researcher in Tropical Fruit Growing and Mountain Agriculture; Marcos Rodríguez, a Chemistry graduate, with a master's degree in Environmental Chemistry, and scientific researcher; and Carlos Sánchez, Doctor of Medicine, specializing in Public Health and Child Nutrition.

13. The Study had the support of Duke University (Durham, North Carolina, USA), the World Environmental Law Alliance (ELAW), Scientific team (Oregon, USA), the International Institute for Energy and Air Quality Research CREA (Helsinki, Finland), the International Institute of Law and Environment IIDMA (Madrid, Spain), and Re:COMMON (Rome, Italy).

14. The objective of the study was to identify, describe and quantify the pollution and damages caused by the CTPC, its effects on health, productive systems and the environment. For this, the Study focused on analyzing the air quality in the Peravia province, the pollution risks caused by the open-air deposits of mountains of coal ash, the impact of the Power Plant on agriculture and the marine coastline, and morbidity and mortality in the community of Nizao (Peravia) between 2016 and 2021. CTPC Pollution Study 2022, pp. 17, 25 and 26.

15. *Ibid*, page 27.

16. The National Committee to Combat Climate Change (CNLCC) is a broad coalition of social, environmental and human rights organizations dedicated to lobbying, advocacy and mobilization. Among the organizations that make up the CNLCC are the National Human Rights Commission (CNDH- DR), the Institute of Lawyers for the Protection of the Environment (INSAPROMA), the Dominican Association of Teachers (ADP), the Eastern Environmental Coalition, the Macorís Verde Ecological Foundation, the Nizao Ecological Society, and the Dominican Association of Agroecology.

2. FACTS

2.1. History of the bidding, adjudication, and construction of the CTPC: bribes, overvaluation of costs and other acts of corruption

The consortium headed by the Brazilian company Odebrecht and made up of the Italian company Grupo Maire Tecnimont and the Dominican Grupo Estrella, was selected for the construction of the CTPC¹⁷. This process began in 2014 and concluded in March 2020, when the second plant of the CTPC was finalized¹⁸.

Although the CTPC construction contract was signed for a value of US\$1.945 billion, according to the information provided in 2023 by the Ministry of Energy and Mines, in reality around US\$3.5 billion were invested into the Plant¹⁹. The cost overrun of approximately US\$395.5 million was reportedly due to works not initially contemplated or which had to be completed more than once²⁰. The construction also received a parallel investment of US\$1 billion from the CDEEE²¹.

The CTPC bidding process was marked by Odebrecht's acts of bribery of Dominican government officials. In late 2016, it became known that Odebrecht had been involved in the payment of millions of dollars to public officials, in exchange for public contracts, throughout Latin America²². In the Dominican Republic, Odebrecht confessed that it paid more than US\$92 million in bribes²³ to obtain contracts between 2001 and 2014²⁴, although it did not specifically mention the CTPC. In 2019, a journalistic investigation revealed that, in relation to the Power Plant alone, Odebrecht had paid US\$39.5 million in bribes²⁵.

Odebrecht won the bidding process despite the fact that its offer was the most expensive²⁶, and its value exceeded the limit set by the 2014 Budget Law, of US\$1.5 billion²⁷. When the contract was awarded to

17. Diario Libre. "Odebrecht won the Punta Catalina tender, whose bases warned that officials could not be influenced". 7 February 2017. Available at: <https://www.diariolibre.com/actualidad/licitacion-punta-catalina-advertia-que-ofertantes-no-podian-influir-funcionarios-BK6185245>

18. The CTPC is made up of two plants. The construction of the first plant was completed in September 2019 and the second in March 2020. CTPC Pollution Study 2022, p. 20.

19. On March 13, 2023, the Minister of Energy and Mines, Antonio Almonte, affirmed in an interview with the show "One plus One", broadcast on *Teleantillas*, Channel 2, that "the contract was signed for 1,945 [million], the contract payment was 2,450 [million], almost 2,500 [million], there there is already an overrun of an amount of more than US\$ 500 million, but then there is the parallel investment made by the CDEEE, detailed in the audit, which is almost 1,000 million". *Uno Más Uno Teleantillas*. Live broadcast. 13 March 2023. Available at: <https://www.youtube.com/watch?v=XE1wxSAAh3o&t=2292s>

20. Towards the end of the construction of the CTPC, Odebrecht claimed an additional US\$708 million for works not initially contemplated or that had to be carried out again. This claim was settled by an agreement before the arbitration court, for which the Dominican Government paid the consortium US\$395.5 million. El Dinero. "Government will not pay more money for Punta Catalina to a consortium headed by Odebrecht". 25 August 2017. Available at: <https://eldinero.com.do/46488/gobierno-no-pagara-mas-dinero-por-punta-catalina-odebrecht/>. In the same sense, see N. "The Government will pay an additional 395.5MM to Odebrecht for Punta Catalina". 17 March 2020. Available at: <https://n.com.do/2020/03/17/el-gobierno-pagara-395-5mm-adicionales-a-odebrecht-por-punta-catalina/>

21. *Ibid*.

22. This scandal was described by the United States Department of Justice as "The largest foreign bribery case in history" and caused the resignation of high-ranking officials in the region. International Consortium of Investigative Journalists. "Leak reveals millionaire payments associated with the Odebrecht scandal". 25 June 2019. Available at: <https://www.icij.org/investigations/bribery-division/filtracion-revela-millonarios-pagos-asociados-con-el-escandalo-de-odebrecht/>.

23. *Ibid*.

24. According to the Attorney General's Office, between 2001 and 2014, the Dominican Republic contracted Odebrecht for the construction of seventeen public works. Attorney General of the Republic. Official statement formal accusation Odebrecht case. 7 June 2018. Available at: <https://pgr.gob.do/wp-content/uploads/2019/03/Discurso-PGR-Odebrecht.pdf>

25. International Consortium of Investigative Journalists. "Leak reveals millionaire payments associated with the Odebrecht scandal". 25 June 2019. Available at: <https://www.icij.org/investigations/bribery-division/filtracion-revela-millonarios-pagos-asociados-con-el-escandalo-de-odebrecht/>. In the same vein, see Euronews. "Odebrecht, the gigantic corruption scandal that brings down political leaders in Latin America". 22 April 2019. Available at: <https://es.euronews.com/2019/04/18/odebrecht-gigantesco-escandalo-corrupcion-derriba-lideres-politicos-america-latina>.

26. In the bidding process, the cheapest offer was submitted by the Dominican-Chinese consortium IMPE- Gezhouba. While this company's offer amounted to US\$900 million, that of Odebrecht and its consortium reached US\$2,040,747,000. On May 8, 2014, after the award, the IMPE Consortium and China Gezhouba group Company Limited sent a document to the National Congress in which it stated that Odebrecht was the company "with the lowest technical qualification compared to the other participants and with the highest economic price of the offers". Diario Libre. "Odebrecht won the Punta Catalina tender, whose bases warned that officials could not be influenced." 7 February 2017. Available at: <https://www.diariolibre.com/actualidad/licitacion-punta-catalina-advertia-que-ofertantes-no-podian-influir-funcionarios-BK6185245>

27. *Ibid*. The Dominican authorities justified the award of the CTPC contract to Odebrecht through a mechanism not contemplated

the company, the only two members of the bidding commission who were not government officials refused to sign the award document, without specifying the reasons²⁸.

The CTPC was built on land belonging to the Vicini family, one of the largest wealth holders in the country. Thanks to an injunction filed by INSAPROMA and the CNLCC²⁹, it was established that the land on which the Power Plant was being built was private and that the authorities had signed an emphyteutic lease agreement under unjust conditions for its use³⁰. According to the CNLCC's analysis, by leasing the use of the land, the state allocated more money than if it had declared it to be of public utility and the state will additionally pay for the value added to the land by the construction of the CTPC itself³¹.

2.2. Accountability efforts in response to the corruption alleged in the construction of the CTPC: criminal and financial investigations



Demonstrations against the Punta Catalina Thermoelectric Power Plant © AFP

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- by law, which compared the costs presented by the Brazilian company and those of a ghost computer bidder. Information. "Institutions reject the hiring of firms linked to Punta Catalina". 17 February 2021. Available at: <https://www.lainformacion.com.do/economia/empresas/instituciones-rechazan-contratacion-de-firmas-vinculadas-a-punta-catalina>
28. Noticias Sin. "Minister of Economy and engineer refuse to say why they did not sign the contract award for Punta Catalina". 18 January 2017. Available at: <https://noticiassin.com/pais/ministro-de-economia-e-ingeniero-rehusan-decir-por-que-no-firmaron-adjudicacion-de-punta-catalina-575202>
29. Al momento. "Constitutional Court orders CDEEE to deliver Punta Catalina documents". 17 February 2017. Available at: <https://almomento.net/tribunal-constitucional-ordena-a-cdeee-entregar-documentos-de-planta-catalina/>
30. In the contract it was agreed that the Vicini family would lease their land to the Dominican Corporation of State Electric Companies (CDEEE) for fifty years. For its part, the state agreed to pay an annual lease fee, the amount of which would be defined according to a complex formula that included a fixed component and a variable component. The fixed component is the result of dividing the appraised value of the occupied area by the number of years of the contract. For its part, the variable component refers to the computation of a percentage value, by the annual fixed value, multiplied by the number of years that remain in force for the contract. Each year, the amount of the lease corresponds to the sum of the two components. *Siete días*. "Land lease agreement for Punta Catalina did not go through Congress". 7 July 2017. Available at: <https://7dias.com.do/2017/07/07/contrato-de-arrendamiento-de-terrenos-para-punta-catalina-no-paso-por-el-congreso/>. See also, *La Verdad y Punto*. "The CDEEE leased the land for 50 years to the Vicini family where it is building Punta Catalina". 10 June 2018. Available at: <https://laverdadypunto.com/la-cdeee-arrendo-por-50-anos-a-familia-vicini-terrenos-donde-construye-punta-catalina/>
31. According to the CNLCC, with the emphyteutic clauses of the lease, the state will also pay "the price increased by the capital gain that the construction of the Punta Catalina coal plants has added". *Ibid*.

