

PERU

UNDERMINING RIGHTS

The erosion of human rights by economic interests



February 2021

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The members of Group for the Protection of Human Rights Defenders (Peru) participated in the elaboration of this report and fully endorse its content:

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LIST OF ACRONYMS

ACHR	American Convention on Human Rights
ANFASEP	National Association of Families of Kidnapped, Detained and Missing Persons of Peru (<i>Asociación Nacional de Familiares de Detenidos y Desaparecidos del Perú</i>)
ANP	National Association of Journalists of Peru (<i>Asociación Nacional de Periodistas del Perú</i>)
BHRRRC	Business and Human Rights Resource Centre
CGTP	Workers' General Confederation of Peru (<i>Confederación General de Trabajadores del Perú</i>)
CNAs	Critical National Assets
CNDDHH	National Coordinator for Human Rights of Peru (<i>Coordinadora Nacional de Derechos Humanos</i>)
CNDH	National Human Rights Council of Peru (<i>Consejo Nacional de Derechos Humanos</i>)
CPP	Peruvian Press Council (<i>Consejo de la Prensa Peruana</i>)
CVR	Truth and Reconciliation Commission of Peru (<i>Comisión de la Verdad y Reconciliación - CVR</i>)
DINI	National Intelligence Directorate (<i>Dirección Nacional de Inteligencia</i>)
FTCCP	Federation of Civil Construction Workers of Peru (<i>Federación de Trabajadores en Construcción Civil de Perú</i>)
IACHR	Inter-American Commission on Human Rights
IAPA	Inter American Press Association
ICCPR	International Covenant on Civil and Political Rights
ILO	International Labour Organisation
INACN	National Inventory of Critical National Assets (<i>Inventario Nacional de Activos Críticos Nacionales</i>)
LGBTIQ	Lesbian, Gay, Bisexual, Transgender, Intersex and Queer
OHCHR	Office of the United Nations High Commissioner for Human Rights
PNP	National Police of Peru (<i>Policía Nacional del Perú</i>)
SERVIR	National Civil Service Authority of Peru (<i>Autoridad Nacional del Servicio Civil</i>)
TC	Constitutional Court of Peru (<i>Tribunal Constitucional</i>)
UN	United Nations
UPR	Universal Periodic Review

I. EXECUTIVE SUMMARY

Who are human rights defenders?

Defending human rights in Peru is a risky profession: human rights defenders live under constant threat of attack and criminalisation for carrying out their work. They suffer significant stigmatisation at the hands of the media, the authorities, and public officials. Constant references to human rights defenders as “agitators,” and to human rights organisations as “defenders of terrorists,” creates a climate that facilitates attacks against them.

Moreover, the criminalisation of human rights defenders persists, affecting many types of human rights defenders in Peru, including journalists, trade unionists, defenders of victims of the internal armed conflict and communities defending land and territory. Community leaders, indigenous defenders, and members of *Rondas Campesinas*¹ (*ronderos*) are particularly affected by this practice, which sees them face charges for criminal offences such as extortion (*extorsión*) and kidnapping (*secuestro*).

The killing of **union leaders** continues, as highlighted by the murder of **Jerson Henry Noé Suárez**, Labour Defence Secretary of the Union of Construction Workers of the Province of Sullana (*Secretario de Defensa Laboral del Sindicato de Trabajadores en Construcción Civil de la provincia de Sullana*) in July 2020. This situation is fuelled by the existence of criminal organisations which took advantage of the automatic registration of trade unions between 2008 and 2014 to set themselves up as fake trade unions and are continuing to use their seemingly legal status to threaten workers. The Federation of Construction Workers of Peru (*Federación de Trabajadores en Construcción Civil de Perú – FTCCP*) has repeatedly denounced this practice.

Journalists are another particularly vulnerable group. According to the Peruvian Press Council (*Consejo de la Prensa Peruana - CPP*), investigative journalists in Peru face serious threats and harassment, especially in connection with the coverage of sexual abuse or corruption by officials and other State authorities. For example, in 2020, three media outlets that had been critical of the regional government of Inca had their equipment confiscated and their broadcasts taken off air following the investigation of a complaint by the regional governor’s family. Likewise, during the COVID-19 health emergency, journalists and social communicators have received administrative sanctions for covering social protests on the grounds of their alleged violation of health regulations. There were repetitions of cases like that of journalists Rudy Huallpa Cayo and Marco Antonio “Atoq” Ramon, which is detailed in this report, during recent demonstrations that took place from November 9 to November 15, 2020. In that period, the National Association of Journalists of Peru (*Asociación Nacional de Periodistas del Perú - ANP*) documented multiple attacks on journalists, many of whom were injured by the police².

On the other hand, defenders of land and territory or environmental defenders encounter systematic violations linked to the implementation or development of extractive projects, agro-industry, real estate developments and infrastructure projects. The stigmatisation they face for criticising these projects is compounded by repressive measures, such as the excessive use of force or militarisation of their lands, which is often facilitated by state of emergency declarations. Between 2012 and 2020, there were 15 deaths resulting from social conflict and protests linked to extractive projects – primarily mining. A prominent example that is also covered in this report, is the Las Bambas project, where there were four fatalities following the intervention of the Armed Forces and the National Police of Peru (*Policía Nacional del Perú - PNP*).

1. *Rondas Campesinas* are community organisations that emerged in rural areas of Peru in the 1970s in response to the lack of protection of rural areas by the State. They are autonomous organisations intended to protect human rights in rural areas, and are regulated by Peruvian Law No. 27908 which recognises the right of *Rondas* to participate in Peruvian political life, their conciliatory capacity and their general support for the administration of justice.

2. ANP, documentation available at: <https://fr.scribd.com/document/483844393/Informe-Ataques-a-Periodistas-durante-protestas-del-9-y-10-Noviembre-2020>

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Women human rights defenders experience double discrimination in Peru for being both women and defenders. Attacks against them are characterised by various forms of sexual and gender-based violence, and the use of patriarchal power structures to deter their work. Women defenders' motherhood is also used against them, as they are discredited for supposedly failing to fulfil their roles as protectors and carers or for putting their children at risk. In addition, **LGBTIQ people** suffer as invisible victims of sexual violence, discrimination and even repression. The lack of a gender perspective makes it impossible to identify the specific risks faced by these traditionally excluded groups or the differential impacts on those who are attacked for defending their rights.

Defenders of truth and justice also suffer profound stigmatisation, as they are labelled "defenders of terrorists" or "terrorist sympathisers" by groups opposed to investigating what happened during the internal armed conflict. A prominent example of this was the glorification of terrorism investigation opened against members of the National Association of Families of Kidnapped, Detained and Missing Persons of Peru (*Asociación Nacional de Familiares de Detenidos y Desaparecidos del Perú* - ANFASEP) in 2017, following the exhibition of images of State abuse in the Museum of Memory founded by the Association.

Sources of vulnerability of defenders

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A series of constitutional and legal amendments have been passed in Peru in recent years, which have reduced guarantees for citizens and had a negative impact on human rights defenders. A punitive legal framework has been created for the defence of human rights. Article 2 of the Constitution of Peru (*Constitución Política del Perú*), which protects the right to personal liberty, was amended under Law 30558, extending the pre-charge detention period. Along with this new regulatory framework, different legislative decrees granting powers of detention to the PNP, has led to police control of social protests. In many cases this has resulted in excessive use of force and abuse of power and has increased the vulnerability of human rights defenders.

This includes the amendment of the criminal offences with which defenders are frequently charged, to give them excessively broad definitions that violate the principle of legality. It also includes the incorporation of new crimes and changes in procedural rules that encourage the investigation, prosecution, and punishment of those who exercise the right to protest, and consequently has a significant impact on the work of defenders.

Another alarming aspect of the transformation of the Peruvian justice system is the creation of a system that allows the Special Prosecutor's Office for Crime Prevention (*Fiscalía especial de prevención del delito*) of the Peruvian Public Ministry (*Ministerio Público*) to hear proceedings intended to prevent crimes. As social conflict in the country has increased, this system has been repeatedly used as an intimidation and repression mechanism to prevent people exercising their right to protest, and particularly against community leaders who report the violation of rights by extractive companies.

Other causes of concern include the new Law on Police Protection that grants legal protection to police officers if they cause injury or death when using their weapons (regardless of whether they acted lawfully), and the elimination of the principle of proportionality in the use of force. Both developments contravene constitutional and international standards recognising the right to life and personal integrity, and the principles governing the use of force, in addition to fostering impunity. This situation is further complicated by Article 4.3 of Legislative Decree 1095, which authorises the armed forces to intervene to protect infrastructure or public utilities in coordination with the PNP.

In recent presidential terms, many people have been injured in social protest contexts – some of them seriously. There have also been deaths, mostly of indigenous peoples, which seems to indicate a marked discriminatory bias in the use of force. This excessive use of force took place under increasingly frequent state of emergency declarations which had

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become devoid of their exceptional and temporary nature. A case in point is the Apurímac-Cusco-Arequipa mining corridor (*corredor minero*), where between 2017 and 2019 alone five states of emergency were decreed, which were extended thirteen times. It was not until 2021 that the Peruvian Constitutional Court (*Tribunal Constitucional* - TC) issued a decision prohibiting these preventive states of emergency.

In addition, there is the legal concept of extraordinary police services, which allows the PNP to enter into agreements with public or private entities. These agreements enable the PNP to provide security services to the private sector, breaching the State's monopoly on the use of force. These agreements undermine both the duty to preserve public order and the protection of fundamental rights, as they allow policing to be commodified and purchased by those who can afford to pay for it.

Another major source of vulnerability stems from the regulation, since 2017, of Critical National Assets (CNAs). Although the purpose of this regulation is to protect resources, infrastructure and systems that are essential and indispensable to the State, its current formulation means that mining and energy operations can be classed as NCAs and action such as protests against these companies can be defined as sources of risk that disrupt public order. In view of this, the Peruvian Ministry of Defence and the Interior (*Ministerio de Defensa e Interior*) might ask the Armed Forces and the PNP to directly intervene in the territories concerned, obstructing the exercise of the rights to demonstrate and to social protest. Given the context of high conflict—especially of a social and environmental nature—, this also favours the potential disproportionate use of force.

These reforms and measures packages reflect a tough, heavy-handed policy in the face of the social conflicts that have arisen in the country in recent years and have had an impact on the prosecution of human rights defenders.

Persecution of freedom of expression is an ongoing reality in Peru. Journalists working in the country are the worst affected, suffering direct threats against them. There have been cases of the police arbitrarily confiscating their recording equipment, and of journalists being criminally prosecuted for their broadcasting or investigative work. A worrying trend is emerging of journalist human rights defenders being charged with the criminal offence of defamation. In addition, the **criminalisation of social protest** has led to many human rights defenders being detained and prosecuted. While most cases end in acquittal or the case being closed, they involve lengthy investigations that have a profound physical and psychological impact on those being prosecuted and repress their right to defend rights.

Despite its importance in allowing workers to secure their rights, **freedom of association** has also been obstructed in practice in Peru. Therefore, it is unsurprising that union membership rates are very low. In addition, there is a significant gender gap in unionisation, especially in the private sector. Current legislation in both the private and public sectors adheres to an interventionist and restrictive model in its view of trade union rights, with severe restrictions and limits on the formation of trade union organisations, collective bargaining, and controls on the right to strike. When the petitions and demonstrations of union members or associates go against the government or its policies, action is often deployed to repress or limit freedom of expression, and criminal proceedings are even brought against their main representatives, limiting their work.

Lastly, concerning the **exercise of customary law**, despite Article 149 of the Constitution recognising the existence of a special jurisdictional system for **peasant and native communities and Rondas Campesinas**, in practice a multitude of conflicts of jurisdiction have arisen when indigenous communities attempt to apply their own system of justice in their territories.

State action for the protection of human rights defenders

In view of the above, the failure of the Peruvian authorities to guarantee the defence of human rights and to advance in the fight against impunity for attacks against human rights defenders is alarming.

On April 25, 2019, the Ministry of Justice and Human Rights of Peru (*Ministerio de Justicia y Derechos Humanos del Perú* - MINJUSDH) approved the Protocol for the Protection of Human Rights Defenders (*Protocolo para garantizar la protección de personas defensoras de derechos humanos*). However, the Protocol is lacking a national scope since it does not specify mechanisms by which defenders from peasant or indigenous communities can directly access protection measures. It is also lacking an intersectional approach, which would enable the problem to be addressed holistically. Thus, despite being an important document that recognises the need to develop tools to protect defenders, the existing protection measures it contains are entirely precarious. There is also a significant lack of funding for their implementation.

Impunity for attacks on human rights defenders and the **misuse of criminal proceedings** are also matters of reality in Peru. The role of the police force does not comply with international human rights standards, particularly in the mining region in the South of the country and other conflict zones. There are many shortcomings relating to its structure, its bias in favour of business groups as a result of the agreements between companies and the PNP, and its tendency to use excessive force to repress protest. Investigations into deaths are usually closed by the Public Prosecutor's Office (*Fiscalía*), without identifying those responsible for the deaths or the circumstances in which they occurred. Many deaths occur during declarations of a state of emergency.

Finally, the **business sector** in Peru plays an important role in fuelling the climate of insecurity and attacks against human rights defenders, often enabling, or sponsoring these attacks. Defenders of land and territory have been particularly affected. For example, there was documented interference of business groups in decision-making spaces where the signature of the Escazú Agreement was being discussed³. The consolidated database of attacks on defenders from the Business and Human Rights Resource Centre (BHRRC) shows 120 attacks on defenders between 2017 and 2020. According to this database, 92 of these attacks (i.e., 76.6%) were associated with the operations of formal companies and primarily comprised criminalisation (40.83%) and murders (21.6%). Attacks on human rights defenders were most frequently carried out by the mining (58.3%) and agricultural export (20.83%) sectors.

