

THE SITUATION OF HUMAN RIGHTS DEFENDERS IN



PERU

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At its last Universal Periodic Review (UPR) in October 2012, the Republic of Peru (Peru) received three recommendations related to human rights defenders. Peru agreed to protect human rights defenders from threats and intimidation and ensure their participation in the search for solutions to human rights problems. However, it merely took note of a recommendation to repeal criminal defamation laws which are often used against defenders and journalists. Five years later, defenders continue to face attacks and acts of criminalisation. The situation of those defending environmental and land rights is of particular concern.

A. RISKS FACING HUMAN RIGHTS DEFENDERS

1. The excessive and disproportionate use of force to suppress protests is a problem in Peru.¹ Between 2010 and September 2015, at least 79 civilians were killed by police forces.² The intervention of National Police and the Armed Forces in the control of demonstrations has resulted in serious violations of the right to life, personal integrity, association and freedom of expression. During 2015, Global Witness documented the murder of 12 defenders; 11 linked to extractive industries,³ and 9 killed by the police in the context of land and environment protests.⁴
2. Defenders and journalists are subject to physical aggression by State and non-State actors. The Committee on the Rights of the Child expressed concern about arrests and physical attacks against journalists and defenders, particularly those opposing extractive projects, and recommended Peru take measures to protect defenders' rights to freedom of expression and opinion without threat or harassment.⁵ Several UN Special Procedures have received recurrent complaints of physical attacks and harassment committed by mining company Yanacocha S.R.L. against Máxima Acuña, a beneficiary of precautionary measures of the Inter-American Commission of Human Rights (IACHR).⁶ Journalists and reporters covering protests are victims of physical assault, equipment seizure and arbitrary arrests. In January 2017, photographer Marco Antonio Ramón Huaroto received a metal pellet in his eye while covering a demonstration.⁷
3. Defenders are slandered and stigmatised by high-level State actors as well as non-state actors. They are often described as development opponents or destabilisers of the economy.⁸ In 2010, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism expressed concern about statements by senior officials associating defenders with terrorism.⁹ Media outlets have also referred to them as 'violent people, development enemies or anti-mine terrorists.'¹⁰ In 2014, the former Minister of Internal Affairs publicly discredited the Organization Coordinadora Nacional de Derechos Humanos (CNDDHH) associating it with terrorism.¹¹ In 2015, the Executive Secretary of CNDDHH drew attention to the use of public speeches associating environmental leaders with condemned terrorists and comparing social protests with terrorist acts.¹²
4. The criminalisation of social protests and the improper use of pre-trial detention are other obstacles defenders face. According to CNDDHH, in 2017 more than 800 people, including several social leaders, will be tried for participating in demonstrations; 70% are

related socio-environmental issues.¹³ Several social leaders have been criminalised: Gregorio Santos, mayor of Cajamarca, was charged with 'rebellion' for giving a speech against American Newmont Mining Corporation;¹⁴ Ydelso Hernández Llamo, president of the 'Central Única Nacional de Rondas Campesinas del Peru' (CUNARC), has received around 45 charges against him;¹⁵ and Milton Sánchez Cubas, Secretary General of the 'Plataforma Interinstitucional Celendina', has been subject to 50 unfounded criminal complaints.¹⁶

B. OFFICIAL RESTRICTIONS ON THE SPACE FOR HUMAN RIGHTS DEFENDERS

5. Legislative Decree 1095 of 2010 provides that the Armed Forces may support the National Police without the need for a declaration of a state of emergency.¹⁷ Between 2010 and 2015, the Armed Forces intervened repeatedly in the control of social protests, including demonstrations against mining project Tía Maria where around 50 reports of police abuse were documented.¹⁸ They also participated in protests against Las Bambas mining project, where the police used weapons, killing three demonstrators.¹⁹ The IACHR expressed concern about this practice and emphasised that security and internal order should be the exclusive competence of civilian police forces.²⁰
6. The Special Operations Division (DINOES), a militarized police force involved in the control of drug trafficking and terrorism, has also participated in the control of social protest. According to the CNDDHH, the DINOES follow the instruction of extractive companies and operate in areas where extractive projects are developed.²¹
7. Increased penalties and expansion of crimes have contributed to the use of pre-trial detention and criminal prosecution to suppress protests.²² For example, the crime of extortion was broadened to cover road blocks, punishable with up to 25 years in prison.²³ The International Commission of Jurists (ICJ) has considered this construction to be vague and imprecise, allowing it to be used to criminalise protests that affect roadway transit.²⁴ The crime of 'obstruction to the operation of public

services' and 'threats to internal security' are also vague.²⁵

8. The Third Provincial Prosecutor of Arequipa issued an order urging media outlets not to express opinion on a regional strike regarding mining projects. The International Federation of Journalists and the National Association of Journalists of Peru expressed concern about this restriction on freedom of the press.²⁶
9. Violence committed in the context of protests occurs with impunity. Since 2002 there has only been one conviction relating to the death of demonstrators. Impunity stems from the impossibility of identifying perpetrators. Officials do not carry identification, weapons and ammunition are not properly registered, and operations are not identified. Lack of due diligence in investigations and refusal to investigate police officers and political authorities has also contributed.