In 2017, the corruption that surrounded the construction of the Power Plant led to massive demonstrations in the country, which lasted until 2019. At the marches, the crowds chanted "*Punta Catalina cuerpo del delito*" ("*Punta Catalina, body of the crime*"), alluding to corruption both regarding the Plant as well as in the government³². Since that date, civil society has promoted numerous attempts at national and international accountability that have been unsuccessful.

In response to allegations of corruption, in 2017, the Presidency established a commission of inquiry³³. The persons who composed it were appointed at the discretion of the executive branch; according to complaints from civil society, most had ties to the business elite and the President³⁴. During the investigation, the commission did not delve into the acts of corruption that occurred during the bidding process, and concluded that the costs of the work were similar or lower to those of other plants with similar characteristics³⁵.

The civil society organization *Participación Ciudadana* affirmed that the Dominican Republic is one of the countries where Odebrecht paid the most money in bribes and highlighted the need for the investigation to also address the over-evaluation of the Plant³⁶. According to the organization, the lack of progress in the investigations was due to impunity agreements between the Dominican government and the company³⁷.

At a national level, Odebrecht obtained an agreement to avoid criminal prosecution for the payment of bribes it confessed to in 2016. In it, the company promised to pay US\$184 million over eight years as compensation to the state, in annual installments, until the year 2025³⁸.

The Public Ministry of the Dominican Republic investigated fourteen people for allegedly receiving bribes from Odebrecht³⁹. Yet, in 2018, with regards to the CTPC, it concluded that "*we found no evidence that*

32. Proceso. "The Green March warns Punta Catalina is the body of the crime of the illegal operations of Odebrecht". 14 May 2017. <https://proceso.com.do/2017/05/14/marcha-verde-advierte-punta-catalina-es-cuerpo-del-delito-de-las-operaciones-ilegales-de-odebrecht/>

33. Through Decree 6-17, of January 10, 2017, the Presidency of the Republic established a "commission to investigate everything related to the bidding process and awarding of the Punta Catalina Thermoelectric Power Plant work".

34. For the presidency, Monsignor Agripino Núñez Collado, member of the administrative council of the construction company *Acero Estrella*, a company that formed part of the consortium with Odebrecht for the construction of the Power Plant, was appointed, and resigned from his position to form part of the commission. Two former members of the Dominican Corporation of State Electric Companies (CDEEE) were also appointed, those who signed the contract with Odebrecht for the construction of the second plant of the CTPC. *El Dinero*. "Agripino resigns from the board of Acero Estrella to preside over the commission investigating Punta Catalina". 13 January 2017. Available at: <https://eldinero.com.do/35195/agripino-renuncia-al-consejo-de-acero-estrella-para-presidir-comision-indaga-punta-catalina/>. See also, *El Nacional*. "CDEEE- Odebrecht contract ratified". 4 October 2017. Available at: <https://elnacional.com.do/ratifican-contrato-cdeee-odebrecht/>

35. Notisur Baní. "Odebrecht case". 10 January 2017. Available at: <https://notisurbani.com/index.php/18-noticia-principal/11670-gobierno-investigara-punta-catalina-comite-lucha-contra-cambio-climatico-objeta-comision>; "Report of the Investigative Commission of the Tendering and Awarding Process of the EPC Contract of the Punta Catalina Thermoelectric Power Plant". June 2017, pp. 114-120. Available at: <https://cdeee.gob.do/cdeeesite/download/ventana-abierta/Informe-Comision-Central-Termoelectrica-Punta-Catalina.pdf>

36. *Participación Ciudadana* also requested the investigation of all officials who, during the negotiation and construction of the Power Plant, held decision-making powers. *Participación Ciudadana*. "Odebrecht Punta Catalina: More Corruption Goes Unpunished". 7 May 2018. Available at: <https://www.youtube.com/live/1vjiNpgIF40?feature=share>

37. *Noticias Sin*. "PC requires the president to explain new evidence of Odebrecht bribery in Punta Catalina." 27 June 2019. Available at: <https://noticiassin.com/pais/pc-exige-al-presidente-explicacion-sobre-nuevas-evidencias-de-sobornos-de-odebrecht-en-punta-catalina-860523/>

38. To date, Odebrecht has only complied with the first and second payments of US\$30 million each. Judicial Branch. Third Investigating Court of the National District. Resolution 059-2017. 19 April 2017. Available at: <https://pgr.gob.do/wp-content/uploads/2017/04/Resolucion-059-2017-SRES-00098RP.pdf>; See also *Diario Libre*. "Attorney receives the second payment of US\$30 million from Odebrecht by agreement". 1 August 2018. Available at: <https://www.diariolibre.com/actualidad/justicia/procuraduria-recibe-el-segundo-pago-de-us-30-millones-de-parte-de-odebrecht-por-agreement-BC10474577>

39. Among these fourteen people investigated were former officials, legislators, leaders of the official party and a businessman. Of this group, six people were charged, of which only two were sentenced to serve prison terms and pay fines, described as "benign" by the Attorney General's Office. Those convicted of receiving bribes and money laundering appealed their sentences. Likewise, the Attorney General requested to review these cases and raise the sanctions. Currently these processes are ongoing. Attorney General of the Republic. "Attorney General points to 14 people involved in bribery in the Odebrecht case." 29 May 2017. Available at: <https://pgr.gob.do/ministerio-publico-senala-a-14-personas-implicadas-en-los-sobornos-del-caso-odebrecht/>. In the same sense, see Attorney General of the Republic. "Attorney General's Office submits seven people linked to the case Odebrecht". 7 June 2018. Available at: <https://pgr.gob.do/procuraduria-somete-a-siete-personas-por-caso-odebrecht/>. See also *Prensa Latina*. "Sentences of the Odebrecht case leave disagreement in the Dominican Republic". 19 October 2021. Available at: <https://www.prensa-latina.cu/2021/10/19/sentencias-del-caso-odebrecht-dejan-inconformidad-en-dominicana>

perks or improper exchanges materialized during the bidding process for the work, nor during its financing"⁴⁰. Despite this conclusion, in 2019, the Milan Public Prosecutor's Office in Italy arrested and questioned the main executives of the Maire Group Tecnimont, raided its headquarters and seized its computer equipment, under accusations bribes and money laundering in the CTPC project⁴¹. Likewise, it sent a request to the Public Ministry of the Dominican Republic to allow them to carry out investigations in the country⁴², which was not answered⁴³. Consequently, the Italian investigation process was archived.

None of the proceedings delved into the leaks of records from Odebrecht 's Department of Structured Operations, which show that between December 2013 and December 2014, the company made sixty-two secret payments for US 39.5 million, related to a "Thermo Plant" or "Thermoelectric Plan"⁴⁴.

Eventually, the European banks that financed the Power Plant suspended loans to the government, due to the existence of signs of acts of corruption in the construction of the work⁴⁵. However, at the time of the suspension of the initially agreed-upon US\$650 million in financing, more than US\$350 million had already been disbursed⁴⁶.

2.3. Technical failures in the operation of the CTPC and findings of the forensic technical and financial audits

Currently, the Dominican government continues to operate the Power Plant and Maire Group Tecnimont advises its technical management. Since before the construction was finalized, the CNLCC and INSAPROMA denounced the numerous structural technical failures that put the Plant, employees, and the surrounding population at serious risk⁴⁷. Due to the seriousness of these defects, the government was urged not to certify the final delivery of the Power Plant⁴⁸.

To date, the Dominican state has not definitively accepted the delivery of the Plant and promised to carry out a technical and forensic financial audit which will be submitted to the Ministry of Energy and Mines and the Accounts Registry (*Camara de Cuentas*). The objective of these audits was to establish whether the CTPC complies with the functionality specifications detailed in the bidding process, as well as to determine the total amount of public resources that have been invested⁴⁹.

40. Attorney General of the Republic. Official statement formal accusation Odebrecht case. 7 June 2018. <https://pgr.gob.do/wp-content/uploads/2019/03/Discurso-PGR-Odebrecht.pdf>

41. *Proceso*. "An Italian company partner of Odebrecht is being investigated in Milan for corruption in the DR". 15 March 2019. <https://proceso.com.do/2019/03/15/investigacion-en-milano-empresa-italiana-socia-de-odebrecht-por-corrupcion-en-rd/>

42. The request from the Milan prosecutor was supported by important civil society entities such as the Green March Movement, the Human Rights Commission, the National Observatory of Public Policies of the Autonomous University of Santo Domingo (UASD), INSAPROMA, and the CNLCC. Z Digital. "Entities invite the Milan prosecutor to investigate Tecnimont's participation in Punta Catalina". 17 June 2019. <http://z101digital.com/entidades-invitan-al-fiscal-de-milano-investigacion-participacion-de-tecnimont-en-punta-catalina/>

43. *A todas luces*. "They will come from Italy to ask for a response from the Attorney General of the Republic to the request for cooperation from the Milan prosecutor". 16 September 2019. <https://atodaslucet.net/vendran-de-italia-a-inquirir-respuesta-del-procurador-general-de-la-republica-a-la-peticion-de-cooperacion-del-prosecutor-of-milan/>

44. International Consortium of Investigative Journalists. "Leak reveals millionaire payments associated with the Odebrecht scandal". 25 June 2019. Available at: <https://www.icij.org/investigations/bribery-division/filtracion-revela-millonarios-pagos-asociados-con-el-escandalo-de-odebrecht/>