3. The Escazú Agreement is the first environmental treaty for Latin America and the Caribbean. It was opened for signature by countries on September 27, 2018 at the UN. For more information on the Agreement, see: <https://www.cepal.org/es/acuerdodeescazu>

II. INTRODUCTION

This report began to take shape in 2018, under the alliance between the Peruvian National Coordinator for Human Rights (*Coordinadora Nacional de Derechos Humanos* - CNDDHH) and the World Organisation Against Torture (OMCT), within the framework of the Observatory for the Protection of Human Rights Defenders (the Observatory), an OMCT and International Federation for Human Rights (FIDH) joint programme. Our organisations noted with concern that despite the enormous difficulties faced by human rights defenders in Peru, their situation was little known to the international community. According to CNDDHH figures, 119 defenders were killed between 2011 and 2018, and in 2017 more than 800 defenders faced criminalisation. On January 12, 2021, the United Nations (UN) Human Rights Office (OHCHR) published a report documenting the unnecessary and excessive use of force during protests that took place from November 9 to November 5, 2020 in Peru, as well as the restrictions, threats and attacks on journalists, media and human rights defenders attending the demonstrations⁴.

In addition to the alarming number of attacks against human rights defenders, our organisations found it remarkable that Peru had no protection mechanism or public policy for human rights defenders. This exception placed Peru among the few countries that had no public policy on human rights defenders, in a regional context where many States are already making progress in this area.

The CNDDHH and the Observatory implemented a two-pronged strategy.

On the one hand, they developed a joint strategy to lobby the Peruvian authorities, to try to advance the development of a public policy for the protection of human rights defenders.

In October 2018, the OMCT and the CNDDHH organised a strategic workshop in Lima on public policies for the protection of human rights defenders and organisations, in which the member organisations of the CNDDHH Working Group on Human Rights Defenders participated. The CNDDHH and its member organisations participated in numerous meetings and consultations with the Peruvian Ministry of Justice and Human Rights (*Ministerio de Justicia y Derechos Humanos* – MINJUSDH) to move forward in this area.

Due to a lack of progress on these matters, the CNDDHH and the Observatory organised a hearing before the Inter-American Commission on Human Rights (IACHR) on February 14, 2019 in Sucre, Bolivia, as part of the 171st session period. Note that during another hearing before the IACHR in May 2016, representatives of the Peruvian State had committed to developing an inter-institutional protocol for the protection of human rights defenders, so this new hearing was held for accountability for purposes in the absence of any progress.

These efforts contributed to the adoption, on April 25, 2019, of the Protocol for the Protection of Human Rights Defenders. As we will outline in this report, the Protocol is a positive first step for Peru towards complying with its international obligations and developing a State policy for the comprehensive protection of defenders, which involves other institutions such as the Peruvian Ministry of the Interior (*Ministerio del Interior* – MININTER) and the National Public Prosecutor's Office (*Fiscalía de la Nación*).

Secondly, in addition to advocacy action for the promotion of public policy, the CNDDHH and the Observatory initiated a joint analysis of the situation of human rights defenders in Peru, delving into some of the main issues that exacerbate their vulnerability.

4. UN. Report on the Mission to Peru November 17 to November 22, 2020 (2021). Available at: https://www.ohchr.org/Documents/Countries/PE/Informe-Mission-Peru_SP.pdf

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The report was drafted based on the documentation work of the CNDDHH and its member organisations and was supported by an international fact-finding mission launched by the OMCT within the framework of the Observatory. The mission was carried out from June 4 to June 9, 2018 in the Departments of Lima and Cusco, jointly with the CNDDHH, and for the activities carried out in Cusco, with the valuable support of the organisation Human Rights Without Borders (*Derechos Humanos Sin Fronteras* - DHSF).

The delegation was composed of Claudia Virginia Samayoa (Guatemalan national, President of the Unit for the Protection of Human Rights Defenders of Guatemala (*Unidad de Protección a defensoras y defensores de Derechos Humanos de Guatemala* - UDEFEGUA) and member of the Executive Council of the OMCT), and Miguel Martín Zumalacárregui (Spanish national, Head of OMCT Brussels Office and Human Rights Adviser at the Observatory). The mission was accompanied by Jorge Bracamonte (Executive Secretary of the CNDDHH).

In addition to analysing current sources of vulnerability for human rights defenders, the report proposes specific recommendations on measures that the CNDDHH and the Observatory have identified as necessary to guarantee the defence of human rights in Peru.

This report is also a tribute to all the human rights defenders in Peru who continue their work defending human rights every day, despite all the difficulties they face.

III. CURRENT CONTEXT

In 2020, the situation in Peru has been marked not only by the pandemic but also by the materialisation of a deep political crisis following successive corruption investigations, which have undermined the legitimacy of institutions. As a result, the country has witnessed an intensification of police abuse against the population, rather than a focus on protecting the right to health for all. Those engaged in the defence of human rights have also experienced significant criminalisation and stigmatisation.

Despite the enormous difficulties faced by human rights defenders in Peru, the complexity of their situation is little known to the international community. According to CNDDHH figures, since 2002, more than 960 human rights defenders have been criminalised and, between 2011 and 2021, 220 defenders were killed.

In recent years, corporate mega-projects have continued to multiply and with them, protests to prevent them or denounce their negative impact on human rights and the environment. Many defenders of indigenous rights, land and territory continue to be threatened and attacked by people linked to companies operating –some of them illegally– in their territories. At least four defenders of land and territory were killed in 2020.

One of the strategies used by the authorities to contain this reaction has been the criminalisation of those who defend rights, and the declaration and extension of preventive states of emergency that obstruct their work. These states of emergency also violate the international commitments assumed by the State, as they are not based on a serious and imminent risk to national security and do not satisfy the requirements of strict necessity.

In late 2020, the country saw the excessive use of force by the PNP and Armed Forces against people exercising their right to social protest. Since the commencement of social protests on November 10, 2020, following the announcement in the Peruvian Congress (*Congreso del Perú*) of President Martin Vizcarra's removal from office, human rights violations in the country have surged. There was heavy repression of demonstrations again on November 12, 14 and 15, 2020, despite their peaceful nature, with many people left injured or missing, and even several deaths. Violence escalated after the government issued dangerous messages aimed at delegitimising the protests.

These acts were facilitated by the passing, on March 28, 2020, of Law No. 31012 on Police Protection, which contravenes constitutional and international standards recognising the right to life and personal integrity, and the principles regulating the use of force, thus fostering impunity. In fact, this law is unconstitutional, since it grants legal protection to police officers who cause injury or death through the use of their weapons, regardless of whether they have acted lawfully. Furthermore, it eliminates the principle of proportionality, previously enshrined in Legislative Decree No. 1186 on the Use of Force by the PNP, doing away with an indispensable requirement for ensuring that State security forces do not act in an arbitrary or abusive manner in the line of duty.

While there has been some progress, such as the approval of the Protocol for the Protection of Human Rights Defenders, it is still necessary to develop a State policy for the comprehensive protection of human rights defenders, which addresses the structural sources of vulnerability of human rights defenders. This policy should include a new model for dealing with social conflict that avoids criminalising human rights defenders, as well as reforms to the Criminal Code (*Código Penal*) and greater protection concerning the role of the police.

Ahead of the 2021 elections, this report reveals a disturbing reality in a country where the defence of human rights is a risky activity. The next government will have the opportunity to fulfil its obligation to promote and protect human rights, which also includes the duty to ensure that people can protect and defend these rights and do so in a safe environment where their lives and physical and psychological integrity are not in constant danger.

IV. WHO ARE HUMAN RIGHTS DEFENDERS IN PERU?



March 29, 2016 - Hunger strike in front of the Ombudsman's Office (*Defensoría del Pueblo*), Lima. © Atoq Wallpa Sua

1. A defender is a person who defends human rights

Article 1 of the UN Declaration on Human Rights Defenders states: "Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels⁵." Accordingly, a human rights defender is a person who is individually or collectively committed to human rights, regardless of their occupation, identity, or leadership.

In recent years in Peru, the media, the authorities, and public officials have developed an extractivist discourse that has seriously impinged on human rights defenders and organisations that oppose extractivism⁶. On the one hand, it has normalised the labelling of human rights defenders as "agitators" and human rights organisations as "defenders of terrorists." And, on the other hand, it has created a climate that facilitates attacks on human rights defenders in the country.

This is compounded by various amendments to the Constitution and Criminal Code, which began during the second government of former president, Alan García Pérez, and have given rise to: i) a punitive legal framework for the defence of human rights, and ii) increased criminalisation of human rights defenders, as detailed in this report.

5. See: Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. Available at: <https://www.ohchr.org/Documents/Issues/Defenders/Declaration/declaration.pdf>

6. See: ROCÍO SILVA SANTISTEBAN: Perros y antimineros: discursos extractivistas y prácticas represivas en el Perú. Available at: <https://www.redalyc.org/jatsRepo/396/39646776004/html/index.html>.

2. Trade unions

The killing of **Jerson Henry Noé Suárez** took place in July 2020. He was the Labour Defence Secretary of the Union of Civil Construction Workers of the Province of Sullana, and President of the Collegiate Front for the Defence of the Rights and Interests of the Province of Sullana (*Presidente del Frente Colegiado por la Defensa de los Derechos e Intereses de la Provincia de Sullana*), which was formed in 2017 by civil society.

The General Secretary (*Secretario General*) of the FTCCP reported that he was shot several times by a group of hired killers at the Waste Water Treatment Plant construction site where work was due to start, close to the premises of the First Cavalry Brigade of the Peruvian Army (*Primera Brigada de Caballería del Ejército del Perú*), in the Loma de Teodomiro district.

Unfortunately, this was not an isolated case. Between 2011 and 2020, 19 trade union leaders who were members of the FTCCP were killed after reporting the extortion of employers and workers by criminal organisations, registered as trade unions. On August 20, 2012, the FTCCP and the Workers' General Confederation of Peru (*Confederación General de Trabajadores del Perú* – CGTP) filed a complaint with the Committee on Freedom of Association of the International Labour Organisation (ILO) in connection with the killing of trade union leaders and workers in the construction sector – all of whom had been members of the FTCCP. After analysing the information provided and hearing the State, the Committee concluded:

“(a) While deploring and expressing its concern at the seriousness of the alleged extortion and murder of six trade unionists (in addition to one more mentioned in recent allegations), and noting that this case exists against the backdrop of trade union disputes between organisations, the Committee firmly hopes that in the near future the criminal proceedings underway will identify all the material and intellectual perpetrators of the murder of three trade union leaders and three trade union members in the construction sector, that responsibility will be established and that the culprits will be severely punished. The Committee asks the Government to keep it informed, both in this regard and on the progress of the criminal proceedings.”

Yet, to date, there has been no substantive progress in the investigation of these cases by the Peruvian authorities⁷.

Construction sector leaders killed (2011-2020)		
Year	No. of deaths	Position of victims
2011	02	Jorge Arturo Correa Piedra, General Secretary Jorge Alberto Vargas Guillén, Organisation Secretary (Secretario de Organización)
2012	04	Armando Viera Rosales, Organisation Secretary Guillermo Yacila Ubillus, Deputy General Secretary (Secretario General Adjunto) Rubén Soberón Estela, General Secretary Favio Carbonero Tocasque General Secretary
2013	03	Gilmer Castro Arteaga, General Secretary César García Chinchay, Disciplinary Secretary (Secretario de Disciplina) Jesús Aníbal Ruiz Díaz, General Secretary

7. Updated information on the case registered with the ILO can be found at: https://www.ilo.org/dyn/normlex/es/f?p=NORMLEXPUB:50002:0::NO::P50002_COMPLAINT_TEXT_ID:3171956 Date accessed: October 27, 2020.

2014	02	Saturnino Hugo Rodríguez Santos, Organisation Secretary Carlos Enrique Malásquez Bastante, Organisation Secretary
2015	04	Martín Alfonso Vega Huashuayo, Organisation Secretary Víctor Roberto Rodas Medina, General Secretary Miguel Fernando Cotelo Villanueva, Secretary of Treasury (Secretario de Economía) Eberth Martín Vigoria Vivanco, General Secretary
2016	01	Óscar Céspedes Balcazar, Labour Defence Secretary
2017	01	Ángel Luis Ulises Gonzales de las Casas, General Secretary
2018	01	Israel Calero Espinoza, Plant Site Manager (Dirigente en obra de planta)
2020	01	Jerson Noé Suárez, Labour Defence Secretary
Total: 19 murders		

Source: Compiled by us with data from the FTCCP.

On the other hand, the FTCCP and the CGTP have repeatedly denounced the so-called automatic trade union registrations (*registros sindicales automáticos*), which were granted between 2008 and 2014. During this period, the Peruvian Ministry of Labour and Employment Promotion (*Ministerio de Trabajo y Promoción del Empleo* - MTPE) granted the automatic registration of trade unions within a 24-hour period, without requiring them to undergo any formal or substantive assessment⁸. This permitted the registration of criminal organisations which operate using their trade union status as a front, extorting money from construction firms, and threatening real workers⁹. To this date, the FTCCP is demanding that the MTPE deregister these pseudo-unions, which continue to operate without their legal status having been reviewed.