C. HUMAN RIGHTS DEFENDERS FACING PARTICULAR RISKS

10. Environmental and land rights defenders face greater obstacles in exercising their work. The Ombudsman's Office of Peru documented 214 active social conflicts in January 2017, of which 144 are socio-environmental.²⁷ Global Witness has classified Peru as one of the most dangerous places for environmental defenders.²⁸
11. Indigenous leaders face great risks for defending their ancestral territories. The Special Rapporteur on the rights of indigenous peoples indicated that excessive use of force, undue criminal prosecution and difficulties in accessing the justice system are some of the obstacles faced by indigenous people who oppose extractive projects.²⁹
12. Journalists have been attacked and threatened by both State and non-State actors. During 2015, the Special Rapporteur on Freedom of Expression of the IACHR documented at least

10 physical attacks by police officers against journalists,³⁰ often while journalists were covering protests against extractive companies. In 2015, Juan Jordan Lino Escobar and Claudia Cisneros Méndez were attacked by the police while covering protests against Pluspetrol.³¹ Journalists also face charges of defamation. In 2016 two journalists were convicted of aggravated defamation. This ruling violates the right to freedom of expression³² and shows the lack of progress made in repealing this offence. The Special Rapporteur also urged Peru to amend legislation criminalising expressions of public interest and expressions against public officials.³³

D. THE RESPONSE OF THE STATE REGARDING THE PROTECTION OF HUMAN RIGHTS DEFENDERS

13. In August 2015, Legislative Decree 1186³⁴ established for the first time a specific legal framework regulating the use of force by the police in accordance with international principles.³⁵ However, to date, police operational procedures have not been regulated and adequate equipment and training has not been provided to guarantee officers act in accordance with these standards.³⁶

14. In September 2016, the Bagua Criminal Court acquitted 53 indigenous and non-indigenous persons indicted on various counts, including the killing of 12 police officers during clashes in June 2009.³⁷

15. However, no police officer has been investigated or prosecuted in relation to the death of 10 civilians at that same event. It is essential that the State conduct a thorough and impartial investigation into the death of civilians and police officers to prevent impunity prevailing.

16. During its 157th session, the State informed the IACHR that on 6 April 2016 a resolution was approved requiring the General Directorate of Human Rights of the Ministry of Justice and Human Rights to design a protocol to guarantee the protection of human rights defenders in Peru.³⁸ However, this protocol has not yet materialised.

E. RECOMMENDATIONS TO THE GOVERNMENT OF PERU

17. Combat impunity by ensuring the prompt, thorough and impartial investigation of all violations and killings of human rights defenders, the prosecution of perpetrators, and access to effective remedies for victims.
18. Immediately and urgently take all necessary measures to guarantee the right to life, integrity and security of human rights defenders, especially those working in defence of the land and environment, as well as journalists.
19. Refrain from criminalising the legitimate activities of human rights defenders and repeal all laws and policies which restrict their activities and rights, including criminal defamation laws.
20. Recognise the legitimate role of human rights defenders by creating and maintaining an enabling environment so that both advocates and journalists can carry out their work without threat of violence or reprisals.
21. In consultation with civil society, develop and implement a national law for the recognition and protection of human rights defenders, with a specific mechanism with adequate resources for their protection against risks that come from State and non-State actors, that is in line with the UN Declaration on Human Rights Defenders.
22. Provide safe spaces for meaningful civil society participation in the development and implementation of public policies, in particular those guaranteeing free, prior and informed consultation of communities affected by economic and development projects.
23. Mandate and resource a human rights defender focal point in the national human rights institution, Defensoría de Pueblo.
24. Implement, with the participation of civil society, a system to prevent and monitor the use of force and ensure the provision of training and equipment to guarantee the safety and security of demonstration participants.

¹ <https://www.amnesty.org/es/documents/pol10/4800/2017/es/> page 354.

² <https://www.icj.org/wp-content/uploads/2016/03/Peru-DESC-extractives-Publications-Reports-Facts-Finding-Mission-Report-2016-SPA.pdf> page 38.

³ Ibid. page 8.

⁴ <https://www.globalwitness.org/en/campaigns/environmental-activists/dangerous-ground/> page 16.

⁵ www.undocs.org/CRC/C/PER/CO/4-5 par 21-22

⁶ <https://spdb.ohchr.org/hrdb/33rd/public> - UA PER 01.04.16 (1.2016).pdf

⁷ <http://peru21.pe/actualidad/puente-piedra-fotografo-peru21-resultado-herido-enfrentamiento-2267049>

⁸ Supra No. 2.