45. This decision was promoted by a civil society coalition, made up of Bank Track from the Netherlands, Friends of the Earth from France, Urgewald from Germany, Re :COMMON from Italy, and the National Committee to Fight Climate Change (CNLCC), who went before the boards of directors and shareholders' meetings of the European banks that financed the construction of the Power Plant to request that the financing of the CTPC, valued at US\$650 million, be suspended. Z Digital. "European bank ING would have stopped financing Punta Catalina, according to a Dutch newspaper". 2 August 2018. Available at: <http://z101digital.com/banco-europeo-ing-habria-dejado-de-financiar-punta-catalina-segun-periodico-holandes/>

46. The pool of banks that financed the construction of the CTPC was made up of ING from the Netherlands, Banco Santander from Spain, Unicredito and the insurer SACE from Italy, Société Generale from France, and Deutsche Bank from Germany, the latter head of the pool. *Diario Libre*. "CNLCC affirms European bank pool suspends loan for Punta Catalina plants". 11 June 2018. Available at: <https://elnuevodiario.com.do/cnlcc-afirma-pool-de-bancos-europeos-suspende-prestamo-para-plantas-punta-catalina/>

47. *Listin Diario*. "The failures of Punta Catalina that have caused its outages". 7 February 2021. Available at: <https://www.youtube.com/watch?v=8eVZt5wz3JA> See also *Proceso*. "They suggest to the Government not to receive plants from Punta Catalina with technical failures." 22 April 2020. Available at: <https://proceso.com.do/2020/04/22/sugieren-al-gobierno-no-recibir-plantas-de-punta-catalina-con-fallas-tecnicas/>

48. *Ibid*.

49. *El Dinero*. "Minister of Energy promises to determine if there was corruption in the award of Punta Catalina". 22 August 2020. Available at: <https://eldinero.com.do/118146/ministro-de-energia-promete-determinar-si-hubo-corrupcion-en-la-adjudicacion->

On 19 May 2022, the technical audit concluded that there were failures that could alter the proper functioning and general security of the Plant⁵⁰. First, it highlighted the installation and use of inadequate material given the size and performance of the Power Plant, which led to the filtration of toxic waste into the environment⁵¹. It also identified that there were issues with the Air Control System (AQCS)⁵², causing fine particulate matter to leak⁵³. Finally, it revealed that there were problems in the operational reliability and quality of the fire prevention facilities⁵⁴.

In February 2023, the Coordinating Committee of the National Interconnected Electric System (SENI) revealed that in 2019 the Power Plant had 32 events due to technical failures, in 2020, 31, in 2021, 18. In 2022, it registered 23 of all the 62 cases reported that year by electrical generators in the country⁵⁵.

Regarding the financial audit, its progress is currently unknown. However, in March 2023, the Ministry of Energy and Mines assured that its final report was close to being published and determined that the construction of the CTPC involved an investment of close to US 3.5 billion, including cost overruns⁵⁶.

The CTPC Pollution Study provided evidence of a direct relationship between technical failures in the operation of the Power Plant and a higher level of air emissions. Emission values fluctuated during monitoring. These differences were determined by the lower and higher incidence of technical failures observed and declared by the CDEEE at the time of measurement. Among the regular failures that caused high emission levels were damage to the baghouse and the disconnection of the flue gas desulfurization (FGD) systems that are responsible for eliminating particulate matter and sulfur dioxide emissions (SO₂)⁵⁷.

[de-punta-catalina/#_google_vignette](#). See also, Presidency of the Dominican Republic. "Punta Catalina will remain as State property". 15 January 2022. Available at: <https://presidencia.gob.do/noticias/punta-catalina-se-mantendra-como-propiedad-del-estado>

50. Government of the Dominican Republic. Energy and Mines. Technical audit Punta Catalina Thermoelectric Power Plant. Deliverables 1, 2, 3, 4, 5. Report SL-016716 prepared by Sargent and Lundy. May 19, 2022, pp. IV-XII.

51. According to the technical audit, there are risks of misalignment of the conveyor due to a problem in the tension system that can lead to losses of highly toxic and dangerous material. In the same way, the fans of the boiler do not have the necessary power to fulfil their functions with respect to the level of production of the Power Plant. As a consequence, the temperature of the gas leaving the boiler is too high, since a 6.8% leak is registered against 4.2% foreseen in the initial design. *Ibid.*

52. Each of the CTPC units has an air quality control system (AQCS), aimed at guaranteeing compliance with emission limits. This system has a special impact on the control of sulfur dioxide (CO₂) and particulate matter. *Ibid.* Page 115.

53. According to the technical audit, the operating capacity of the lime hydrators does not reach the level it should, taking into account the percentage of sulfur contained in the coal burned at the Power Plant. In addition, the experts observed that the particle load in the chimney of Unit 1 prevented its proper functioning. They also found a problem in the control of particle flows, leading to the leakage of material whose percentage of fine particles is very high. *Ibid.* Pages IV-XII.

54. *Ibid.* On this point, in 2020, a few weeks after the commissioning of the second plant, the CLNCC registered a fire, which was firmly denied by the CDEEE, saying that it was a simple maintenance operation. The general administrator of Punta Catalina did not want to comment on the case. *Diario Libre*. "They denounce that a fire was registered in unit 2 of Punta Catalina." 7 August 2020. Available at: <https://www.diariolibre.com/economia/denuncian-que-se-registro-un-incendio-en-unidad-2-de-punta-catalina-AA20640563>

55. *Diario Libre*. "Punta Catalina is the generator with the most events involving failures in the National Interconnected Electric System". 17 February 2023. Available at: <https://www.diariolibre.com/economia/energia/2023/02/17/punta-catalina-generadora-con-mas-eventos-en-el-seni/2229832>

56. *UnoMásUno Teleantillas*. Livebroadcast. 13 March 2023. Available at: <https://www.youtube.com/watch?v=XE1wxSAAh3o&t=2292s>

57. CTPC Pollution Study 2022, pp. 31 and 32.

3. VIOLATIONS OF RIGHTS

The violations of children's rights arising from the operations of the Punta Catalina Thermoelectric Power Plant are described below. This section also highlights the state's failures to comply with its obligations to respect and fulfil the rights to life, survival and development, the highest attainable standard of health, access to safe drinking water and adequate nutrition, and the enjoyment of safe environments for children's education and play.

3.1. Air pollution caused by the CTPC and its impact on children's rights to life, survival and development (Article 6), and to the enjoyment of the highest attainable standard of health (Article 24)

The massive combustion of coal at the CTPC, as well as the outdoor deposit of coal ash, contribute to concentrations of substances in the atmosphere that are harmful to the health of the population, both regionally and transboundary.⁵⁸ The air quality of a large part of the Dominican Republic, Haiti and the eastern coasts of Cuba and Jamaica⁵⁹ is affected by the high levels of gas and particulate matter emissions from the CTPC.⁶⁰ Atmospheric pollution is also the result of the inadequate management of coal combustion waste, which is dumped outdoors in the area of San José ("*batey* San José"), in the Peravia province.⁶¹

Six air pollutants were identified in CTPC emissions and toxic waste. First, fine particulate matter (PM_{2.5}),⁶² one of the most dangerous substances because of its small size and capacity to enter the lungs and then the bloodstream, with adverse health effects including heart and lung disease.⁶³ Second, nitrogen dioxide (NO₂),⁶⁴ which mainly affects the respiratory system.⁶⁵ Third, sulphur dioxide (SO₂),⁶⁶ which is the main cause of acid rain and affects mucus and lungs.⁶⁷ Fourth, ozone (O₃),⁶⁸ which can cause breathing difficulties, pulmonary oedema, fatigue, dizziness, reduced kidney function, skin irritation and other health problems.⁶⁹ Fifth, hydrogen sulphide (H₂S),⁷⁰ linked to irritation of soft body tissues and continuous exposure to which can cause asthma attacks and respiratory difficulties.⁷¹ Finally, mercury (Hg),⁷² a highly toxic substance with serious impacts on developing nervous systems⁷³

58. CTPC Pollution Study 2022, pp. 25 and 49.

59. The transboundary effects in Haiti and on the eastern coasts of Cuba and Jamaica are explained by the wind direction in the region, which blows from east to west, carrying much of the pollution to the western part of the Dominican Republic. *Ibid.* p. 50.

60. *Ibid.* p. 25.

61. *Ibid.*

62. *Ibid.* p. 83.

63. *Ibid.* p. 52.

64. *Ibid.* p. 36 and 49.