8. See: Gestión Editorial (November 7, 2014) "MTPE: Desde hoy inscripción de sindicatos deja de ser automática". Gestión. Available at: <https://gestion.pe/economia/mtpe-hoy-inscripcion-sindicatos-deja-automatica-80823-noticia/>; Andina (February 7, 2010) "Trabajadores podrán registrar su organización sindical en menos de tres horas, anuncia MTPE." Available at: <https://andina.pe/agencia/noticia.aspx?id=278593;%20FTCCP> (August 15, 2017) "Reconstrucción Urgente y sin violencia." Available at: <http://ftccperu.com/index.php/noticias-footer/811-reconstruccion-urgente-y-sin-violencia>; La Eskina, (September 8, 2016) "Solicitan eliminar registros de mafias de construcción civil de MTPE." Available at: <http://prensalaeskina.pe/solicitan-eliminar-registros-de-mafias-de-construccion-civil-de-mtpe/>
9. See: FTCCP (February 12, 2019) "Delincuencia organizada mantiene registro sindical del MTPE." Available at: <https://www.ftccperu.com/index.php/noticias-footer/899-delincuencia-organizada-mantiene-registro-sindical-del-mtpe>; FTCCP (February 21, 2015) "CGTP, Construcción Civil (FTCCP), Ministerio del Interior, Ministerio de Trabajo, Policía Nacional, CAPECO y Cámara de Comercio acordaron acciones para enfrentar al crimen organizado." Available at: <https://ftccperu.com/index.php/noticias-footer/268-cgtp-construccion-civil-ftccp-ministerio-del-interior-ministerio-de-trabajo-policia-nacional-capeco-y-camara-de-comercio-acordaron-acciones-para-enfrentar-al-crimen-organizado>.

Threats against construction union leaders, impunity, and disregard

On April 09, 2018, shots were fired at the homes of two leaders of the Provincial Construction Union (*Sindicato Provincial de Construcción Civil*), located in the southern region of Talara (Piura). The victims were **Abel Juliano Colquepisco Taípe**, Secretary General of Provincial Construction Union of Talara, and the union Press Secretary (*Secretario de Prensa*), **Jhonny Alarcón**. Money had been demanded from them in exchange for guaranteeing their lives and those of their families. In 2014, Mr Colquepisco had already reported to the public authorities, that “mafia” in construction sector were extorting money from employers and authorities under the guise of membership fees and work.

On April 09, 2018, Abel Juliano Colquepisco applied to the Sub-Prefecture of Talara, on behalf of himself, his family, and members of the Construction Union, to be granted personal guarantees (*garantías personales*) – an administrative procedure intended to prevent threats, coercion, harassment, and violence against individuals.

On April 9, 2018, the CNDDHH asked the MINJUSDH to implement the necessary protection measures for the leaders of the Talara Provincial Union. In a letter of the same year, MINJUSDH communicated that the District Directorate of Public Defence and Access to Justice of Sullana (*Dirección Distrital de Defensa Pública y Acceso a la Justicia de Sullana*), had appointed the Victims' Ombudsman (*Defensora Pública de Víctimas*) to the case¹⁰.

The facts were reported to the Provincial Corporate-Criminal Prosecutor's Office of Talara (*Fiscalía Provincial Penal Corporativa de Talara*), opening public prosecution case No. 702-2018, on the crime of extortion, against the perpetrators. To date, no suspects have been identified.

3. Journalists

Between 2017 and 2018, the ANP recorded around 106 attacks on journalists. Among these, legal pressure was the most prevalent form of attack against journalists and media outlets, with many legal proceedings still pending before the Peruvian courts¹¹.

In its September 2019 report on freedom of expression in Peru, submitted to the Inter American Press Association (IAPA), the Peruvian Press Council (*Consejo de la Prensa Peruana-CPP*) noted: “there are three main fronts of attack against the freedom of expression of citizens, media, and journalists: the legislative apparatus, defamation lawsuits, and judicial impunity¹².”

In this regard, in recent years, the Congress of the Republic of Peru (*Congreso de la República*) has tried on several occasions to limit the freedom of expression of the media and journalists through legislative initiatives. These have included bills restricting State advertising in

10. On May 25, 2018, by Letter No 227-2018-JUSIVMDHAJ MINJUSDH informed the CNDDHH that an ombudsman had been assigned to the case.

11. In September 2018, the ANP sent a letter to the Minister of the Interior (Ministro del Interior), stating: “In 2017 and this year, journalists have been frequent targets of the use of repressive force by police officers during the coverage of demonstrations or social protests, seemingly with the intention of preventing them from reporting.” The letter proposed the creation of an action protocol for the PNP to offer protection for the work of the press in situations that put them at risk. More details of this letter are available at: ANP (undated) “ANP advierte a sector Interior reiteradas agresiones a fotoperiodistas.” http://www.anp.org.pe/index.php?option=com_content&view=article&id=2658&Itemid=85

12. CPP, Informe 2019 de libertad de expresión en el Perú para la Sociedad Interamericana de Prensa (September 10, 2019). Available at: <http://consejoprensaperuana.org.pe/opinion/informe-2019-de-libertad-de-expresion-en-el-peru-para-la-sociedad-interamericana-de-prensa/>

private media¹³, requiring the professional affiliation of journalists and the lengthening of prison sentences for defamation. In addition to the above, defamation lawsuits are used as a means of silencing journalists by people involved in various kinds of corruption or abuse of power cases¹⁴. A new bill proposing the extension of prison sentences for defamation from two to four years was introduced in March 2019¹⁵ but, like other legislative initiatives, was eventually blocked due to the dissolution of the 2016-2019 Congress¹⁶.

Within this industry, investigative journalism comes under particular threat and harassment in Peru. This holds especially true for journalists investigating corruption in cases involving "members of the Legislative and Judicial Branches, politicians and businesspeople¹⁷." The latest CPP report, published in early 2020, confirms:

"The lawsuits brought against journalists in the last six months [September 2019-March 2020] suggest that some journalists are being fiercely targeted. Those investigating cases of sexual abuse and corruption are bearing the brunt. The incidence of physical attacks against Peruvian journalists also increased. However, the pursuit of justice improved in cases where journalists were murdered¹⁸."

Police violence and journalists injured at demonstrations

In October 2014, during a protest by locals in Ayaviri (Puno), journalist **Rudy Huallpa Cayo** (24) was injured after being shot with a pellet in the left eye. As a result, he lost his sight. Huallpa Cayo recalls that the leaders planned for a peaceful protest, but the police proceeded to clear the streets, while the main leaders were in discussions inside the Regional Government Building (*Gobierno Regional*). The events were reported to the Provincial Prosecutor's Office (*Fiscalía Provincial*). Even though the police officer suspected was identified, the case was closed in 2016, and there has been no punishment or redress to date.

In January 2016, **Marco Antonio 'Atoq' Ramón** (25), a photojournalist for *Perú 21*, faced a similar situation after being shot five times by a police officer while covering the protests against the Puente Piedra toll in Lima. This occurred despite him wearing a vest identifying him as a journalist and showing his press card. The pellets hit him in the head, hand, camera, and eye, causing him to lose 70% of his field of vision in his left eye. A criminal investigation and disciplinary proceedings are currently underway in the PNP.

Against the backdrop of the COVID-19 health emergency, journalists and social communicators have been subjected to administrative sanctions when covering social protests, for their alleged violation of health regulations. On March 27, 2020, journalist **Washington Román** was covering a sit-in where parents and students of Universidad Privada Andina del Cusco were demanding that the authorities reduce tuition fees. He was detained by the police, had his equipment confiscated and was given a ticket for violating administrative regulations.

13. The TC found this proposal unconstitutional. Accordingly, in May 2019, the Transport and Communications Commission (Comisión de Transportes y Comunicaciones) of the Congress of the Republic drafted a new opinion.

14. CPP, 2019 report, op. cit.

15. Bill No. 3990/2018-CR was introduced on March 6, 2019 and proposes to amend article 132 of the Criminal Code. Available at: <http://www.congreso.gob.pe/pley-2016-2021>

16. CPP, Informe 2020-I de libertad de expresión en el Perú para la Sociedad Interamericana de Prensa (March 2, 2020). Available at: <http://consejoprensaperuana.org.pe/opinion/informe-2020-i-de-libertad-de-expression-en-el-peru-para-la-sociedad-interamericana-de-prensa/>

17. The 2018 Annual Report of the Office of The Special Rapporteur for Freedom of Expression reports on this situation, noting that several journalists were victims of threats and physical and verbal attacks due to their work. Inter-American Commission on Human Rights (2018) Annual Report of the Office of the Special Rapporteur for Freedom of Expression, Vol. II <http://www.oas.org/en/iachr/expression/docs/reports/annual/IA2018RELE-en.pdf>

18. CPP, April 2020 report, op cit.

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In addition, three media outlets that criticised the regional government of Ica—*RadioSistema*, *Radio La Mega* and *Cadena Sur TV*, and *Canal 15*—had their equipment confiscated and broadcasts taken off air, following the investigation of complaint by the regional governor's family about an allegedly offensive video posted on Tik Tok¹⁹. At the same time, another series of threats against local journalists was documented, including against journalist **Ricardo Herrera**, host of *RadioExitosa*, whose family were threatened at home by telephone: "Please tell your children's father not to give his opinion on things that don't concern him. Tell him to stay out of it. If you love your family, tell him to stay out of it"²⁰."

4. Land and territory defenders

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Between January and October 2020, four environmental defenders were killed in Peru²¹. According to the organisation Global Witness, Peru is "one of the most dangerous countries in Latin America in which to defend the environment"²²."

Land and territory defenders and environmental defenders face systematic violations in the context of the implementation or development of extractive projects, agro-industry, real estate development and infrastructure projects. In many cases, these companies act without complying with the right to prior consultation, which violates the right to a healthy and balanced environment and the right to citizen participation, among others. Illegal activities such as drug trafficking are also exerting increasing pressure on the Amazonian forests and their defenders.

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19. ANP, Ica: Allanamiento a medios y reglaje a periodistas (2020). Available at <https://bit.ly/2HB4cGx>.

20. Ibid, p. 3

21. They were Arbildo Meléndez Grandez, Santiago Vega Chota, Gonzalo Pío Flores and Roberto Carlos Villanueva Pacheco.

22. According to a report by the organisation, between 2015 and 2017, 22 environmental leaders were killed. Global Witness (2014) El ambiente mortal de Perú: El aumento de asesinatos de defensores ambientales y de la tierra http://derechoshumanos.pe/wp-content/uploads/Peru_Deadly_Environment_ES.pdf

The Las Bambas case

The Las Bambas S.A. project area, owned by the Chinese company Minerals and Metals Group (MMG), comprises the Departments of Apurímac, Cusco and Arequipa. Initial plans for the project envisaged extracting ore (copper and molybdenum) through a mineral pipeline spanning 206 km, crossing through the provinces of Cotabambas (Department of Apurímac) and Chumbivilcas and Espinar (Department of Cusco). It incorporated four pumping stations located along the route, as well as a power line for the pumping stations. However, the environmental impact assessment was amended, and the ore is now transported in trucks along a road which passes through the same communities.

This resulted in an increase in heavy traffic on an unpaved road that is used daily by approximately 250 trucks (125 loaded trucks and 125 trucks returning unloaded) and 60 vehicles taking supplies to Las Bambas, as well as by private cars and vans which regularly drive along this public road. This caused dust, house vibration and noise pollution. At night, the noise from the trucks prevented residents living near the road from sleeping. Citizens reported that the constant presence of dust was damaging the quality of the grass and water, seriously affecting their animals' feed, and sometimes causing them to die²³.

The communities have demanded respect for and protection of their health, territory, and environment, as well as compliance with the right to prior consultation. The State's response has been the suspension of rights through a series of state of emergency declarations that it began to implement in 2017, militarisation, police repression that has already led to the death of five people from the Kána indigenous nation, and the criminalisation of dozens of social leaders.

The work of these defenders is essential to ensure compliance with human rights and to protect the ecosystem. Nonetheless, those who criticise the implementation of a natural resource exploration or exploitation project have been stigmatised—as have those who defend leaders—and labelled “enemies of development” or “anti-mining violence activists²⁴.” This stigmatisation is compounded by repressive action through the excessive use of force or the militarisation of their territories, or emergency declarations that have ceased to be exceptional²⁵.

The Ombudsman's Office (*Defensoría del Pueblo*) publishes a monthly report on social conflict that allows for the monitoring of these acts of violence and which reflects an upward trend between July 2019 and July 2020.

23. Observatory of mining conflicts in Peru (Observatorio de conflictos mineros en El Perú – OCM) - CooperAcción, Las bambas, Informe Especial 2015 Case, Available at: <http://cooperaccion.org.pe/wp-content/uploads/2015/10/Las%20Bambas%20-%20informe%20ocm.pdf>

24. See Noriega C. En Perú, una mina que no calla, (June 1, 2015) Available at: <https://www.pagina12.com.ar/diario/elmundo/4-273927-2015-06-01.html>

25. See Cooper-Acción, (April 30, 2018), Estados de Emergencia limitan la democracia, <http://cooperaccion.org.pe/los-estados-de-emergencia-limitan-la-democracia-en-el-peru/>.

Peru: Social Conflicts Recorded by Month, July 2019-20													
	2019						2020						
	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul
No. of cases.	184	186	184	187	185	184	191	188	188	188	189	190	192

Source: Compiled by us using data from the Ombudsman's Office - SIMCO.

In July 2020, the Ombudsman's Office recorded a total of 192 conflicts, 129 of which were classed as socio-environmental (active and latent). Eighty-two of these cases (63.6%) were linked to mining operations, followed by 23 (17.8%) due to hydrocarbon operations²⁶.

According to CNDDHH data, between 2012 and 2020, there were 20 deaths a result of social conflict and protests linked to extractive projects –mainly mining ones. Among them, it is worth highlighting the Las Bambas project, where five people died following the intervention of the Armed Forces and the PNP.