⁹ www.undocs.org/A/HRC/16/51/Add.3 par 36.

¹⁰ http://derechoshumanos.pe/informe2014_15/Criminalizacion_de_la_Protesta_2014_15.pdf page. 46.

¹¹ Ibid. page 40.

¹² <http://derechoshumanos.pe/2015/07/oficina-de-proteccion-de-defensores/>

¹³ Supra No. 10, page 45.

¹⁴ <https://www.fidh.org/IMG/pdf/criminalisationobsangocto2015bassdef.pdf> at 17-18

¹⁵ Frontline Defenders, 'Defensores y defensoras del medio ambiente en riesgo en Perú' Junio 2014, page 5.

¹⁶ https://static1.squarespace.com/static/560b18b0e4b067a54c32c76a/t/56151758e4b0e58796c24df3/1444222808848/CongaNoVa_Evaluacion.pdf

page 19.

¹⁷ Supra No. 2, page 41.

¹⁸ <http://rpp.pe/peru/actualidad/coordinadora-de-ddhh-pide-levantar-estado-de-emergencia-en-islay-noticia-803785>

¹⁹ <https://www.fidh.org/es/region/americas/peru/fidh-exige-investigacion-imparcial-y-exhaustiva-por-ejecuciones-de>

²⁰ <http://www.oas.org/es/cidh/docs/anual/2015/doc-es/informeannual2015-cap4a-fuerza-es.pdf> par 46.

²¹ Supra No. 9, page 42.

²² <https://www.fidh.org/IMG/pdf/criminalisationobsangocto2015bassdef.pdf> page 23.

²³ <https://www.fidh.org/IMG/pdf/criminalisationobsangocto2015bassdef.pdf> page 23.

²⁴ Supra No. 2, page 36.

²⁵ <https://www.fidh.org/IMG/pdf/criminalisationobsangocto2015bassdef.pdf> page 22.

²⁶ <http://www.ifi.org/nc/es/news-single-view/category/news-3/article/la-fip-y-su-afiliado-peruano-anp-denuncian-amenaza-contr-la-libertad-de-prensa-en-arequipa/>

²⁷ http://www.defensoria.gob.pe/conflictos-sociales/objetos/paginas/6/48Reporte_mensual_de_conflictos_sociales_n_155_-_ene.pdf page 8

²⁸ Supra No. 3.

²⁹ <http://www.undocs.org/es/A/HRC/27/52/Add.3> par 26-27

³⁰ <http://www.oas.org/es/cidh/expresion/docs/informes/anauales/InformeAnual2015RELE.pdf>

³¹ Ibid. par 135-1036.

³² [http://derechoshumanos.pe/2016/05/cnddh-expresa-su-preocupacion-ante-fallo-que-atenta-contr-la-libertad-de-expresion-en-el-peru/;](http://derechoshumanos.pe/2016/05/cnddh-expresa-su-preocupacion-ante-fallo-que-atenta-contr-la-libertad-de-expresion-en-el-peru/)

<http://derechoshumanos.pe/2016/04/preocupacion-por-sentencia-contr-ex-director-de-diario-16-y-por-situacion-de-la-libertad-de-expresion/>

³³ <http://www.oas.org/es/cidh/expresion/showarticle.asp?artID=1020&IID=2;>

<http://www.oas.org/es/cidh/expresion/showarticle.asp?artID=1024&IID=2>

³⁴ <http://www.leyes.congreso.gob.pe/Documentos/DecretosLegislativos/01186.pdf>

³⁵ Supra No. 2, page 39

³⁶ <http://derechoshumanos.pe/2016/05/organizaciones-de-derechos-humanos-presentan-observaciones-al-proyecto-de-reglamento-que-regula-uso-de-la-fuerza-policial/>

³⁷ <http://derechoshumanos.pe/2016/09/cnddhh-sobre-la-sentencia-del-caso-bagua/>

³⁸ <https://www.minjus.gob.pe/wp-content/uploads/2016/11/01-Informe-2011-2016-integrado-final.pdf> page 140-141;

<http://derechoshumanos.pe/2016/04/peru-en-audiencias-ante-comision-interamericana-de-derechos-humanos/>.

About this briefing paper: ISHR and the Coordinadora Nacional de Derechos Humanos (CNDDHH) encourage States to consult UPR submissions by local activists as well as to make a recommendation to Peru regarding the protection of human rights defenders. This briefing is a result of both compilation of public information and direct information and experience of the CNDDHH. ISHR and the CNDDHH suggest readers consult the sources cited for further information. For further information about this briefing paper, contact Eleanor Openshaw at e.openshaw@ishr.ch and Mar Pérez at marperez@derechoshumanos.pe.