65. Agency for Toxic Substances and Disease Registry (ATSDR). "ToxFAQs™ for Nitrogen Oxides". Available at: <https://www.cdc.gov/TSP/ToxFAQs/ToxFAQsDetails.aspx?faqid=396&toxid=69>

66. CTPC Pollution Study 2022, pp. 31, 32, 35 and 36.

67. Agency for Toxic Substances and Disease Registry (ATSDR). "ToxFAQs™ for Sulfur Dioxide". Available at: <https://www.cdc.gov/TSP/ToxFAQs/ToxFAQsDetails.aspx?faqid=252&toxid=46>

68. CTPC Pollution Study 2022, p. 84.

69. Spanish Ministry for the Ecological Transition and the Demographic Challenge (*Ministerio para la Transición Demográfica Ecológica y el Reto Demográfico de España*). "Efectos en salud y el ecosistema del ozono" (Health and ecosystem effects of ozone). Available at: <https://www.miteco.gob.es/es/calidad-y-evaluacion-ambiental/temas/atmosfera-y-calidad-del-aire/calidad-del-aire/salud/ozono.aspx>

70. CTPC Pollution Study 2022, p. 84.

71. Agency for Toxic Substances and Disease Registry (ATSDR). "Public Health Statement for Hydrogen Sulfide". Available at: <https://www.cdc.gov/TSP/PHS/PHS.aspx?phs=387&toxid=67>

72. CTPC Pollution Study 2022, p. 32 and 42.

73. Agency for Toxic Substances and Disease Registry (ATSDR). "ToxFAQs™ for Mercury". Available at: <https://www.cdc.gov/TSP/ToxFAQs/ToxFAQsDetails.aspx?faqid=113&toxid=24>



The chimney of the Punta Catalina Thermolectric Power Plant emits toxic clouds of particulate matter and acid gases. March 20, 2021 © CNLCC

The CTPC's annual air emissions blatantly exceed equivalent European Union ("EU") standards.⁷⁴ The measurements analysed in the CTPC Pollution Study showed that the Plant releases an annual average of thousands of tonnes of particulate matter (PM_x), sulphur dioxide (SO₂) and nitrogen oxides (NO_x), levels which are respectively seven, nine and two times higher than the levels defined as safe under EU standards.⁷⁵ In the case of mercury (Hg), while European standards prohibit its emission, the CTPC releases an annual average of 122 kilogrammes.⁷⁶

Atmospheric concentrations of gases emitted by the CTPC,⁷⁷ such as ozone (O₃) and hydrogen sulphide (H₂S), also exceed the parameters set out in the World Health Organisation's ("WHO") guidelines on healthy long-term outdoor air quality (annual average).⁷⁸ With regard to fine particulate matter (PM_{2.5}), the measurement in the study was taken over twenty-four hours, so it was not possible to establish whether the annual levels of this substance were harmful to health. However, the study warned that if the sample taken was typical of emissions throughout the year, the emissions of microparticulate matter would exceed WHO standards.⁷⁹

In the cases of mercury (Hg) and sulphur dioxide (SO₂), exposure of the population to these substances exceeds the daily and annual thresholds established by the WHO.⁸⁰ Over an area of twelve square kilometres (12 km²), more than four and a half thousand people are exposed to levels exceeding the

74. When the Dominican government received the loan to build the Punta Catalina Power Plant from a pool of European banks, it undertook in the loan contract to respect EU environmental regulations. Agreement between the Dominican Republic, acting through the Ministry of Finance, and Deutsche Bank acting as agent. May 2015.

75. The study measurements showed that the average annual emissions from the CTPC are 998 tonnes of particulate matter (PM_x), 15,010 tonnes of sulphur dioxide (SO₂) and 4,971 tonnes of nitrogen oxides (NO_x). According to EU standards, safe levels of annual emissions are 128 tonnes of particulate matter (PM_x), 1,665 tonnes of sulphur dioxide (SO₂) and 1,921 tonnes of nitrogen oxides (NO_x). CTPC Pollution Study 2022, p. 32.

76. *Ibid.*

77. *Ibid.* p. 84.

78. World Health Organisation (WHO). WHO global air quality guidelines. Particulate matter (PM_{2.5} and PM₁₀), ozone, nitrogen dioxide, sulfur dioxide and carbon monoxide. 2021. Available at: <https://apps.who.int/iris/bitstream/handle/10665/345329/9789240034228-eng.pdf>

79. CTPC Pollution Study 2022, p. 83.

80. *Ibid.* p. 46.

annual average concentration of mercury and the maximum daily concentration of sulphur dioxide.⁸¹ Over an area of two hundred and fifty-one square kilometres (251 km²), 108,586 people are exposed to levels above the maximum daily concentrations of sulphur dioxide.⁸²

The above estimates show the high level of exposure to dangerous and unhealthy concentrations of air pollutants experienced by individuals, and especially children, living in the province where the CTPC is located. According to official statistics, Peravia covers an area of 785 km²⁸³ and has a population of 196,336 inhabitants.⁸⁴ Of this number, 19,365 are children under the age of five, 16,980 are children between the ages of six and ten, and 17,918 are children between the ages of eleven and fifteen.⁸⁵ Thus, the population between the ages of zero and fifteen exposed to the atmospheric pollution produced by the Power Plant amounts to 54,263 children, who make up 27% of the total population of Peravia.

Four of the six substances released by the CTPC are widely recognised for their negative impact on air quality. According to the Special Rapporteur on the right to a healthy environment, particulate matter, sulphur dioxide, nitrogen oxides and ozone have been the primary focus of global abatement efforts because of their known adverse health effects.⁸⁶ Of these substances, fine particulate matter (PM_{2.5}) is of particular concern, as it “is the single largest environmental risk to health worldwide”.⁸⁷

Air pollution caused by the CTPC creates an unsafe and adverse environment for children to survive, grow properly and develop to their full potential. Air pollution is recognised as a factor that reduces both the quality of life and life expectancy of children. According to the Special Rapporteur on the right to a healthy environment, air pollution causes approximately 600,000 deaths of children under the age of five every year worldwide, as well as an increase in childhood diseases and disabilities with long-term effects.⁸⁸

Due to their physiology and particular maturation processes, children are especially vulnerable to air pollution. Their airways are narrower and more easily blocked by respiratory infections.⁸⁹ In addition, their exposure to concentrations of harmful substances in the air is often higher than that of adults, as they “breathe more quickly and take in more air per unit of body weight”.⁹⁰ Finally, the fact that their immune systems are still developing means that children are at higher risk of respiratory infections and are less able to combat them.⁹¹

The data collected in the CTPC Pollution Study show indications of a link between environmental pollution caused by coal combustion at the Power Plant and certain diseases and causes of death recorded in the municipality of Nizao and elsewhere in Peravia province. The occurrence and incidence of diseases associated with contact with these pollutants has increased since 2019, as have deaths from acute myocardial infarction, which rose by 50% in 2020.⁹² The main diseases that have seen an increase are associated with the deterioration of air quality, including conditions affecting the skin and the respiratory, cardiovascular and neurological systems.

The upsurge in coal combustion-related diseases has coincided, in particular, with high emissions events at the CTPC.⁹³ In 2018, the first trial operation of one of the units at the Plant coincided with an increase

81. *Ibid.*

82. *Ibid.*

83. *Oficina Nacional de Estadística* (National Statistics Office - ONE). Provincial Sociodemographic Profile. Dominican Republic 2008. Available at: <https://ayuntamientomatanzas.gob.do/wp-content/uploads/2018/08/Tu-municipio-en-cifras-Matanzas.pdf>

84. *Oficina Nacional de Estadística* (ONE). National Multi-Purpose Household Survey. Dominican Republic 2018. Available at: <https://mepyd.gob.do/>

85. *Ibid.*

86. 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. para. 20.

87. *Ibid.* para. 24.

88. Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment on the relationship between children’s rights and environmental protection. A/HRC/37/58. 24 January 2018. para. 16.

89. *Ibid.*

90. *Ibid.*

91. *Ibid.*

92. CTPC Pollution Study 2022, p. 147.

93. *Ibid.* p. 23.

in cases of high blood pressure. In 2019, the regular operation of CTPC Unit 1 was accompanied by a rise in cases of allergies and deaths from acute myocardial infarction, and an upward trend in cases of high blood pressure. In 2020, the malfunctioning of the air quality control system (AQCS) coincided with an increase in cases of pneumonia and anaemia, and a spike in allergies and deaths from acute myocardial infarction. Finally, in 2021, the presence of toxic clouds near the Power Plant and the municipality of Baní was accompanied by an increase in cases of arterial hypertension, pneumonia and anaemia.⁹⁴

The CTPC Pollution Study showed that the CTPC's emissions exceed the limits established in the project's Environmental Impact Assessment ("EIA").⁹⁵ However, even if the CTPC were to operate in accordance with these limits, the health of children would still be threatened. In the scenario established in the EIA, according to annual and cumulative health impact estimates, there would be 19 new annual cases of childhood asthma in the Dominican Republic and 33 in Haiti.⁹⁶ The number of children per year who would suffer from asthma due to exposure to pollution would total 82 in the Dominican Republic and 162 in Haiti.⁹⁷ By 2051, when the Plant is expected to cease operation, the above calculations would mean that in the Dominican Republic there would be 725 new cases of childhood asthma and 3,123 children would suffer from asthma caused by exposure to pollutants.⁹⁸

As part of the CTPC Pollution Study, inhabitants of the municipality of Nizao were interviewed and reported the presence of gusts of caustic dust causing skin rashes on humans and domestic animals, as well as ash covering vegetation.⁹⁹ These skin irritations could be caused by lime particles from the ash mountains.¹⁰⁰ Interviewees also indicated that adverse health effects have been more frequent in recent years and affect the population indiscriminately.¹⁰¹

These statements are consistent with the epidemiological profile reflected in consultations by members of the population at the municipal hospital of Nizao between 2016 and 2021.¹⁰² Acute respiratory infections (ARI) accounted for 25% of annual consultations, increasing significantly in 2019, the year in which the CTPC began operating, to reach 31.56% of consultations.¹⁰³ In 2019, ARI accounted for most cases of hospitalisation, representing almost 50% of the total. The second most common cause of hospitalisation in 2019 was pneumonia, representing 6.7% of the total.¹⁰⁴ In 2021, 17.2% of hospital admissions were due to pollution-related diseases, with most hospitalisations due to pneumonia, followed by bronchospasm.¹⁰⁵

Diseases associated with coal combustion can be lethal for children. In February 2022, the deaths of three girls under one year of age from pneumonia were recorded. The victims lived in areas in the municipality of Nizao with the highest concentrations of fine particulate matter (PM_{2.5}) and nitrogen dioxide (NO₂).¹⁰⁶ In the investigation into these events, the Ministry of Public Health concluded that the deaths were not related to air pollution. However, the Ministry acknowledged that its findings were based on a social rather than a pathological autopsy and did not consider indicators of air pollution in the bodies of the deceased girls. The conclusions of this investigation recommended ongoing monitoring of CTPC emissions, air pollution and its health impacts.¹⁰⁷

94. *Ibid.*

95. The CTPC Pollution Study revealed that the emissions declared in the CTPC Environmental Impact Assessment (EIA) did not correspond to the actual emissions released by the Plant. Taking the average between the best and worst levels in the data collected, in several cases emissions were more than double the reported figures. For example, while the EIA stated that annually the Plant releases 384 tonnes of particulate matter and 5,123 tonnes of sulphur dioxide, actual annual emissions averaged 998 tonnes of particulate matter and 15,010 tonnes of sulphur dioxide. *Ibid.* p. 32.