Extractive project that produced the conflict	Year	Intervention by the Armed Forces	Geographical Scope	Civilians killed
Conga	2012	Yes	Cajamarca	5
Xtrata	2012	Yes	Cusco	3
Las Bambas	2015, 2016 and 2017	Yes	Cusco and Apurimac	5
Tia Maria	2015	Yes	Arequipa	3
Minera Quiruvilca	2017	No	La Libertad	1
Petrotal	2020	No	Loreto	3

Source: CNDDHH

26. Office of the Ombudsman, Reporte mensual de Conflictos Sociales, (2020). Available at: <https://www.defensoria.gob.pe/wp-content/uploads/2020/08/Reporte-Mensual-de-Conflictos-Sociales-N%C2%B0-197-julio-2020.pdf>

Murder of indigenous rights defender Gonzalo Pío Flores

Gonzalo Pío Flores was an indigenous Asháninka, defender of indigenous and territory rights and leader of the Nuevo Amanecer Hawai Community (*Comunidad Nuevo Amanecer Hawai*) in the district of Puerto Bermúdez, located between the regions of Pasco, Junín, and Ucayali. He worked for the legal recognition of the communal territories of the Nuevo Amanecer Native Community, and their protection from illegal logging operations in the area.

On May 17, 2020, he was murdered in the village of Santa Rosa de Cashingari, in the district of Río Tambo, province of Satipo (Junín). His wife, Maribel Casancho Flores, who was with him, was seriously injured. There has been no progress in investigations to date.

For years, defenders of the indigenous rights of the Nuevo Amanecer Hawai Native Community and defenders of land and territory in the area have been facing threats and attacks by people linked to logging companies that are operating illegally in the area. In fact, **Mauro Pío Peña**, father of Pío Flores and former leader of the Nuevo Amanecer Native Community was murdered in May 2013. The crime goes unpunished to this day.

According to the reports produced by the CNDDHH, the development of extractive projects is seen by communities as both an individual and collective threat which particularly affects the territories of indigenous populations²⁷. These populations are subject to the abuse of State and economic power, and seek to confront the imposition of a development model based on the extraction of natural resources. In this context, indigenous peoples exercise their right to protest, to which the State's response is to criminalise them, to employ the use of excessive police force, to declare states of emergency and to subject their main leaders to criminal investigations on aggravated criminal charges that often result in disproportionate penalties, as detailed below.

5. LGBTIQ rights defenders

In Peru, the LGBTIQ community remains vulnerable. LGBTIQ individuals are the invisible victims of sexual violence, discrimination and even repression. The situation of transgender women who are the victims of sex, labour and drugs traffickers is especially worrying, as they are not recorded as victims. This evident lack of a gender perspective makes it impossible to identify the specific risks²⁸ or the differential impacts faced by this group when they are attacked for defending rights.

27. For more information, see: <https://derechoshumanos.pe/documentos/>

28. Ojo Público conducted research on the trafficking situation of transgender women. Information can be found in Salazar Vega, E., *Mujeres trans: las víctimas invisibles de la trata*, Ojo Público – Connectas: <https://ojo-publico.com/especiales/mujeres-trans-victimas-invisibles-de-la-trata/>

Repression of sexual diversity rights activists

On May 17, 2017, a group of 30 people marched as part of the International Day Against Homophobia, Transphobia and Biphobia. They dressed in different colours, with the intention of standing on the pedestrian walkway in front of the Congress of the Republic and taking a photo with the rainbow flag.

However, from the outset members of the police force proceeded to forcibly remove them without any dialogue whatsoever, using abusive language, violence, shields and pepper spray. These attacks were carried out with evident discriminatory intent, given that other demonstrations had taken place in the same location just a few days earlier without those demonstrators being moved on or being subjected to any violence.

The criminal complaint brought before the Public Prosecutor's Office for these events described was closed. A PNP report was referred to as grounds for this decision, which stated there were no records of the reported events, and that the march participants were obstructing traffic, placing the physical integrity of passers-by at risk.

6. Defenders of truth and justice

Peru's Truth and Reconciliation Commission (*Comisión de la Verdad y Reconciliación de Perú - CVR*) estimated that nearly 70,000 people were killed or victims of enforced disappearances during the internal armed conflict that took place in the country between 1980 and 2000. The commission made a series of recommendations on truth, justice and reparation, the vast majority of which have not been implemented by the State.

More than 12 years after the Law on Reparations was passed, it has still not been fully and effectively implemented. According to the CNDDHH report, *The Situation of Human Rights Defenders* (*La Situación de las Personas Defensoras de los Derechos Humanos*), multiple entitlement to compensation (*derecho a la múltiple afectación*) is not recognised, no support is provided to the beneficiaries of educational reparations in their university studies, and the victims of sexual violence have not been included in the Comprehensive Reparations Programme (*Programa Integral de Reparaciones*). Likewise, mental health services are concentrated in areas of extreme poverty, addressing problems that are unrelated to the specific rehabilitation of people who have been tortured.

With regard to justice, impunity prevails for various human rights violations that occurred during the internal armed conflict, as restrictions still exist with respect to the full identification of those primarily responsible for these violations. Between 2011 and 2016, the Ministries of Defence and the Interior refused to submit information to the Judicial Branch (*Poder Judicial*) on international crimes and serious human rights violations committed during that period. Furthermore, investigation and trial periods for human rights violations are lengthy and can last more than 10 years.

A minimal percentage of cases involving human rights violations go to trial. Sentences for sexual violence are a prime example. Although a total of 4,684 direct victims of rape were recorded in the Single Registry of Victims (*Registro Único de Víctimas - RUV*) as of October 2018²⁹, only one sentence has been passed for this crime to date. During the IACHR's working visit to Peru in 2018, it noted various irregularities and delays, including the "lack of psychological support for victims, references to discriminatory stereotypes based on

29. Figures on victims can be consulted at: <http://www.ruv.gob.pe/registro.html>

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victims' gender or race, and the failure to consider their testimonies, which has contributed to situations of re-victimisation, exacerbated by the lack of progress in the proceedings"³⁰.

Defenders working in this area also face profound stigmatisation; they are labelled "terrorist defenders" or "terrorist sympathisers" by groups linked to the attackers. One of the most serious cases in recent years involved an investigation for "glorification of terrorism" (*apología del terrorismo*) being launched against members of ANFASEP in 2017, following the exhibition of images of State abuses in the Museum of Memory founded by the Association³¹. This case was opened following a complaint filed by a congressman linked to Fujimorism. Although the case was closed due to social pressure, it caused deep anxiety among ANFASEP members, many of whom had lost family members to the terrorist organisation Shining Path (*Sendero Luminoso*).

7. Gender impacts on the defence of human rights

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The Special Rapporteur on the Situation of Human Rights Defenders argues: "Women defenders are subject to the same types of risks as any human rights defender, but as women, they are also targeted for or exposed to gender-specific threats and gender-specific violence. [...] Women defenders are more at risk of being subject to certain forms of violence and other violations, prejudice, exclusion, and repudiation than their male counterparts³²." A situation of double discrimination therefore exists against women who face discrimination both on account of their gender and for being defenders.

Women in Peru face different forms of violence, among the most serious of which is femicide. According to data from the Women's Emergency Centre (*Centro de Emergencia Mujer - CEM*) of the Peruvian Ministry of Women and Vulnerable Populations (*Ministerio de la Mujer y Poblaciones Vulnerables*), a higher number of cases was recorded in 2018 than in the previous 10 years (149 cases)³³. In addition, there has been an increase in misogynistic, sexist and homophobic discourse against women and LGBTIQ defenders, which reflects the conservative positions of groups such as Don't Mess with My Kids (*Con Mis Hijos No Te Metas*), and a resulting rise in systematic violence against them for not fulfilling traditionally assigned gender roles³⁴.

In this sense, the remarks of former President of the Congress of the Republic, Pedro Olaechea, demonstrate the influence of machoism and stereotypes that discredit women's role in the country: "women think about the children, about their mothers, about the bills, about the house, the ironing, and picking up clothes. Women are multidimensional; the only place they really relax is at the hairdressers – that's the only place where they think about themselves³⁵."

Regarding attacks on women defenders, research carried out by Rocío Silva Santisteban³⁶ reports on the various expressions of gender-based violence, sexual violence, and the use of patriarchal power structures to discourage the work of women defenders. For example,

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30. The IACHR conducted a working visit to Peru from October 29 to 31, 2018, to follow up on plans to reform the country's justice system and obtain information on the human rights situation of women, girls and adolescents. The information can be viewed at: <http://www.oas.org/es/cidh/prensa/comunicados/2018/243.asp>

31. See: RPP Noticias, *Ministerio Público inicia investigación contra el Museo de la Memoria*, (October 27, 2017). Available at: <https://rpp.pe/peru/ayacucho/ministerio-publico-inicia-investigacion-contra-el-museo-de-la-memoria-noticia-1085284>

32. OHCHR, Women Human Rights Defenders. Available at <https://www.ohchr.org/en/issues/women/wrgs/pages/hrdefenders.aspx>

33. Instituto de Defensa Legal (IDL), Medidas anunciadas por el MIP y el Mininter ante cifras crecientes de feminicidio, (July 18, 2019). Available at: <https://www.idl.org.pe/medidas-anunciadas-por-el-mimp-y-el-mininter-ante-cifras-crecientes-de-feminicidio/>. For more information see: <https://www.gob.pe/479-denunciar-violencia-familiar-y-sexual>

34. Martínez Osorio, M., "¡Con mis hijos no te metas: no a la ideología de género!", DeJusticia (May 15, 2017) Available at: <https://www.dejusticia.org/con-mis-hijos-no-te-metas-no-a-la-ideologia-de-genero/>

35. La Mula editorial, Estereotipo de género: la frase sexista de Pedro Olaechea (July 29, 2019) Available at: <https://redaccion.lamula.pe/2019/07/29/pedro-olaechea-presidente-congreso-frase-machista-estereotipo-de-genero-mujeres-peluqueria-video/jorgepaucar/>

36. Silva Santisteban R., *Mujeres y conflictos ecoterritoriales: Impactos, estrategias, resistencias*. Demus. (2017) Available at: https://www.demus.org.pe/wp-content/uploads/2018/02/Mujeresyconflictos_Convenio.-2017.pdf

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by spreading rumours about their sexuality so that they are asked to withdraw by those around them. Women defenders' motherhood is also used against them: they are discredited for supposedly failing to fulfil their protection and care roles or pressured to abandon their work to avoid losing their children. A case in point, illustrated by the CNDDHH, concerns a student leader who withdrew a public complaint against the authorities for fear of being stripped of custody of her daughter if she became involved in defamation proceedings. A woman defender from Cajamarca was prevented from participating in legal proceedings in which she was wrongly accused because she was not allowed to enter the courtroom with her months-old baby. Another woman defender of territory from the southern Andean territory agreed to plead guilty—despite her innocence—to the offence of obstructing the operation of transport services (*entorpecimiento a los servicios de transporte*) and to pay financial compensation in order to be released from prison to be with her young son.

Furthermore, there is still limited protection of women's right to effective participation in decision-making, whether at dialogue roundtables (*mesas de diálogo*)³⁷ or development roundtables (*mesas de desarrollo*)³⁸ or in prior consultation processes.

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37. Political spaces where the protagonists of a conflict come together to resolve conflictive issues, generally when a conflict is in its crisis stage. Their constitution has been formalised by through Ministerial Resolutions, which establish their formation, members, functions and duration.

38. Also linked to the conflict prevention strategy, these spaces are intended to provide continuity and follow-up of to the agreements reached. They were proposed in response to the identification of the limitations of dialogue roundtables.

V. SOURCES OF VULNERABILITY OF DEFENDERS



January 5, 2017 - Protest against tolls in Shangri-La, Puente Piedra, Lima. © Atoq Wallpa Sua

1. Constitutional and legal amendments that impinge on guarantees for citizens

a) Constitutional Reform

In May 2017, Article 2 of the Constitution, which protects the right to personal liberty and the right not to be arrested without a written and reasoned warrant from a judge or in the act of committing an offence, was amended by Law 30558³⁹.

The substantial changes brought about by this reform were i) the extension of the pre-charge detention period for ordinary offences from 24 hours to 48 hours, and ii) the addition of "crimes committed by criminal organisations" (*delitos cometidos por organizaciones criminales*) to the list of offences warranting a fortnight's detention (terrorism, espionage, and illegal drug trafficking)⁴⁰.

This new regulatory framework, along with various legislative decrees granting powers to the PNP in cases of detention, allows for the police control of social protests, which has often led to the excessive use of force and abuse of power⁴¹. This has exacerbated the vulnerability

39. Law 30588 on the Reform of Paragraph 24(F), Article 2 of the Constitution of Peru, May 4, 2017 <https://busquedas.elperuano.pe/normaslegales/ley-de-reforma-del-literal-f-del-inciso-24-del-articulo-2-d-ley-n-30558-1518101-1/>

40. "Article 2 - Everyone has the right: [...] 24. To liberty and personal security. Consequently: [...] f. No-one may be arrested except with a written and reasoned warrant issued by a judge or by the police authorities while the offence is being committed. The detention period shall last no longer than the time strictly necessary for investigations to be conducted and, in any case, the person held must be brought before the corresponding court, within a maximum period of forty-eight hours or within the allotted time. These time limits do not apply in cases of terrorism, espionage, illicit drug trafficking and offences committed by criminal organisations. In such cases, the police authorities may detain the suspects for a period not exceeding fifteen calendar days. They must inform the Public Ministry and the judge, who may assume jurisdiction before this period has expired."

41. Saldaña Cuba, J., & Portocarrero Salcedo, J. (2017). *La violencia de las leyes: el uso de la fuerza y la criminalización de protestas socioambientales en el Perú*. *Derecho PUCP*, (79), p. 339. <https://doi.org/10.18800/derechopucp.201702.013>

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of human rights defenders and eroded their fundamental right to liberty⁴², contravening the judgments of the Constitutional Court, which state that this right prevails over the legal system.

The PNP has made various detentions directly, often without the oversight of the Public Ministry or the Judicial Branch. This occurred both in the 2015 Las Bambas Project conflict, and in the 2017 protests in Puente Piedra, Lima, which were motivated by the price of tolls going up. In the latter, five citizens suffered irreversible eye trauma after being hit by pellets fired by the police, and several people, including children, were injured⁴³. Therefore, in both cases fundamental rights, such as individuals' physical and psychological integrity, were significantly impacted.

Arbitrary detentions and violations of due process (Las Bambas 2015)⁴⁴

On September 25, 2015, the communities of the province of Grau y Cotabambas, in the Department of Apurímac, began an indefinite strike because they had not been informed or consulted about the amendments to the environmental impact assessment for the Las Bambas mining project which affected the communities' health and environment. Three days later, there was strong police repression of locals who were protesting in front of the mining camp, which resulted in the death of three demonstrators, along with 23 injured (15 civilians and eight police officers) and the arbitrary detention of 17 demonstrators.

All those detained were held on the premises of the Las Bambas mining camp for over 24 hours. After the filing of *habeas corpus* by human rights organisations, including DHSF and the Association for Human Rights in Peru (*Asociación Pro Derechos Humanos* – APRODEH), 10 of those detained were released without charge. The remaining seven were transferred to Abancay to appear before a court. According to the testimonies collected, the detentions were unlawful. However, in its report, the PNP states that only one of the 17 was detained "when he entered the mining camp⁴⁵," while all the others were in the surrounding area. The PNP even states that five of the 17 people were detained because they had "a suspicious attitude"⁴⁶. The victims claim that they were beaten and threatened while being held. They were also forced to spend the night on the floor, without food, water, or warm clothes, despite the low temperatures.

In the end, 19 community members and human rights defenders were criminally prosecuted as a result of these protests against the mining company's non-compliance. Numerous irregularities and illegalities were identified and reported by the Observatory during the legal proceedings in 2019, and prior to the start of the trial against the 19 human rights defenders, which the Chinese consortium MMG Limited, owner of the Las Bambas mine, joined as a civil party⁴⁷.

On October 26, 2020, the One-Judge Court of Cotabambas (*Juzgado Unipersonal de Cotabambas*) found the 19 criminalised community members innocent.

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42. Following protests against the tolls in the district of Puente Piedra (Lima) in 2017, the PNP arrested 55 people, who were released after 48 hours in police detention.

43. CNDDH (2018) *Informe alternativo sobre la implementación de la Convención contra la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes* - 65th session of the CAT. https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/PER/INT_CAT_CSS_PER_32812_S.pdf

44. CNDDH and IDL, Las Bambas, violaciones a derechos humanos y protesta social, (2015). Available at: <https://www.seguridadidl.org.pe/sites/default/files/INFORME%20LAS%20BAMBAS%20DIC%202015.pdf>

45. Informe No. 062- 2015-REGPOL-APU/DEPESEGEST-AB .VII., section D states: "along the road, they noticed four people with a suspicious attitude, who were also stopped and taken, together with the first three, to the Las Bambas-Pioneros mine camp office."

46. Ibid

47. FIDH in the framework of the Observatory, Peru: No a la criminalización de defensores por protestar contra proyecto minero las Bambas, May 20, 2015. Available at: <https://www.fidh.org/es/temas/defensores-de-derechos-humanos/peru-no-a-la-criminalizacion-de-defensores-territoriales-por>

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In cases of social protest such as these, the reform of Article 2 of the Constitution may have a disproportionate impact by allowing the PNP to detain people for up to 48 hours, or even a fortnight for certain crimes. Therefore, the maximum detention period should be used in exceptional circumstances, with the oversight of the Public Prosecutor's Office, and with guarantees, as argued by some experts on the matter⁴⁸.

The TC has ruled accordingly, affirming the requirement to adhere to the strictly necessary detention period, without extending it beyond the minimum period unless necessary. According to the TC, this detention time limit "must be established on a case-by-case basis according to the circumstances, such as the formalities that need to be completed, the specific difficulty of conducting certain inspections or tests, and the behaviour of the detainee, etc."⁴⁹.

The justice system and, in particular, the judiciary must therefore scrutinise the legality of police detention, even when the person is arrested in the act of committing the offence (i.e., when a warrant is not required), both for ordinary offences and those committed by criminal organisations.

b) Crime package and new laws

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The introduction of new criminal offences and procedural changes (investigation, trial and sentencing) are seriously impinging on the work of human rights defenders, since they have led to a climate of increasing criminalisation, wherein it is sought to address social protests through the criminal justice system.

Vásquez⁵⁰ provides an insightful account of the key legislation impacting criminal proceedings against human rights defenders between 2002 and 2012.

DATE	REGULATION	CONTENT
March 19, 2002	Law 27686 Amending Articles 283 and 315 of the Criminal Code.	It raises the penalties for the offences of "rioting" (<i>disturbios</i>) and "obstructing the operation of public services" (<i>entorpecimiento del funcionamiento de los servicios públicos</i>) by imposing sentences, in aggravated cases, of up to 10 and 8 years respectively, in order to permit pre-trial detention (<i>prisión preventiva</i>).
June 22, 2006	Law 28820 Amending Articles 281, 283 and 315 of the Criminal Code.	Increases the scope of the offence of "attacks on public roads" (<i>atentados contra vías de comunicación</i>) and "rioting," in order to permit effective imprisonment in a variety of cases.

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48. "It is clear that, in scrutinising the reasonableness of administrative detention [pre-charge detention in the case of Peru], beyond the obligation incumbent on police officers to make an arrest when there are reasonable grounds to believe a deed that presents the characteristics of a crime has been committed [...], this brings about the right for every person to be "informed immediately, and in a way they can understand, of their rights and the reasons for their arrest" [...]" Reifarth, W. (2018). El acceso a los elementos de las actuaciones policiales por parte del detenido como manifestación del derecho a la libertad personal. *Reseñas de Jurisprudencia Procesal*. P. 333.

49. TC, Judgment No. 06423-2007-HC/TC, Exp. N° 06423-2007-PHC/TC, legal basis 3.a.

50. Vásquez, M. (2015) La criminalización de la protesta social como estrategia de desarticulación del movimiento social en el Perú. GRUFIDES, p. 10.

July 10, 2007	Supreme Decree 060 -PCM-2007 (repealed by Supreme Decree No. 032-2018-p of March 2018)	Authorises the intervention of the Armed Forces in support of the PNP (30 days) to protect the operations of entities and essential public services, and to safeguard critical key points.
December 2007	Law 29166 on the Use of Force by Members of the Armed Forces	Allows the Armed Forces to use firearms to maintain public order.
July 22, 2007	11 Legislative Decrees (No's 982, 983, 988, 989, etc.)	For the punishment of "organised crime": lack of capacity of the police and military to be charged, public protest classified as "extortion," increased sentences for "rioting," etc. It punishes public officials who participate in strikes, including by disqualification.
2008	Regulation of Law 29166 Number 12-2008-DE/CFFAA	Authorises the use of lethal force to protect private property, "in compliance with the assigned mission" and in "self-defence." The intervention of the Armed Forces is authorised in matters falling under the jurisdiction of the PNP, such as "ordinary offences" and "drugs."
September 1, 2010	Legislative Decrees No. 1094, and No. 1095-1097	Govern the intervention of the Armed Forces and police force during social conflicts, and the statute of limitations for crimes against humanity.
May 3, 2012	Passing of the Bill on the Use of Force by the Police.	"The action of police who use lethal force is not criminally punishable, under this law."
May 31, 2012	Administrative Resolution No. 096-2012-CE-PJ issued by the Judicial Branch	Orders that all cases related to the Espinar and Conga conflicts will be tried in the provinces of Ica and Chiclayo respectively.

Source: Compiled by us based on Vásquez, M. *La criminalización de la protesta social* (2015).

In addition to these changes, new legislative packages were introduced, reforming various offences and procedures:

Year	Regulation no.	Main contents
2010	Legislative Decree 1095	Provides for the military to intervene in support of the PNP to re-establish public order. This distorts the role of the Armed Forces, which previously only acted to defend against external threats, under the constitution.
2013	Law 29986 Amending Article 195 of the Code of Criminal Procedure (<i>Código Procesal Penal</i>).	Authorises the removal of corpses by the Armed Forces or the PNP in areas where a state of emergency has been declared, if the Public Prosecutor has difficulty attending.

2014	Law 30151 Amending Article 20, Paragraph 11 of the Criminal Code, on the Use of Weapons or Other Means of Defence by Members of the Armed Forces and the PNP.	Provides for the exoneration from criminal liability of members of the PNP and the Armed Forces who, because of their intervention, cause the death or affect the personal integrity of civilians.
2015	Legislative Decree 1237	Amends the crime of "rioting" by incorporating aggravating factors and sentences, including a) if the attack on physical integrity results in serious injuries, 8-10 years; and b) if it is followed by death, no less than 15 years.
2016	Legislative Decree 1267 - Law on the National Police	- In its <i>sixth final supplementary provision</i> , it provides for the conclusion of private agreements with mining companies (provision of security services). Its subsequent regulation (Supreme Decree 003-2017-IN) ratified and validated the 112 agreements. - Provides for Police Fronts (<i>Frentes Policiales</i>) of a temporary and exceptional nature, which are now linked to Police Macro-Regions (<i>Macro Regiones Policiales</i>).
2016	Legislative Decree 1245 Amending the Offences of "Robbery" (<i>hurto simple</i>), "Aggravated Robbery" (<i>hurto agravado</i>), "Attacks on Public Security" (<i>atentado contra la seguridad común</i>) and "Obstructing the Operation of Public Services".	Increases sentences and creates aggravating circumstances when damage is caused to public or private infrastructure, or to facilities for the exploration, exploitation, processing, refining, storage, transport, distribution, commercialisation or supply of gas, hydrocarbons, or their by-products.
2016	Legislative Decree 1298 Amending Pre-Charge Detention Following Arrest with or without a Warrant.	Pre-charge detention may extend from 72 hours to 7 days. For organised crime offences, detention following warrantless arrests may extend to 10 days.
2016	Legislative Decree 1307 Amending Article 272 of the Code of Criminal Procedure.	Pre-trial detention is extended to 36 months in organised crime proceedings. Substitution of the defence counsel is not permitted in unpostponable hearings.

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In addition to these regulations, in 2019, the Standing Committee (*Comisión Permanente*) of the Congress of the Republic passed the Law on Police Protection⁵¹, with the aim of strengthening the presence and performance of the PNP⁵².

These reforms and packages of measures, issued by the Executive Branch (*Poder Ejecutivo*) through legislative powers granted by the Congress of the Republic, represent a heavy-handed, repressive, militaristic policy, with few guarantees for citizens considering the social conflicts that have arisen in the country in recent years. As such, they are used to prosecute or investigate those who exercise their right to protest.

c) Preventive complaints (*denuncias preventivas*)

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Under the current regulation, the Special Prosecutor's Offices for Crime Prevention (*Fiscalías especiales de Prevención del Delito*) of the Public Ministry have the jurisdiction to hear proceedings intended to prevent crimes without having to initiate an investigation⁵³.

Article 13 of this Regulation on Special Prosecutor's Offices Crime Prevention highlights that preventive proceedings are intended to determine the existence of possible criminal conduct and to encourage compliance with the law. Its main functions include promoting coordination meetings between public or private institutions, planning and overseeing measures intended to prevent criminal conduct, and requesting the support of the police or other public or private entities for preventive measures.

These Special Prosecutor's Offices are also authorised to initiate preventive proceedings ex-officio, at the request of a party or at the request of public or private institutions. Article 16 of the same Regulation states: "The Public Prosecutor shall institute preventive proceedings when he considers that there is a real risk of an offence potentially being committed or when the facts are of a magnitude or would entail social repercussions in terms of crime prevention."

These proceedings are therefore preventive, rather than criminal, and their institution is important to address potential criminal offences that could cause imminent harm. However, with a growing number of social conflicts throughout the country, these Prosecutor's Offices have begun to repeatedly institute preventative proceedings as an intimidation mechanism to prevent people exercising their right to protest. They are often used against community leaders who report the violation of rights by extractive companies. This demonstrates clear repressive intent⁵⁴.

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51. This initiative was approved in the Standing Committee on July 24, 2019 and an enrolled bill has been sent to the Executive Power, but has not yet come into force.

52. Its objectives are: to restrict the appearance before court of the PNP if its members cause injury or death, i.e., to prevent any investigation, to guarantee the exoneration of the Armed Forces and the PNP from criminal liability incorporating the fulfilment of the constitutional duty, and to guarantee the legal defence of PNP members by specifically creating specialised PNP Prosecutors' Offices.

53. National Public Prosecutor's Office, *Reglamento de las Fiscalías de Prevención del Delito, resolución número 3377-2016-MP-FN*, (August 2, 2016). Available at: <https://busquedas.elperuano.pe/normaslegales/aprueban-el-reglamento-de-las-fiscalias-de-prevencion-del-de-resolucion-no-3377-2016-mp-fn-1411218-1/>

54. In this regard, authors such as Mirtha Vásquez highlight the fact that preventive complaints are evidence of a policy of repression, as they are aimed in particular at social leaders, are devoid of assumptions such as "legal assets being manifestly under threat", lack adequate means of proof, and tend to be used by State Prosecutor's Offices or company representatives. Vásquez, M (2013), *Criminalización de la protesta en Perú. Un análisis a la luz del caso Conga-Cajamarca*; GRUFIDES. Available at: <https://grufides.org/sites/default/files/documentos/publicaciones/Criminalizaci%C3%B3n%20de%20la%20protesta%20en%20Per%C3%BA%20-%20Mirtha%20V%C3%A1squez.pdf>

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A recent example of this practice took place during the summer of 2019, in the community of Alto Huarca in the province of El Espinar, where locals had been protesting for some time about environmental problems caused by the mining company Glencore-Antapaccay. After denouncing issues involving pollution and lack of prior consultation, a preventive complaint was filed against five community leaders for suspected crimes against public security⁵⁵.