96. *Ibid.* p. 51.

97. *Ibid.*

98. *Ibid.*

99. *Ibid.* p. 122.

100. *Ibid.* p. 124.

101. *Ibid.* p. 129.

102. *Ibid.* pp. 131-134.

103. *Ibid.*

104. *Ibid.*

105. *Ibid.*

106. *Ibid.* p. 24.

107. Ministry of Public Health. Investigation into four deaths of minors. February 2022. Annex 11 of the Study on the Punta Catalina Thermoelectric Power Plant, CTPC. September 2022.

The CTPC Pollution Study estimates the number of deaths, based on measurements of the actual emissions released by the Plant. According to these projections, if the CTPC continues with the technical failures observed during monitoring, the pollution produced could cause up to five premature deaths annually in Peravia, 57 in the Dominican Republic and up to 127 in Haiti.¹⁰⁸ This would mean that the thirty years of the CTPC's expected lifespan would result in the premature deaths of at least six thousand people from pollution, especially children, who are among those most vulnerable to the Plant's pollution.¹⁰⁹

The operation of the CTPC has exposed Dominican children to high levels of air pollution that seriously affect their health and put their lives at risk.

3.1.1. Violations of the right to life, survival, development and the enjoyment of the highest attainable standard of health of children through the creation of avoidable environmental damage, corruption and actions against the struggle to combat climate change

The state is responsible for violations of children's right to life, survival, development, and enjoyment of the highest attainable standard of health. By promoting and investing public funds for the construction and operation of the CTPC, a source of widespread air pollution, the state breached its obligation to respect their rights. The authorities' decision to generate electricity derived from fossil fuels exposes children to high concentrations of airborne emissions of gases, particulate matter, and other toxic waste. Thus, the state was directly involved in creating conditions that affect children's rights to health, to enjoy healthy and appropriate conditions for survival, to avoid premature death, and to grow and develop in a holistic and optimal manner.

The state is failing children not only by prioritising the operation of the Plant over guaranteeing their rights, but also by failing to adopt substantive environmental standards to protect them from pollution caused by CTPC emissions. Air pollution standards in the Dominican Republic are not based on the best available science, such as the WHO's global air quality guidelines, and therefore allow children to be exposed in the short term to concentrations of pollutants almost twice as high as in other countries, such as the United States. These episodes are as harmful to health as long-term exposure.¹¹⁰

In relation to the impacts caused by the CTPC on the health, survival, and proper development of Haitian children, it is important to recall the position of the Committee on the Rights of the Child on the scope of extraterritorial jurisdiction in relation to the protection of the environment, and the responsibility of states in cases of transboundary harm. According to the Committee,¹¹¹ a state is responsible for the violation of children's rights outside its territory where it has effective control over the sources of emissions that contribute to causing significant and reasonably foreseeable harm.¹¹²

Atmospheric pollution due to emissions of gases, particulate matter, and toxic waste from the CTPC causes foreseeable and significant damage to the health, survival and development of children in the Dominican Republic. Due to the direction of the wind in the region, which blows from east to west, concentrations of pollutants also impact Haitian territory, affecting its population to an even greater extent. The Dominican state is responsible under international law on the basis of its effective control of the source of the emissions, and its failure to take measures to prevent the pollution caused by the CTPC from having transboundary effects.

108. CTPC Pollution Study 2022, p. 52.

109. *Ibid.* p. 26.

110. CTPC Pollution Study 2022, p. 82.

111. Committee on the Rights of the Child. Decision adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 104/2019. CRC/C/88/D/104/2019. para. 10.12.

112. In its decision, the Committee on the Rights of the Child referred to a concept developed by the Inter-American Court of Human Rights (IACtHR), according to which states have an obligation to prevent transboundary environmental harm, and therefore they may be held responsible where "activities originating in their territory or under their effective control or authority" cause significant damage to persons outside their borders. IACtHR. Advisory Opinion OC-23/17. Environment and Human Rights. 15 November 2017. para. 103.

3.1.1.1. Corruption and actions against the struggle to combat climate change



Demonstration before the Superior Administrative Court, after the filing of an injunction for the protection of the communities against the pollution caused by the Punta Catalina Thermoelectric Power Plant. Santo Domingo, April 27, 2021© CNLCC

In deciding on the construction of the CTPC, and its coal-fired operation, the state failed in its duty of due diligence to protect children from foreseeable and avoidable environmental harms and their cumulative long-term effects, such as climate change. The CTPC's massive coal combustion has not only produced widespread air pollution that has endangered the health, survival, and proper development of children today, it is also an activity that accelerates and perpetuates climate change,¹¹³ and as such, threatens the health, well-being, and quality of life of children in the future. According to the Committee on the Rights of the Child, climate change is "one of the biggest threats to children's health and exacerbates health disparities",¹¹⁴ and has serious and long-term implications for children's enjoyment of their rights.¹¹⁵

The authorities maintained their political decision to promote the generation of electricity from coal combustion, and to drive forward the construction of the CTPC, despite calls from various civil society organisations, including CNLCC, since 2016, to abandon the use of non-renewable energies, due to their known harmful effects on health and the environment, and their contribution to climate change.¹¹⁶

At the time of these calls from civil society, the state was clearly aware of the dangers posed by climate change to the enjoyment of human rights, and the island's particular vulnerability to global warming. The Dominican Republic had already ratified the United Nations Framework Convention on Climate

113. Combustion in the electricity sector has been recognised as a major contributor to climate change. 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. para. 40.

114. Committee on the Rights of the Child. General Comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (Article 24). para. 50.

115. Committee on the Rights of the Child. Decision adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 104/2019. CRC/C/88/D/104/2019. para. 10.13.

116. In 2016, CNLCC, among other social and community organisations in the Dominican Republic, filed a writ for preventive environmental protection (*recurso de amparo*) with the Superior Administrative Court, requesting the immediate suspension of the construction of the two CTPC units. The application was rejected by the Superior Court, whose decision was confirmed by the Constitutional Court, which considered the writ of protection to be an inappropriate means to request suspension of the project. Acento. "Denuncian TC ignora derecho ambiental con sentencia favorece Punta Catalina" (Constitutional Court ignores environmental law in decision in favour of Punta Catalina). 25 September 2017. Available at: <https://acento.com.do/ecologia/denuncian-tc-ignora-derecho-ambiental-ante-sentencia-favorece-punta-catalina-8495035.html>

Change¹¹⁷ and the Paris Agreement,¹¹⁸ and in its National Adaptation Plan on Climate Change 2015-2030, recognised that the country was one of the eleven most vulnerable to climate change worldwide.¹¹⁹ The state had also enshrined in its regulations the duty to decarbonise the economy¹²⁰ and promote the use of clean energy.¹²¹

The serious effects of fossil fuel power generation were highlighted in the CTPC Pollution Study, which concluded that the decision to run the Plant on coal was a grave mistake, as it delays the adoption of clean and renewable energy in the country, as well as the implementation of measures to combat climate change.¹²² According to the study, the Plant “is a stranded asset with no market outlet, which cannot continue to operate with coal nor with natural gas, given the scarcity and historically high prices of this fuel”.¹²³

The state also failed in its duty to protect children from foreseeable environmental harm by authorising the operation of the CTPC and maintaining it in operation, despite its multiple structural technical failures. These defects have not only affected the continuity of the electricity supply,¹²⁴ but have also led to a significant increase in the level of gas and particulate matter emissions, beyond the levels stated in the project’s EIA.¹²⁵ Thus, through its actions, the state has promoted the exposure of children to higher levels of pollution, and therefore, to unhealthier and unsafe environments for their growth.

It has been established that Odebrecht paid bribes to public officials in connection with the decision on the construction of a coal-fired thermoelectric power plant and the award of the contract. There is also a body of evidence suggesting that these acts of corruption contributed to the aforementioned violations of children’s rights. The authorities’ decision to build the CTPC, further consolidating the country’s dependence on imported fossil fuels, in a global context of struggling to combat climate change through the decarbonisation of the energy sectors,¹²⁶ cannot be understood without taking into account the corruption surrounding the CTPC bidding process. Payments of USD 39.5 million in bribes by the Odebrecht-led consortium for the award of the project exerted undue influence on a decision that not only departs from the general interest that should guide state actions, but also undermines the well-being, health and life of present and future generations of children in the Dominican Republic and the Caribbean.

It is also noteworthy that, from the very beginning of its operation, the largest public investment project in the Dominican Republic presented technical defects of such magnitude that its stable operation has been impossible and a permanent source of risk for children, exposing them to high concentrations of air pollutant emissions. Despite this, the state has refused to take action against the construction companies to repair the defects or reimburse the costs incurred as a result of the construction failings. Corruption offers the only explanation for the failure to protect the interests of the population, especially children, and the decision to operate a plant that does not meet the standards necessary to protect children from irreversible damage caused by pollution.

117. On 7 October 1998, the government of the Dominican Republic ratified the United Nations Framework Convention on Climate Change and undertook to prepare national communications, in accordance with Article 12 of the Convention.

118. On 22 April 2016, the state of the Dominican Republic signed the Paris Agreement.

119. Presidency of the Dominican Republic. National Adaptation Plan on Climate Change for the Dominican Republic. *Un país resiliente frente al cambio climático* (A resilient country in the face of climate change). Santo Domingo, 2016. Available at: <https://adaptacion.cambioclimatico.gob.do/wp-content/uploads/2022/07/Plan-Nacional-de-Adaptacion-para-el-Cambio-Climatico-en-RD-2015-2030-PNACC.pdf>

120. Article 27 of the National Development Strategy Law (Law 498-06 of 2012) establishes that in order to ensure adequate adaptation to climate change, it is the duty of the state to “promote the decarbonisation of the national economy through the use of renewable energy sources, the development of the biofuels market, energy saving and efficiency, and efficient and clean transport”.

121. According to Article 67 of the Constitution of the Dominican Republic, adopted on 13 June 2015, in order to protect the environment “The state shall promote, in the public and private sector, the use of non-polluting alternative technologies and energy”.

122. CTPC Pollution Study 2022, p. 25.

123. *Ibid.* p. 27.

124. Since the beginning of the CTPC’s operations, both units have sustained several structural failures, such as hydrogen leaks and damage to the combustion boiler, leading to their temporary shutdown on two occasions. *Ibid.* p. 31.

125. *Ibid.* pp. 31 and 32.

126. Inter-American Development Bank (IDB). *Evaluación Económica de la Descarbonización del Subsector Eléctrico en la República Dominicana Informe Final* (Economic Assessment of the Decarbonisation of the Electricity Subsector in the Dominican Republic Final Report). 2023. p. 10.

The issue of corruption must be addressed when assessing the state's compliance with its obligations under the CRC, since, as the Committee on the Rights of the Child has warned, such practices can have negative consequences on the enjoyment of the rights enshrined in the CRC.¹²⁷ As part of this assessment it is also important to consider that, despite evidence of the corruption scheme, the Dominican authorities did not carry out serious and effective investigations into the award of the contract in the bidding process and construction of the CTPC. In other words, the state failed to carry out investigations to "thwart corrupt conspiracies, punish those responsible, recover diverted assets, and undertake the regulatory and institutional reforms needed to strengthen the framework and options open to the State to respond to such cases".¹²⁸

3.2. The inadequate management of toxic waste by the CTPC and its impact on children's rights to the enjoyment of the highest attainable standard of health (Article 24) and adequate living conditions (Article 27)

The inadequate management of toxic waste produced by the CTPC has led to the contamination of soil and water, both surface and underground, in the Peravia province. The monthly combustion of 160,000 tonnes of coal produces large quantities of ash, whose cumulative volume amounts to more than five times the fossil fuel incinerated.¹²⁹ This waste is dumped outdoors and accumulates in three large mountains located in close proximity to the communities of Peravia and their food crops, and only two kilometres from the coast.¹³⁰



Mountains of toxic ash from the Punta Catalina Thermoelectric Power Plant. Batey San José, Peravia province. April 12, 2021 © CLNCC

127. In its assessments of states, the Committee has expressed concern about "the negative impact corruption may have on the allocation of already limited resources to effectively improve the promotion and protection of children's rights, including their right to education and health". Concluding Observations of the Committee on the Rights of the Child Republic of Congo. CRC/C/COG/CO/1. 20 October 2006. para. 14.

128. IACHR. Corruption and Human Rights. OEA/Ser.L/V/II. Doc. 236. 6 December 2019. para. 177.

129. It is estimated that the cumulated volume of ash amounts to more than 600,000 tonnes. Over the thirty years of the CTPC's lifespan, the ash deposit could amount to six million tonnes distributed over some thirty mountains in the province of Peravia. CTPC Pollution Study 2022, p. 90.

130. CTPC has dumped toxic ash on three large open-air mountains in the community of Catalina, each taller than an eight-storey building and the size of five football stadiums. *Ibid.* pp. 90 and 171.



Mountains of toxic ash from the Punta Catalina Thermoelectric Power Plant. Batey San José, Peravia province. November 23, 2021 © CNLCC

Analyses of the coal ash have shown that the waste is highly toxic, containing high levels of lime and heavy metals such as boron, barium, thallium, molybdenum, arsenic, selenium, lithium, lead, rubidium, strontium and calcium.¹³¹ Six of these substances are recognised as water contaminants under the WHO guidelines for drinking water quality¹³² and their concentrations exceed the threshold values in these guidelines.¹³³ In relation to lead, the Special Rapporteur on Toxic Substances noted that its high toxicity is beyond doubt, and around the world, hundreds of thousands of people continue to suffer diseases and experience disabilities as a result of contact with this substance.¹³⁴

According to the CTPC Pollution Study, to ensure the sustainable management of toxic coal ash, it is necessary to dispose of it in a complete landfill with a treatment plant for leachate from run-off water¹³⁵ and toxic leachate from this waste and from the Plant.¹³⁶ These treatment processes are indispensable to prevent water pollution from rainwater run-off into the river system, and the transfer of heavy metals into surface and groundwater through contact with the soil.

Despite this, and statements in the project's EIA, which indicates that coal waste "may under no circumstances be dumped in fragile environmental areas",¹³⁷ every day the CTPC dumps 5,500 tonnes of ash outdoors in the San José *batey*.¹³⁸ This area is a very fragile environmental space, not only because

131. In early 2021, Duke University (Durham, North Carolina, USA) analysed samples of ash produced by the combustion of CTPC coal. *Ibid.* p. 94.

132. Boron, barium, molybdenum, arsenic, selenium and lead are recognised by WHO as chemical contaminants in drinking water. WHO. Guidelines for Drinking-water Quality. Geneva, 2018. pp. 371, 377, 381, 462, 480 and 486. Available at: <https://www.who.int/publications/i/item/9789241549950>

133. CTPC Pollution Study 2022, p. 94.

134. Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes. Implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes. A/74/480. 7 October 2019. para. 76.

135. Run-off water refers to the flow of water over the surface of the ground, generally from rainfall. According to the Spanish Ministry of Agriculture, Fisheries, Food and Environment (MAPA), this water flows through the drainage network until it reaches the fluvial network, and its calculation is necessary to assess water resources. Fundación Aquae. "La escorrentía: un proceso clave en el ciclo del agua" (Run-off: a key process in the water cycle). Available at: <https://www.fundacionaquae.org/wiki/escorrentia/>

136. CTPC Pollution Study 2022, p. 95.

137. *Ibid.* p. 95.

138. *Ibid.* p. 96.

of its proximity to the Catalina river and the Pastor o Naranjo stream,¹³⁹ but also because of the high level of groundwater in the soil.¹⁴⁰

As a result of the uncontrolled release of toxic waste from the CTPC, it is highly probable that the water consumed by the inhabitants of the region, as well as the groundwater, is contaminated with heavy metals. Despite this evidence, managers at the Plant prevented the scientific teams in charge of the CTPC Pollution Study from establishing the extent of the environmental damage. As detailed in the study, the Plant's management did not authorise access to or sampling of groundwater in the ash yard at the Plant.¹⁴¹



March «Water yes, Coal no». Baní, Peravia province. March 19, 2015 © CNLCC

According to the CTPC Pollution Study, the ash mountains represent “a permanent environmental liability”, not only resulting in the release of substances harmful to the environment, drinking water quality and health in the vicinity of the Power Plant, but also the spread of pollution to surrounding water sources and soils.¹⁴² As they are deposited in the open air, ash easily spreads due to natural phenomena that are very frequent in the country, including troughs, storms and earthquakes.¹⁴³ In July and August 2021 alone, the island experienced three high-profile tropical storms,¹⁴⁴ which also impacted a large part of the Caribbean.

139. According to the CTPC Pollution Study, both bodies of water are located approximately 400 metres from the CTPC's coal ash mountains. *Ibid.*

140. The CTPC Pollution Study underlines that the soil in San José batey has a high-water table. This refers to the layers of water that accumulate in the soil at a certain depth. These layers provide nutrition for plants and are important sources of drinking water for human consumption. CTPC Pollution Study 2022, p. 96.

141. Against this background, the CTPC Pollution Study calls on the authorities to assess the quantity of heavy metals in groundwater as soon as possible, as a measure to prevent environmental damage to water reserves. In particular, it warns of the imminent danger of heavy metal contamination spreading to the Valdesia aquifer, one of the largest water reserves in the Dominican Republic. *Ibid.* pp. 22 and 26.

142. *Ibid.*

143. *Ibid.* p. 96.

144. Between July and August 2021, the Dominican Republic experienced storm Elsa in July, storm Fred on 11 August and storm Grace on 16 August.

Through its dispersion in the air, the toxic ash from the CTPC has affected sensitive and important crops in Peravia province, such as papaya (*lechosa*), melon and tomato. The high levels of lime in the coal ash have changed the pH of the soil and reduced crop productivity.¹⁴⁵ In group interviews conducted as part of the CTPC Pollution Study, farmers mentioned ash covering foliage, the occurrence of “rare crop diseases”, and the impossibility of producing the above crops. Some of the families interviewed had to abandon their farms due to intolerable levels of dust.¹⁴⁶

The pollution caused by the CTPC's toxic waste prevents children from enjoying their rights to health and an adequate standard of living, as it affects their access to conditions that are necessary to live in dignity, and to avoid malnutrition and disease, such as safe drinking water and safe and nutritious food. The inadequate management of waste from the Plant causes pollution to spread indiscriminately in the waters and soils of the Peravia province, affecting the rivers, wells and water reservoirs from which children drink, as well as the fruit trees and crops that feed them.