In fact, social organisations have observed that often, when faced with the announcement of a protest or march, the immediate intervention of these Prosecutor's Offices is requested. In many cases, these interventions have been based solely on media reports. Thus, the rights to freedom of expression, of assembly and protest are associated with the imminent occurrence of a crime.

Therefore, despite the preventive nature of these proceedings, in practice they are no different from a criminal investigation, since they include the appearance of the individuals before court, the involvement of the PNP, requests for reports and even evidence, which constitutes a form of harassment for defenders in carrying out their work, bearing in mind that most of these cases end up being closed.

2. Role of the police force

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a) Contravention of the operating principles of the Police: Agreements between companies and the PNP

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Legislative Decree No. 1267 Passing the Law on the National Police sets out the legal concept of extraordinary police services, which permits the PNP to enter into agreements with public or private entities. These agreements enable the PNP to provide security services to the private sector, breaching the State's monopoly on the use of force⁵⁶.

To understand this contravention of neutrality in the use and exercise of police power, it is worth referring to the provisions of Article 166 of the Peruvian Constitution:

"Article 166.- Purpose of the National Police
The fundamental purpose of the National Police is to guarantee, maintain and re-establish public order. [The police force] provides protection and assistance to individuals and the community. It ensures compliance with the law and the security of public and private property. It prevents, investigates and combats crime. It monitors and controls the borders."

This provision makes it clear that the imperative purpose of the PNP is to ensure public order:

"Therefore, the work of the police force is closely linked to the protection of people's fundamental rights, insofar as public order implies the absence of situations in which these rights are impinged on or threatened⁵⁷."

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55. La República editorial, Cusco: Fiscalía abre investigación a comuneros que protestan contra minera Antapaccay (August 10, 2019). Available at: <https://larepublica.pe/sociedad/2019/08/10/cusco-fiscalia-abre-investigacion-a-comuneros-que-protestan-contr-minera-antapaccay/>

56. Saldaña, José & Portocarrero, J. (2017), opt, cit, p. 325.

57. Soria, D. (2013) La Constitución comentada. In Comentarios a los artículos 165, 166 y 168 de la Constitución de 1993 (Defensa Nacional y Orden Interno), Lima. Gaceta Jurídica, p. 540.

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The TC ruled to that effect, interpreting this concept as follows:

“Fundamentally, public order comprises three aspects:

- a) Public safety (protection of life, physical and moral integrity, property, etc.).
- b) Stability of the political order (safeguarding of public peace, quiet and tranquillity, respect for public authority).
- c) Safeguarding of public infrastructure and utilities (public buildings and facilities covering the essential, primary needs of the community, such as water, electricity, etc.)⁵⁸.”

On this basis, it can be inferred that the agreements which have been or are going to be signed between the PNP and third parties undermine the duty of preserving public order and the protection of fundamental rights, by allowing policing to be commercialised and purchased by whoever can afford it⁵⁹. Thus, “by entering into an agreement, the PNP loses its independence and impartiality, since it is providing a private security service for the benefit of a private individual in exchange for economic consideration⁶⁰.”

Furthermore, the signing of these private agreements “generates conflicts of interest, which are prohibited under the Law on the Code of Ethics of Public Service (Law No. 27815), which requires police officers—as public officials—to be governed by the duty of neutrality, and to avoid any situation that could compromise the proper performance of their duties⁶¹.”

However, it has been possible to document at least “138 agreements signed with extractive companies, and especially mining and hydrocarbon companies, between 1995 and 2018. One hundred and nine of these were signed before 2017, and 29 between 2017 and 2018⁶².” At present, 29 remain in force and are due to expire between 2019 and 2022⁶³.”

On April 8, 2019, the Bar Association of San Martín (*Colegio de Abogados de San Martín*) filed a constitutional complaint (*demanda de inconstitucionalidad*) against this law, specifically against the provision of extraordinary police services in Peru, i.e., the agreements between the PNP and extractive industries⁶⁴. On September 26, 2020, in a judgment that will seriously impinge on human rights defenders and has been deemed incongruous⁶⁵, the TC found the complaint inadmissible, ruling as follows:

“1. Finds the constitutional complaint UNFOUNDED, to the extent that the following interpretation is given:

- a) Members of the police providing “Extraordinary Police Services” must comply with all standards relating to the use of force, in accordance with the applicable regulations.
- b) An exception may be made to the rule that police providing “Extraordinary Police Services” must be on holiday, off duty or on leave, if there are not enough police officers at the respective police station and it is necessary to maintain order at an event attended by a significant number of people.
- c) “Extraordinary Police Services” cannot be deemed private security. If police officers provide services, they shall do so only with the prior consent of the PNP.”

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58. TC. Judgment in Case No. 0017-2003-AI/TC, March 16, 2004, Legal basis 8.

59. EarthRights International, IDL & CNDDHH (2019) Convenios entre la Policía Nacional y las empresas extractivas en el Perú. Análisis de las relaciones que permiten la violación de los derechos humanos y quiebran los principios del Estado democrático de Derecho. P. 18, <https://earthrights.org/wp-content/uploads/Informe-Convenios-entre-PNP-y-empresas-extractivas.pdf>

60. Ibid. p. 18

61. Idem.

62. Idem. p. 07

63. Idem.

64. TC, Judgment of June 23, 2020, Caso sobre la constitucionalidad de la prestación de Servicios Policiales Extraordinarios Colegio de Abogados de San Martín c. Poder Ejecutivo <https://tc.gob.pe/jurisprudencia/2020/00009-2019-AI.pdf>

65. See: “In this regard, we consider the reminder to the PNP about compliance with the rules on the use of force fundamentally rhetorical, and that the judgment is in itself incongruous, since the TC identifies a problem in the area of the application of the agreements and proposes a constitutional solution, but this does not materialise in the judgment”, IDL (October 7, 2020) Una sentencia incongruente: el Tribunal Constitucional limita los convenios que celebran la PNP y empresas extractivas. Available at: https://www.idl.org.pe/una-sentencia-incongruente-el-tribunal-constitucional-limita-los-convenios-que-celebran-la-pnp-y-empresas-extractivas/#_ftn1

COLLECTIVE AGREEMENTS			
CONTRACTING COMPANY	ECONOMIC ACTIVITY	LOCATION	DATE OF SIGNATURE
Minera Antamina S.A.	Mining (polymetallic)	Ancash	1/10/2017
CNPC Peru S.A	Hydrocarbons and natural gas	Piura	1/10/2017
Consortio Minero Horizonte S.A.	Mining (gold)	La Libertad	6/10/2017
Minera Yanacocha	Mining (gold)	Cajamarca	20/10/2017
Minera Las Bambas S.A.	Mining (copper)	Apurímac	26/10/2017
Aurífera Retamas S.A.	Mining (gold)	La Libertad	26/10/2017
Doe Run Peru S.R.L. (in liquidation)	Mining (polymetallic)	Huancavelica	13/11/2017
Minera Chinalco Peru S.A.	Mining (copper)	Junín	14/11/2017
Minera Barrick Misquichilca S.A.	Mining (gold)	La Libertad, Ancash	23/11/2017
Minera Quechua S.A.	Mining (copper)	Cusco	27/11/2017
Century Mining Perú S.A.C.	Mining (polymetallic)	Arequipa	29/11/2017
Minera Antapaccay S.A.	Mining (copper)	Cusco	2017* The agreement between the PNP and mining company Antapaccay S.A. does not have contract signature date, only the year is indicated.
Savia Perú S.A.	Hydrocarbons and natural gas	Piura	4/12/2017
Gold Fields La Cima S.A.	Mining (copper)	Cajamarca	7/12/2017
Minera La Zanja S.R.L.	Mining (gold)	Cajamarca	12/12/2017
Minera Coimolache S.A.	Mining (gold)	Cajamarca	12/12/2017
Minera Cerro Verde S.A.A.	Mining (polymetallic)	Arequipa	14/12/2017
Anglo American Quellaveco S.A.	Mining (copper)	Moquegua	15/12/2017
Sapet Development Peru Inc.	Hydrocarbons	Piura	18/12/2017

Minera La Soledad S.A.C.	Mining	Arequipa	10/1/2018
Cori Puno S.A.C.	Mining (gold)	Puno	18/1/2018
Petróleos del Perú - Petroperú S.A.	Hydrocarbons	Loreto, Amazonas, Cajamarca, Lambayeque, and Piura	19/1/2018
Apumayo S.A.C.	Mining	Ayacucho	19/1/2018
Anabi (Utunsa)	Mining (polymetallic)	Apurímac	22/1/2018
Anabi (Amana)	Mining (polymetallic)	Apurímac	22/1/2018
Aruniani S.A.C.	Mining (gold)	Moquegua and Puno	5/2/2018
PETROPERU S.A.	Hydrocarbons	Loreto, Amazonas and Piura	30/3/2018
Southern Peru Copper Corporation	Mining (copper)	Apurímac	3/7/2018
Southern Peru Copper Corporation	Mining (copper)	Apurímac	3/7/2018

Source: Compiled by us based on data from EarthRights International, IDLI & CNDDHH⁶⁶

The consequences of these service provision agreements materialise primarily in situations of conflict, where “human and material resources financed by public funds are used to provide private security activities⁶⁷” to protect business premises, based on apparent risks or threats. The constant and prolonged heavy police presence contributes to the arbitrary use of force, resulting in disproportionate deprivations of liberty without ground for justification.

The signing of these agreements also means that the PNP is subordinated to the extractive companies which allow militarised police contingents to set up in the camps. They are equipped with official police uniforms and weapons but are paid by and under the command of the companies⁶⁸.

In short, the impact of these agreements has led to the violation of many fundamental rights, as it distorts the PNP's service to the public and results in a company-biased practice. Communities within the area of influence extractive projects, and in particular the defenders of land and territory, are seriously affected by this situation.

b) Use of force

States are required to ensure security and maintain public order within their territory, and therefore have a monopoly on arms. Yet this power carries with it the responsibility to comply with international human rights obligations. The principles governing the use of force are those of legality, necessity, and proportionality, to the extent that “there is no other less harmful measure and with the criterion of proportionality with respect to the attack that [the

66. EarthRights International, (2019) op. cit.

67. Velazco, D. (2018), *Análisis sobre normatividad legal y uso de la fuerza pública en contexto de conflictos sociales*. FUNDACIÓN ECUMENICA PARA EL DESARROLLO Y LA PAZ (FEDEPAZ).

68. CNDDH, *Uso de la fuerza y defensores indígenas en el Perú. Informe alternativo a los informes periódicos 22° y 23° presentados por el Perú con ocasión del 95° periodo de sesiones del CERD*, 2018, p. 02. Available at: https://webcache.googleusercontent.com/search?q=cache:OSWjQDr4JE8J:https://tbinternet.ohchr.org/Treaties/CERD/Shared%2520Documents/1_Global/INT_CERD_INF_95_26787_S.doc+&cd=1&hl=es&ct=clnk&gl=ch

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use of force] seeks to repel⁶⁹." Accordingly, it is important to remember "that the State is required to train and educate officers in appropriate mechanisms to ensure public order in the event of social protests⁷⁰."

In Peru, the use of force is regulated by Legislative Decree No. 1186, which has been amended several times, most recently with the enactment in April 2020 of the new Law on Police Protection. This law contravenes constitutional and international standards that recognise the right to life and personal integrity and the principles governing the use of force, thereby fostering impunity. Furthermore, the elimination under this law of the principle of proportionality, which was previously enshrined in Legislative Decree No. 1186 on the Use of Force by the PNP, does away with an indispensable requirement for ensuring that State security forces do not act in an arbitrary or abusive manner in the line of duty.

On the other hand, Law No. 30642 of August 17, 2017 incorporates the progressive and differentiated use of force, as well as its different levels of use, and authorises the exceptional use of lethal force. Legislative Decree No. 1095 governs the use of force by the Armed Forces, allowing them to carry out military operations against hostile groups. In this regulation, the term "hostile group" is not clearly defined, which in practice has allowed the Armed Forces to intervene at their discretion without State control.

In light of this, a recent TC judgment delimits the scope of the term, establishing that it is necessary for there to be an armed group acting in an armed conflict⁷¹and:

"under no circumstances may social protests, mass demonstrations or other public expressions of protest against State policies, riots, or acts of banditry be deemed cases of non-international armed conflict. Therefore, groups that participate in this type of protests shall not be deemed hostile groups that merit military confrontation on behalf of the State [...]"⁷².

This situation is further complicated by Article 4.3 of Legislative Decree No. 1095, which authorises the intervention of the Armed Forces to protect strategic infrastructure or essential public utilities in coordination with the PNP. Furthermore, as discussed below, these are classified as CNAs and are therefore protected by both the Armed Forces and the PNP. For example, Supreme Resolution No. 080 - 2019⁷³, authorised the intervention of the Armed Forces in support of the PNP to maintain public order in Matarani Port Terminal (*Terminal Portuario Matarani*), in the province of Islay, Department of Arequipa⁷⁴. This territory has been experiencing ongoing socio-environmental conflicts since 2012, in connection with the rejection of Southern Copper's Tia Maria mining project⁷⁵.