Children's exposure to heavy metals and other pollutants in food and water sources has serious effects on the physiological processes required for them to become healthy adults. Their exposure to toxic substances is higher than adults, as they need “to consume more food and water per unit of body weight”.¹⁴⁷ Thus, children are likely to absorb a greater proportion of harmful food and water-borne chemicals than adults.¹⁴⁸

In addition, children's bodies are more sensitive to the effects of exposure to toxic substances.¹⁴⁹ When children consume unhealthy food and water, their physical and cognitive development is permanently and even irreversibly altered, with long-term repercussions on their physical, emotional and social health and well-being. According to the Special Rapporteur on the right to a healthy environment, stunted growth in children under the age of five is one of the most notorious consequences of unsafe water and inadequate nutrition.¹⁵⁰ Stunting means that children are not only shorter than average for their age, but their immune systems are weaker and their brain development is slower.¹⁵¹

The soil degradation caused by coal ash from the CTPC has also deprived families in Peravia of the livelihoods necessary to ensure adequate conditions for their children's upbringing. As a result of the contamination of fruit trees and crops, the farming population of Peravia has not only faced reduced crop productivity but has had to abandon the land from which they derive their livelihoods. This has put livelihoods at risk in a region recognised nationally for its agricultural activity, and its leading role in the production of papaya and tomatoes,¹⁵² two of the crops affected.

Finally, fishing activity on the Sabana de Uvero beach has also been affected by the disappearance of marine life caused by the construction of the CTPC.¹⁵³ This situation has not only led to a decrease in fishing families' household income, but also to an impoverishment of the food available to the children of this community.

145. CTPC Pollution Study 2022, p. 26.

146. *Ibid.* p. 122. The land lease agreement signed between the Vicini family and the Dominican government also recognises the pollution of the lands surrounding the Punta Catalina Power Plant (long-term leasing contract for Plots Nos. 136 and 137, Cadastral District No. 2, Baní, Peravia province, Dominican Republic, 31 August 2015). Article 6.2.7. states that the owner of the land shall receive USD 36,375.00 in compensation for each hectare of organic sugar cane damaged by the “inadequate treatment of such waste, payable within a period not exceeding 60 days from the date on which the damage occurred”. Proceso. Punta Catalina land lease contract did not pass through Congress. 7 July 2017. <https://proceso.com.do/2017/07/07/contrato-de-arrendamiento-de-terrenos-para-punta-catalina-no-paso-por-el-congreso/>

147. Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, on the relationship between children's rights and environmental protection. A/HRC/37/58. 24 January 2018. para. 23.

148. *Ibid.* para. 20.

149. Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes. A/HRC/33/41. 2 August 2016. para. 2.

150. *Ibid.* para. 19.

151. *Ibid.*

152. The Plant is situated in an important agricultural area, known as “Llano Costero de Peravia”, which is the main producer of mangoes, papaya, onions and tomatoes in the country, among other intensive crops, and is also home to the most productive and highest value-added dairy cattle in the Dominican Republic. CTPC Pollution Study 2022, pp. 117 and 118.

153. According to the CTPC Pollution Study, reduction of marine habitat and life, especially coral reefs, has been caused by the installation of a seaward construction dyke by the CTPC, sedimentation due to debris from the first jetty built by the Odebrecht consortium (destroyed to make way for the current port), the large amount of coal shavings falling to the seabed during unloading and transfer of coal, and the hot water discharged into the sea by the Plant. *Ibid.* p. 26.

3.2.1. Violations of children's rights to the highest attainable standard of health and adequate living conditions through inadequate disposal of toxic waste and contamination of water and food sources

The state is responsible for its direct participation in the creation of environmental damage that prevents children from being able to develop and live in adequate and healthy conditions. In breach of its duty to respect children's rights, the state initiated the construction of the CTPC and has kept it in operation, even though it did not provide for an ecologically sound system of management and disposal of toxic waste from coal combustion. This decision by the state has in turn caused the indiscriminate dispersion of heavy metals, lime and other toxic substances into the waters and soils of Peravia province.

As a result of the uncontrolled production and release of CTPC's coal waste, the state has exposed the children of Peravia, as well as the rest of the population, to contaminated food and water. In other words, through its actions, the Dominican Republic has contributed to restricting children's access to clean water and safe food, and has also affected the ability of communities to produce their own food.

The outdoor dumping of toxic waste represents a breach of the state's duty to ensure and fulfil the rights to water and food. The creation of a "permanent environmental liability",¹⁵⁴ in the form of large heaps of toxic ash, not only affects food security and the availability of sufficient and safe water for present generations, but also access and enjoyment of food and water by future generations.

The Dominican Republic has a duty to act with due diligence to protect children from environmental harms that pose dangers and risks to their health and living conditions. The state breached this duty by failing to prevent children's exposure to the CTPC's toxic waste and its effects on the waters and soils of Peravia province.

Despite the permanent and irreversible effects on children's health and development of the environmental degradation caused by the CTPC, the state did not take their best interests into account as a primary consideration when deciding on its construction and coal-fired operation. The CTPC Pollution Study represents the first effort, after three years of the Plant being in operation, to at least identify the impacts of the Plant on the environment, health and lives of people, including children. Yet, the measurement initiative involved in the study was isolated and did not lead to an ongoing assessment of the CTPC's environmental impacts and their different effects on children's health, development and well-being. Further, the study did not lead to the adoption of precautionary and mitigation measures to address the impacts on children.¹⁵⁵

The state also failed to identify in advance the potential adverse effects of inadequate management of the CTPC's toxic waste on the conditions required for children to enjoy their health and live adequately, nor did it adopt measures to prevent the materialisation of these consequences.¹⁵⁶ According to the Special Rapporteur on Toxic Substances, these measures include "the modification, cessation or relocation of certain activities that present unmanageable or simply unknown risks to children".¹⁵⁷

The pollution described in this section could have been avoided if there had been a landfill site and a coal ash treatment plant. The absence of a proper waste management system was acknowledged one year after the CTPC became operational, at a press conference attended by the Ministry of Energy and Mines and the Plant's management. Officials indicated that the ash yard was in fact a "dumping site" and announced that steps would be taken to convert it into a landfill site with effective ash management.¹⁵⁸

154. *Ibid.* p. 96.

155. Given this lack of follow-up mechanisms, the technical recommendations of the CTPC Pollution Study urged the authorities to create a system for ongoing monitoring and surveillance of gas, particulate matter and ash emissions from the CTPC, as well as their impact on the health of the population. *Ibid.* p 27 and 86.

156. In the words of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, "At its most basic, human rights due diligence for toxic chemicals consists of identifying potential adverse impacts from businesses' activities and business relationships and taking active measures to prevent such impacts from materializing". Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes. A/HRC/33/41. 2 August 2016. para. 75.

157. *Ibid.* para. 81.

158. Z Digital. "Afirman que pasada administración de Punta Catalina convirtió patio de cenizas en un vertedero" (Claims that past administration of Punta Catalina turned ash yard into a dumping site). 29 December 2020. Available at: <https://z101digital>.

More than two years after this acknowledgement, the CTPC Pollution Study showed that poor waste disposal continues, and the state has failed to implement effective mitigation measures.¹⁵⁹

The lack of accurate measurements and absolute scientific certainty regarding the extent of groundwater contamination by heavy metals from the ash coming from the Plant should not delay the adoption of measures to prevent serious environmental damage, such as the imminent danger of affecting the Valdesia aquifer and other freshwater reserves.¹⁶⁰ As the Special Rapporteur on Toxic Substances has stressed, states should not wait for conclusive evidence of environmental damage before adopting measures, nor should they interpret difficulties in establishing causal links between harmful substances released into the environment and impacts on human health and life as synonymous with safety.¹⁶¹

3.3. Environmental pollution caused by the CTPC and its impact on children's rights to education (Article 28) and to play, leisure and recreation (Article 31)

Air pollution caused by the CTPC and indiscriminate exposure to toxic coal waste prevents children in the Peravia province from access to a safe and healthy environment for play and education. The proximity of the CTPC to their homes and schools means that their recreation, growth, and education take place in conditions that are detrimental to their survival, development and health. This situation has been called a "silent pandemic"¹⁶² by the Special Rapporteur on Toxic Substances, as exposure to pollution in air, water, food, playgrounds, houses and schools is invisible but affects children profoundly.¹⁶³

As the CTPC Pollution Study demonstrated, given the extent of pollution caused by the CTPC, and the high concentrations of gases, particulate matter and toxic waste from its emissions, no public or private place, including schools, schoolyards or playgrounds, offers a healthy and safe environment for children's education and free play. For example, air quality measurements carried out at the Máximo Gómez Primary School, which is attended by children aged six to ten and is located twelve kilometres from the CTPC,¹⁶⁴ showed that it is exposed to concentrations of fine particulate matter (PM_{2.5}) that exceed annual WHO's outdoor air quality guidelines.¹⁶⁵

The construction of the CTPC also led to the disappearance of the Sabana Uvero de Paya beach. With the breakwater of the CTPC coal port, the sea currents were diverted, causing sea floods and the erosion of the coast.¹⁶⁶ As a result, children lost a natural place for free play, while the rest of the population suffered the loss of a common good.

With the construction of the CTPC and its operation, the Dominican state failed in its obligation to respect rights, by directly interfering with enjoyment of the rights to play, recreation and education of children in the Peravia province. The release of high levels of unhealthy emissions, together with the inadequate treatment of toxic coal ash, and the destruction of the beach have made the Peravia province a dangerous and unhealthy environment for children to play and be educated. As demonstrated in previous sections of this report, the creation of this adverse environment for children's development, which systematically threatens various children's rights, including to play and education, is the responsibility of the state.

com/afirman-pasada-administracion-de-punta-catalina-convirtio-patio-de-cenizas-en-un-vertedero/

159. CTPC Pollution Study 2022, p. 26.

160. The CTPC Pollution Study warned of the imminent danger of heavy metal contamination spreading to the Valdesia aquifer, one of the largest water reserves in the Dominican Republic and recommended that the authorities urgently measure the level of heavy metals in groundwater to prevent environmental damage to water reserves. *Ibid.* pp. 22 and 26.

161. Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes. A/74/480. para. 25 and 26.

162. Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes. A/HRC/33/41. 2 August 2016. para. 4.

163. *Ibid.* para. 7.

164. CTPC Pollution Study 2022, p. 74.

165. *Ibid.* p. 75.

166. *Ibid.* p. 26.

4. RECOMMENDATIONS



Demonstration against the construction of the coal plants of the Punta Catalina Thermoelectric Power Plant. Bani, Peravia province. January 26, 2015 © CNLCC

4.1. General principles (Articles 3 and 6 of the CRC)

In order to ensure that the best interests of children are a primary consideration in the decisions of the authorities, and that children enjoy their right to life, survival and development, it is necessary that the state adopt measures to address the pollution caused by the Punta Catalina Thermoelectric Power Plant (CTPC), as well as the risks and impacts caused to children by its operation. Consequently, the state of the Dominican Republic is urged to:

- Adopt urgent measures to decarbonize its energy sector, starting with the definitive closure of the CTPC by 2028. Due to the serious impacts caused by its operation, it should be shut down immediately. However, one third of the country's electricity supply depends on the Plant, so its immediate closure could cause additional impacts on the rights of the population. To avoid these negative impacts, the state must urgently initiate the substitution of the coal-based energy generated by the Plant. This substitution must be completed within a non-extendable period of five years.
- Establish and implement an energy transition plan aimed at replacing electricity produced by coal and other fossil fuels with renewable energy sources and modalities. By 2028, the Dominican state should ensure that the 720 megawatts generated by the CTPC are produced in a sustainable, affordable, safe and non-polluting manner.
- Thoroughly assess the short, medium, and long-term impacts of the country's energy sector on the health and optimal development of children.

A first step to ensure this assessment is the creation and implementation of a permanent monitoring system for CTPC emissions. This system should include the measurement of daily, weekly and monthly concentrations of gases and particulate matter in the air in different areas of the Peravia province, and have a participatory mechanism for the adoption of precautionary

measures, especially in cases where emission levels exceed the thresholds of the WHO air quality guidelines. Information from the monitoring system should be publicly available and published by the state on a weekly basis.

A second step is to carry out longitudinal studies¹⁶⁷ that allow for the consolidation of information on the effects on children in the Peravia province, not only of the combined exposure to the substances released by the Plant in its emissions and waste, but also of the exposure during critical periods of child development and throughout their growth. Based on this assessment, the state must determine priority concerns regarding children's health and develop and implement action plans to address them¹⁶⁸.

- Adopt urgent measures to mitigate the risks that the CTPC operation poses to the proper development of children. Within these measures, an appropriate technical maintenance of the Plant is essential, giving special attention to technical failures that affect the increase in the levels of emissions, including defects in the operation of the air safety system (AQSC), among others.
- Adopt and enforce substantive environmental standards that protect children from pollution caused by public and private actors. The state should review the national standards that regulate gas and microparticle emissions and adjust them to the WHO air quality guidelines, which contain the best and most accepted scientific knowledge available on the matter¹⁶⁹.

4.2. Health, well-being and adequate standard of living (Articles 24 and 27 of the CRC) and education and recreation (Articles 28 and 31 of the CRC)

To ensure that children can grow and live in adequate and healthy conditions, as well as enjoy safe and healthy environments to play in and learn, it is necessary for the state to adopt measures to prevent and mitigate their present and future exposure to toxic waste. It must therefore act to respond to the pollution of water sources and soil degradation caused by the CTPC. Consequently, the state of the Dominican Republic is urged to:

- Guarantee the sustainable and ecological management of toxic coal ash produced by the CTPC, including that this waste is not released into the open air and in environmentally fragile areas. While the Plant remains in operation, the state should implement a proper deposit and treatment system for coal residues, designed to avoid leaks of toxic substances into the environment and the continued pollution of water and soil in the area.
- Promote the cleanup and rehabilitation of places that have been polluted as a result of the inadequate management of toxic coal ash from the CTPC. The state should ensure the deposit and adequate management of the more than 600,000 tons of waste that are currently deposited in the San José batey, in an open space, which continues to have harmful consequences for the health and lives of children in nearby communities, as well as the safety of the water and food they consume. The state must also address the community demands that these ashes be definitively removed from Peravia¹⁷⁰.
- Comprehensively evaluate the repercussions that the operation of the CTPC and the inadequate management of its toxic waste have on the availability of water for present and future generations in the Dominican Republic. An urgent measure to prevent the pollution of water reserves, including the Valdesia aquifer, is to carry out a study to establish the presence and amount of heavy metals coming from the ashes of the Plant in the bodies of water located near the waste, including groundwater.¹⁷¹

167. According to the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, studies of this type are one of the measures that states can adopt to "protect the rights of the child from toxic chemicals". Report of the Special Rapporteur on the human rights implications of the environmentally sound management and disposal of hazardous substances and wastes. A/HRC/33/41. August 2, 2016. Para. 110.

168. *Ibid.*

169. CTPC Pollution Study 2022, p. 82.

170. The municipalities of Baní and Nizao requested through a resolution of their municipal councils the transfer of the ashes from Punta Catalina outside the Peravia province. In their demands to the state, they demanded that "these ashes be collected and removed from the Peravia province as soon as possible". Acento. "The mountains of toxic ash from Punta Catalina coal grow". 2 August 2020. Available at: <https://acento.com.do/actualidad/aumentan-montanas-de-ceniza-contaminante-de-punta-catalina-8845193.html>

171. CTPC Pollution Study 2022, p. 98.

- Offer specialized, timely and free medical assistance to the population affected by the Plant, in particular in the areas with the highest concentration of pollution caused by the CTPC. The Nizao hospital, the closest municipality to the Plant, should have a pediatric unit specialized in treating diseases associated with coal combustion and exposure to its toxic waste.

4.3. General enforcement measures (Article 4 of the CRC)

In order to make children's rights effective, it is necessary for the state to promote effective accountability processes for violations against them. Consequently, the state of the Dominican Republic is urged to:

- Adopt the necessary measures to comply with the recommendation formulated in the examination of the periodic reports of the Dominican Republic in the 1932nd and 1934th sessions regarding actions to "prevent and combat corruption"¹⁷². Taking into account that the corruption that surrounded the construction of the CTPC could have been a determining factor in the violations of children's rights mentioned in this report, it is essential that these facts be investigated and punished with due diligence. The investigations should be aimed not only at identifying and punishing all those responsible for the acts of corruption, including public officials, third parties and private companies, but also at dismantling the corrupt schemes that facilitated the commission of these violations.
- Repair the damages caused by the CTPC, including reparations to families whose livelihoods and ways of life have been affected by the environmental pollution, as well as compensation for the loss of the common good of the Sabana de Uvero beach.

The eleven recommendations listed above were submitted to the Committee on the Rights of the Child in an alternative report, where the Committee was asked to make an urgent appeal to the State of the Dominican Republic to adopt the necessary measures to remedy the violations of children's rights caused by the operation of the Punta Catalina Thermoelectric Power Plant.

4.4. Recommendations to international cooperation agencies

Taking into account the environmental and human impacts caused by the operation of the Punta Catalina Thermoelectric Power Plant, the Inter-American Development Bank (IDB) and the World Bank are urged, within the framework of their assistance and financing initiatives to the State of the Dominican Republic for the decarbonization of its energy sector, to promote the definitive closure of the CTPC in 2028, and to desist from extending its operation until 2040, as currently planned by the IDB.

Likewise, these international cooperation agencies are urged to incorporate within their support programs for the decarbonization of the Dominican energy sector, measures for the cleanup and rehabilitation of sites contaminated by the inadequate management of the CTPC's toxic coal ash, including the deposit and proper management of the more than 600,000 tons of waste that are currently deposited in the open air in the San José batey.

172. Committee on the Rights of the Child. Concluding observations on the combined third to fifth periodic reports of the Dominican Republic. CRC/C/DOM/CO/3-5. March 6, 2015. Para. 12.



National Committee to Fight Climate Change (Comité Nacional de Lucha Contra el Cambio Climático - CNLCC)

The National Committee to Combat Climate Change (*Comité Nacional de Lucha Contra el Cambio Climático*, CNLCC) is a broad coalition of social, environmental and human rights organizations dedicated to lobbying, advocacy and mobilization for the protection of the environment and the prevention, mitigation and reduction of the impacts of global warming. Among the organizations that make up the CNLCC are the National Human Rights Commission (*Comisión Nacional de Derechos Humanos*, CNDH-DR), member organization of FIDH, the Institute of Lawyers for the Protection of the Environment (*Instituto de Abogados para la Protección del Medio Ambiente*, INSAPROMA), the Dominican Association of Teachers (*Asociación Dominicana de Profesores*, ADP), the Eastern Environmental Coalition (*Coalición Ambiental del Este*), the Macorís Verde Ecological Foundation (*Fundación Ecológica Macorís Verde*), the Ecological Society of Nizao (*Sociedad Ecológica de Nizao*) and the Dominican Association of Agroecology (*Asociación Dominicana de Agroecología*).

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Institute of Lawyers for Environmental Protection (Instituto de Abogados para la Protección del Medio Ambiente - INSAPROMA)

The Institute of Lawyers for the Protection of the Environment (*Instituto de Abogados para la Protección del Medio Ambiente*, INSAPROMA) is a non-profit organization with 22 years of experience in environmental protection, human rights, environmental education and the promotion of environmental governance. It accompanies vulnerable communities in the Dominican Republic fighting for a healthy and ecologically balanced environment, using the law before the courts as the main tool for environmental and climate justice.

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