Despite the existence of the Manual on Human Rights in Policing (*Manual de derechos humanos aplicados a la función policial*)⁷⁶, the annual reports of the CNDDHH point to the illegitimate use of State force in contexts where there is a high level of conflict. There is a

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69. Saldaña, José & Portocarrero, J. (2017), *opt*, cit.

70. *Ibid*.

71. "370. In this context, it is obvious to this Court that although the definition of hostile group, provided in Article 3.f of the challenged legislative decree, does not explicitly recognise all the elements that make up an armed group, it is clear from a systematic interpretation of the challenged articles, and by recognising the validity of the rules of international humanitarian law: "[w]hen the action of the Armed Forces in a state of emergency is aimed at conducting military operations to confront the capability of a hostile group or element thereof [...] Hostile group - Plurality of individuals in the national territory who meet three conditions: (i) they are at least minimally organised; (ii) they have the capacity and resolution to confront the State, in a prolonged manner by means of firearms; and, (iii) they participate or collaborate in hostilities. Furthermore, it is reaffirmed that to the extent that Articles 3.f and 5.1 of Legislative Decree No. 1095 refer to the "hostile group", they must be interpreted in accordance with the provisions of Article 1.1 of Protocol II Additional to the Geneva Conventions and Common Article 3 on the regulation of the "armed group". TC, Judgment of July 8, 2015, Case 00022-2011-PI/TC. Available at: <https://elperuano.pe/normaselperuano/2015/08/22/1277296-1.html>

72. TC, Judgment of July 8, 2015, Case 00022-2011-PI/TC. Available at: <https://elperuano.pe/normaselperuano/2015/08/22/1277296-1.html>

73. See: <https://fr.scribd.com/document/420767444/Resolucion-que-autoriza-intervencion-de-FF-AA-en-puerto-de-Matarani-provincia-de-Islay>

74. Organisations such as Red Muqui have denounced this situation: Red Muqui (August 8, 2019) Intervención de Fuerzas Armadas en Matarani - Islay es ilegal e inconstitucional. Available at: <https://www.ocmal.org/intervencion-de-fuerzas-armadas-en-matarani-islay-es-ilegal-e-inconstitucional/>

75. *Ibid*.

76. Ministerial Resolution No. 952-2018-IN. Manual published in the Diario Oficial el Peruano on August 14, 2018.

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disproportionate use of force by the State and dialogue mechanisms are late or lacking. In recent presidential terms, 142 civilians have been killed in social protest contexts by law enforcement agencies, and several have been seriously injured⁷⁷.

Most deaths were among indigenous groups, which seems to indicate there is a marked discriminatory bias in the use of force towards these extremely vulnerable groups. On the other hand, the geographical area of influence of extractive industries is a particularly high-risk scenario, as a number of deaths occurred during protests against mining activities. In this type of context, the use of police force is exercised under state of emergency declarations, which in recent years have become devoid of their exceptional and temporary nature⁷⁸. According to the law, a state of emergency should only be decreed in circumstances of serious disturbance of public order, as it restricts fundamental rights such as liberty, personal security, inviolability of the home, freedom of assembly and transit.

c) State of emergency declarations

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In Peru, the declaration and continuous use of states of emergency in recent years clearly demonstrates the criminalisation of social protest. It has also had a disproportionate impact on indigenous populations. These declarations of emergency have been justified by the supposed existence of breaches of public order that put the security of citizens or public or private property at risk. However, research indicates: "the concept of public order seems to be equated with the normal running of mining operations and, consequently, it is deemed to have been violated when there are expressions or actions of protest against this activity⁷⁹."

From 2017 to 2019, in the Apurímac-Cusco-Arequipa mining corridor alone, five state of emergency declarations were decreed, which have been preventatively extended on up to 13 occasions. This is evidence of the violation of both the temporary nature of the measure and international human rights standards, through the joint intervention of the PNP and Armed Forces:

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77. CNDDHH, Informe Anual CNDH 2014-2015. La Criminalización de la protesta social, 2015. Available at: http://derechoshumanos.pe/informe2014_15/Criminalizacion_de_la_Protesta_2014_15.pdf

78. As required by Article 137 of the Constitution and Article 27 of the American Convention on Human Rights.

79. Saldaña Cuba, J., & Portocarrero Salcedo, J. (2017). pp. cit. 311-352.

Year	Supreme Decree	Date	Time limit	Intervention	Territories declared in a state of emergency	State	
						Extension	Renewal
2017	No. 085	Aug 16	30 days	PNP and Armed Forces	Districts of Chalhuanahuacho, Haquira and Mara, province of Cotabambas in the Department of Apurímac.		X
	No. 093	Sep 15	30 days	PNP and Armed Forces	Districts of Chalhuanahuacho, Haquira and Mara, province of Cotabambas in the Department of Apurímac.	X	
					District of Capacmarca, province of Chumbivilcas in the Department of Cusco.		X
	No. 101	Oct 14	30 days	PNP and Armed Forces	Districts of Chalhuanahuacho and Mara, province of Cotabambas in the Department of Apurímac, and district of Capacmarca, province of Chumbivilcas in the Department of Cusco.	X	
	No. 107	Nov 14	30 days	PNP and Armed Forces		X	
	No. 120	Dec 14	30 days	PNP and Armed Forces		X	
2018	No. 006	Jan 11	30 days	PNP and Armed Forces			X
	No. 015	Feb 8	30 days	PNP and Armed Forces		X	
	No. 025	Mar 8	60 days	PNP and Armed Forces		X	
	No. 037	Apr 11	60 days	PNP and Armed Forces		X	
	No. 100	Sep 29	30 days	PNP and Armed Forces	Apurímac-Cusco and Arequipa mining corridor from km 130 to km 160		X
	No. 105	25 Oct	30 days	PNP and Armed Forces		X	
	No. 115	Nov 25	30 days	PNP and Armed Forces		X	
	No. 128	Dec 24	30 days	PNP and Armed Forces		X	
2019	No. 08	Jan 25	30 days	PNP and Armed Forces		X	
	No. 38	Feb 26	30 days	PNP and Armed Forces		X	
	No. 056	Mar 28	15 days	PNP and Armed Forces		X	
	No. 169	Oct 15	30 days	PNP and Armed Forces	Apurímac-Cusco mining corridor including 500 metres adjacent to each road, districts of Capacmarca, Colquemarca, Chamaca, Velille		X

Source: Own elaboration with data from publications in the Official Gazette (Diario Oficial el Peruano)

Human rights organisations have also questioned the continuous declaration of states of emergency in the territories. On October 23, 2017, a *habeas corpus* action was filed against the Council of Ministers (*Consejo de Ministros*), by the social organisations Single Front for the Defence of Chalhuanahuacho (*Frente Único de Defensa de Chalhuanahuacho*), Chalhuanahuacho Peasant Women's Federation (*Federación Campesina de Mujeres de Chalhuanahuacho*) and Paki Waraka Youth Federation (*Federación de Jóvenes Paki Waraka*). It questioned the constitutionality of the continuous states of emergency decreed in the districts

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of Chalhuanhuacho and Mara, province of Cotabambas, in the Apurímac region; and in the district of Capacmarca, province of Chumbivilcas, in the Cusco region⁸⁰.

The legal proceedings⁸¹, which were followed by the Legal Defence Institute (*Instituto de Defensa Legal* - IDL) and the Apurimena section of the Pro-Human Rights Association (*Asociación Pro-Derechos Humanos* - APRODEH), reached a satisfactory conclusion on November 24, 2020, with the claimants winning the case. In a landmark ruling⁸², the TC prohibited the declaration of these preventive states of emergency and set limits on the Executive Branch's ability to use them.

The decision "is particularly significant as it develops three criteria that the State must scrupulously adhere to when decreeing or extending states of emergency, so that their use does not become unconstitutional: temporariness, proportionality and necessity⁸³." It thus marks "the end of their use as a weapon to neutralise the legitimate protests of the population⁸⁴."

d) Critical National Assets

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CNAs have recently come into existence in Peru: they were first regulated in 2017. Peruvian legislation defines them as: "resources, infrastructure and systems that are essential and indispensable to maintain and develop national capacities, or are intended to fulfil that purpose⁸⁵."

Consequently, for a resource, piece of infrastructure or system to be classified as a CNA, the following criteria are considered:

- Its connection with national objectives and capacities
- Its critical importance for the State
- The absence of any immediate alternative solutions

Once classified as CNAs, these assets are granted specific protection to ensure their normal functioning and "the sacrosanctity or continuity of their operations, on the basis that they are protected legal assets which are essential and indispensable for maintaining and developing national capacities"⁸⁶.

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80. TC. Plenary. Judgment No. 945/2020, Caso Huilca Paniura y Otros, p. 2 et seq. Available at: <https://tc.gob.pe/jurisprudencia/2020/00964-2018-HC.pdf>

81. On November 26, 2018, the CNDDHH and the OMCT filed an Amicus Curiae before the TC, in which they stressed that the declaration of a preventive state of emergency in Peru violates the international obligations assumed by the State as it is not based on a serious and imminent risk to national security and does not meet the requirements of strict necessity for that such a measure necessitates. <https://www.omct.org/es/monitoring-protection-mechanisms/statements/peru/2018/11/d25133/>

82. *Caso Huilca Paniura y Otros*, paras. 26 et seq.

83. ILD. Press release. Available at: <https://www.idl.org.pe/tc-prohibe-dictar-estados-de-emergencia-preventivos/>

84. Ibid.

85. Supreme Decree No. 106-2017-PCM, Regulation for the Identification, Assessment and Management of Risks to National Critical Assets, (November 9, 2017). Available at: <https://busquedas.elperuano.pe/normaslegales/decreto-supremo-que-aprueba-el-reglamento-para-la-identifica-decreto-supremo-n-106-2017-pcm-1585361-1/>

86. Ibid, Article 2.

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The Peruvian Ministry of Defense (*Ministerio de Defensa* – MINDEF) is responsible for drafting and updating the National Security and Defence Directive for the Protection of CNAs (*Directiva Nacional de Seguridad y Defensa para la protección de los ACN*). Additionally, the regulation grants an essential role to the National Intelligence Directorate (*Dirección Nacional de Inteligencia* - DINI) in elaborating the National Inventory of Critical National Assets (*Inventario Nacional de Activos Críticos Nacionales* - INACN) with the participation of different sectors, both public and private. It also grants them a role in coordinating and overseeing the risk assessment that will be prepared by each responsible sector, public entity or private company operating for the CNA it handles⁸⁷. This is done as follows:

Source of risk	Sectors, entities and operators responsible for CNA risk identification and assessment
Natural events and climate change	Ministry of the Environment (Ministerio del Ambiente – MINAM), MINDEF, National Institute of Civil Defence (Instituto Nacional de Defensa Civil – INDECI), National Centre for Disaster Risk Estimation, Prevention and Reduction (Centro Nacional de Estimación, Prevención y Reducción del Riesgo de Desastres - CENEPRED) and the CNA operator.
Activities that pose a risk to national security and defence	MINDEF
Activities that disturb the peace or public order	MININTER, MINDEF
Impact on digital security	Operator and DINI
Operation and maintenance	Responsible sector and the operator
Pandemics, epidemics, or plagues	Ministry of Health (MINSA), Ministry of Agriculture (MINAGRI) and the operator
Obsolescence, reduction, or loss of CNA capacities	Responsible sector and the operator
Intelligence actions or other special intelligence operations by actors posing a threat to national security	DINI
Other sources of risk	DINI informs the responsible sector, entity or operator

Source: Compiled by us with data from Supreme Decree No. 106-2017-PCM.

At present, CNAs are being implemented in the abovementioned context of conflict. There were almost 129 socio-environmental conflicts in July 2020, with insufficient public policies to guarantee the protection of human rights defenders in Peru. In these areas of high socio-environmental conflict, where human rights defenders are under serious threat, the possibility

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87. Article 9.- CNA risk identification and assessment

9.1. CNA risk identification and assessment is the responsibility of each operator, in accordance with the provisions of this Regulation, under the supervision of the relevant responsible sector.

9.2. The DINI is the General Coordinator and oversees the risk identification and assessment carried out by each responsible sector, public entity and private company operating the CNA, in consideration of the sources of risk and responsibilities indicated in the following table:

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of intervention by the Armed Forces and PNP, under Article 17 of the CNA Regulation⁸⁸, deepens distrust, setting the scene for potential militarisation.

According to their scope, the regulation of CNAs can result in roadblocks, protests against extractive companies, obstruction of services or other events of a similar nature being identified as sources of risk and acts that disturb the peace and public order. This allows the Ministry of Defence and the Interior to request the direct intervention of the Armed Forces and the PNP in the territories concerned and hinders the right to demonstrate and to social protest being exercised. Furthermore, the authorities' profound disregard for this right fosters the disproportionate use of force in the event of a confrontation between the Armed Forces and PNP and the population, resulting in more victims and the further criminalisation of protest.

Classifying mining and energy operations as CNAs is merely a way of managing the security of mining, hydrocarbon, and other projects, to ensure they remain sacrosanct and guarantee their continuity. Under the creation of CNAs, public security is granted to extractive projects, allocating public funds to ensure the presence of the PNP or the Armed Forces and prioritising the protection of private infrastructure or companies.

Thus, as it stands, the approval and regulation of CNAs in Peru, contravenes constitutional and democratic principles and is primarily intended to defend and guarantee the normal operation of strategic sectors of the Peruvian economy, most of which are challenged by indigenous communities who have been denouncing constant violations of their rights to land and territory, water, the environment, prior consultation, and participation.

In view of this, CNAs should not be used as an arbitrary and discretionary tool. Their implementation must guarantee the protection of fundamental rights, in strict compliance with the Constitution and international human rights standards.

3. Judicialisation of the defence of human rights

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a) Persecution of the freedom of expression

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Freedom of expression is a fundamental right that is essential for the development and consolidation of democracy. This right is recognised in Article 2, paragraph 4 of the Constitution of Peru⁸⁹.

Landmark Advisory Opinion No. OC-5/85 of the Inter-American Court of Human Rights⁹⁰ laid the foundations of this right, establishing that freedom of expression goes further than the theoretical recognition of the right to speak or to write. It also includes, and cannot be separated from, the right to use whatever medium is deemed appropriate to impart ideas and to have them reach as wide an audience as possible⁹¹. In this sense, Inter-American case law has on numerous occasions consolidated the dimensions of the right to freedom of expression in two matters:

"An individual dimension, consisting of the right of each person to express her own thoughts, ideas, and information, and a collective or social dimension, consisting of society's right to

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88. Article 17.- Armed Forces and National Police of Peru 17.1. The Armed Forces, within the framework of their constitutional duties, provide the relevant protection and security measures to CNAs when a serious risk to the nation stems from their disruption, disturbance or destruction, and they are called upon by the responsible sector, with the authorisation of the President of the Republic (Presidente de la República).

17.2. The National Police of Peru, within the framework of its constitutional duties, provides the relevant protection and security measures to CNAs when a serious risk to the nation stems from their disruption, disturbance or destruction, and it has been called upon by the responsible sector.

89. Article 2.- Everyone has the right to: 4. To freedom of information, opinion, expression and dissemination of thought by means of the spoken or written word or image, by any means of social communication, without prior authorisation or censorship or any impediment whatsoever, under liability of law.

90. Advisory Opinion OC-5/85 of November 13, 1985. Available at: https://www.corteidh.or.cr/docs/opiniones/seriea_05_ing.pdf

91. Ibid., para. 31

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obtain and receive any information, to know the thoughts, ideas, and information of others, and to be well-informed. The two dimensions [...] they are of equal importance; they are inter-dependent and must be guaranteed simultaneously, in full, in order for the right enshrined to be completely effective⁹²."

However, in Peru, freedom of expression is under serious threat and, as seen above, journalists working in the country are worst affected by this situation, due to direct threats to their person. There have been cases where the police have arbitrarily confiscated journalists' recording equipment and where journalists have faced criminal prosecution for their broadcasting or investigative work. These facts were reported by the Special Rapporteur for Freedom of Expression of the IACHR in 2018⁹³.

The case of journalist Carlos Yofré López Sifuentes

Journalist **Yofré López** is director of the news site *barranca.pe*. In 2016 he was sued for defamation (*difamación*) and libel (*calumnia*) by the Transport and Road Safety Manager (*Gerente de Transportes y Seguridad Vial*) of the Provincial Municipality of Barranca. The journalist had commented on the chaotic traffic in Barranca on social media and had reported irregularities in the issuing of traffic permits. The journalist revealed that the Provincial Municipality of Barranca was issuing vehicle licences in less than 24 hours without requiring their owners to present a medical certificate or driving licence. The complaint filed against him demanded the maximum criminal sentence and the payment of 60,000 Peruvian Soles in civil damages.

This was not the first time that Yofré López was attacked for reporting alleged acts of corruption in public office. In 2014, he was the victim of the detonation of an explosive device in his home. His parents suffered minor injuries. That attack was in connection with his investigations into pollution in the province of Barranca.

In August 2018, Superior Judge (*Jueza Superior*) Juana Caballero filed another complaint against Yofré López for defamation and libel, seeking a three-year prison sentence and 100,000 Peruvian Soles in damages, after he questioned the revocation of pre-trial detention for the former Mayor (*alcalde*) of Barranca, who had been charged with corruption, and for publishing information showing the former mayor had assets in excess of 1.5 million Peruvian Soles.

The criminal offence of defamation is often used against journalists as a form of intimidation. It is the primary threat to freedom of expression. During 2019, both the ANP and the CPP reported various cases of intimidation of journalists and media outlets, with defamation proceedings underway. In the last report, published in early 2020, they documented an increase in attacks against journalists⁹⁴.

These practices violate international standards for the protection of freedom of expression. Principle 9 of the IACHR Declaration of Principles on Freedom of Expression states: "[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well

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92. IACHR (2010), The Inter-American Legal Framework regarding the Right to Freedom of Expression, Office of the Special Rapporteur for Freedom of Expression Inter American Commission on Human Rights. Available at: <http://www.oas.org/en/iachr/expression/docs/publications/INTER-AMERICAN%20LEGAL%20FRAMEWORK%20OF%20THE%20RIGHT%20TO%20FREEDOM%20OF%20EXPRESSION%20FINAL%20PORTADA.pdf>

93. "867. [...] investigative journalism was threatened in Peru due to harassment coming from the judicial and political sphere against a group of journalists that revealed an alleged corruption plot that involved members of the Legislative and Judicial Branches, politicians, and businesspersons. The harassment involved the filing of applications to reveal the sources of the investigations. Several journalists also suffered threats and physical and verbal attacks because of their work. In addition, the Office of the Special Rapporteur was informed that reporters were frequently attacked by security forces and demonstrators while covering social protests." IACHR (2018) Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Edison Lanza Special Rapporteur for Freedom of Expression. OAS/SER.L/V/II. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/IA2018RELE-en.pdf> P. 222.

94. CPP. Informe 2020-I, op cit.

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as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation⁹⁵."

Another worrying situation concerning the undermining of freedom of expression, was the April 2018 buyout of Prensart (formerly Empresa Periodística Nacional S.A. EPENSA) by Grupo el Comercio⁹⁶. This media merger seriously undermines media pluralism and, consequently, freedom of expression.

b) Criminalisation of social protest

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The right to protest is recognised in the Peruvian legal system as the right of every person to assemble peacefully and without weapons⁹⁷. The TC supplements this definition, adding that this right comprises: "the power to assemble together with other people, in a specific place, temporarily and peacefully, and without the need for prior authorisation, for the shared purpose of putting forward and/or freely exchanging ideas or opinions, defending interests, or agreeing on common action⁹⁸."

The IACHR has repeatedly highlighted the importance of the right to protest, not only because of its link to the exercise of freedom of assembly, but also because it allows for the exercise of other fundamental rights, such as freedom of expression. Accordingly, "participation in demonstrations, as an exercise of freedom of expression and freedom of assembly, is of imperative social interest and is inherent to the proper functioning of a democratic system that is inclusive of all sectors of society⁹⁹." The IACHR explains how human rights defenders are criminalised in the context of protests and the effects this has on them:

"The criminalisation of human rights defenders through the misuse of criminal law involves the manipulation of the punitive power of the State by State and non-State actors in order to control, punish, or prevent the exercise of the right to defend human rights. This takes place, for example, through the filing of baseless allegations or complaints based on criminal offenses that do not conform with the principle of legality or criminal offenses that do not meet Inter-American standards vis-à-vis the behaviors they intend to punish. It can also be displayed in the subjection of defenders to extended criminal proceedings and in the use of preventive measures with no procedural ends. The manipulation of criminal law to the detriment of defenders has become an obstacle that merits priority attention from the States, as it intimidates and paralyzes the work of human rights defenders, since their time, resources (financial and otherwise), and energy have to be devoted to their own defense¹⁰⁰."

This scenario of criminalisation is a reality in Peru. It stems from a multitude of issues, including the indiscriminate use of police and military force, the persistence of agreements between the PNP and companies, and state of emergency declarations. In addition, we find heavy instrumentalisation of criminal law to persecute leaders, defamation and smear campaigns against defenders and the absence of mechanisms to achieve justice and reparations for the victims of the criminalisation of social protest. There is a clear trend towards restricting the exercise of the right to protest, criminalising those who oppose State decisions or policies,

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95. IACHR, Declaration of Principles on Freedom of Expression, adopted by the IACHR at its 108th regular session held from October 2-20, 2000 <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=26&IID=1>

96. See: El Comercio editorial, Grupo el Comercio completó la compra de Prensart, (April 7, 2018) <https://webcache.googleusercontent.com/search?q=cache:hNRINm8uOtkJ:https://elcomercio.pe/economia/grupo-comercio-completo-compra-prensart-noticia-510379-noticia/+&cd=1&hl=en&ct=clnk&gl=ch>

97. Implicitly in Article 2, numeral 12 of the Peruvian Constitution (freedom of assembly), as well as in Article 15 of the ACHR and Article 21 of the ICCPR.

98. TC, Judgment of December 7, 2005. Case No. 4677-2004-PA/TC. Legal basis 14.

99. IACHR (2009), Democracy and Human Rights in Venezuela. Available at: <http://www.cidh.org/countryrep/venezuela2009eng/VE09.summary.eng.htm>

100. IACHR (2015) Criminalization of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15, p. 16 Available at: <http://www.oas.org/en/iachr/reports/pdfs/criminalization2016.pdf>

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and granting a high degree of discretion to State agents in the detention of individuals and in the ways of dealing with conflict.

Additionally, the abovementioned 2017 constitutional reforms, which extended the pre-charge detention periods to 48 hours, or 15 days for acts of organised crime, have exacerbated the vulnerability of human rights defenders. This is compounded by the introduction of criminal and procedural rules amending and/or creating new criminal offences, harsher penalties, and the aggravated offences. When combined, these factors encourage criminal investigation procedures and have led to a worrying increase in human rights defenders' risk of being punished merely for protesting.

The Peruvian State's strategy of criminalising the various expressions of protest is specifically aimed at confronting, resolving, and even disorganising these protests¹⁰¹. An example of this was the amendment of the crime of extortion, which is set out under Article 200 of the Criminal Code, by Legislative Decree No. 1237 in September 2015¹⁰². This criminal offence was originally intended to punish the obtaining of an unlawful financial benefit. However, following the amendments, the crime of "extortion" came to include any type of benefit –not necessarily financial–, which means that public or private institutions can be victims of extortion. It also deems the obstruction of roads or taking of premises in which two or more persons participate an aggravating factor, which carries a prison sentence of up to 25 years¹⁰³.

On April 19, 2018, the Puno Bar Association (*Colegio de Abogados de Puno*) filed a constitutional complaint, arguing that Article 200 violated the right to social protest and its related rights, such as freedom of assembly, expression, conscience, political participation, and petition. On June 2, 2020, the TC upheld this point, ruling that the crime of extortion should no longer be applied to social protest situations¹⁰⁴.

While the prosecution of defenders most often ends in their acquittal or the case being closed, the proceedings involve lengthy investigations that have a profound impact on the defenders' physical and mental health and repress their ability to defend rights. All of this reveals a justice system that behaves ruthlessly.

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101. Salcedo C.M, El derecho constitucional de reunión y la protesta social, Gaceta Constitucional No. 19. Available at: <http://blog.pucp.edu.pe/blog/wp-content/uploads/sites/156/2003/01/722.pdf>.

102. Legislative Decree No. 1237, September 26, 2015. Available at: <https://busquedas.elperuano.pe/download/url/decreto-legislativo-que-modifica-el-codigo-penal-aprobado-decreto-legislativo-n-1237-1292707-7>

103. Article 200, Criminal Code: Extortion:

"Anyone who by means of violence or threat forces a person or a public or private institution to grant the agent or a third party an undue financial or other benefit of any other kind shall be sentenced to no less than ten and no more than fifteen years' imprisonment. The same penalty shall apply to anyone who, with the aim of aiding the commission of the offence of extortion, supplies information that has come to his or her knowledge by reason of or when completing his or her duties, position or office or deliberately supplies the means for the offence to be committed. Anyone who, by means of violence or threats, takes premises, obstructs roads or impedes the free movement of citizens or disrupts the normal operation of public services or the performance of legally authorised works, with the aim of obtaining from the authorities any undue economic benefit or advantage or other benefit or advantage of any kind, shall be punished with a prison sentence of no less than five years and no more than ten years. A public official with decision-making powers or a public official holding a position of trust or management who, in contravention of the provisions of Article 42 of the Political Constitution of Peru, participates in a strike with the aim of obtaining for himself or herself or for third parties any undue economic benefit or advantage or other benefit or advantage of any kind, shall be punished with disqualification under Article 36, paragraphs 1 and 2, of the Criminal Code. The penalty shall be no less than fifteen and no more than twenty-five years and disqualification under Article 36 (4) and (6), if the violence or threat is committed [...]"

104. TC, Judgment of June 2, 2020, Case 0009-2018-PI/TC, legal bases 99-100. Available at: <https://tc.gob.pe/jurisprudencia/2020/00009-2018-AI.pdf>

Prosecuted for protesting: Oscar Mollohuanca and others

Oscar Mollohuanca Cruz, former Mayor of the province of Espinar, **Herbert Huamán** and **Sergio Huamaní Hilario**, both former representatives of the Single Front for the Defence of the Interests of Espinar (*Frente Único de Defensa de los Intereses de Espinar* - FUDIE) have faced a lengthy criminal investigation in the city of Ica since May 2012 for denouncing water pollution in their province and requesting the fulfilment of commitments by the mining company operating there, in the context of social protests. They are charged with the offences of "attacks on public security", "obstructing public services" and "rioting." The Public Prosecutor's Office requested a prison sentence of eight years for the first offence and seven years for the last two, as well as the payment of 100,000 Peruvian Soles in damages.

In May 2012, Oscar Mollohuanca was violently arrested while performing his duties as Mayor of the provincial municipality and held in pre-trial detention. Other leaders were also detained, including inside the premises of the Xstrata mining company (now Glencore Antapaccay). The Judicial Branch decided to transfer the trial to the city of Ica, citing a "lack of procedural guarantees." This has increased his financial and personal costs and, consequently, restricted his right to defence¹⁰⁵.

On July 17, 2017, Oscar Mollohuanca, Sergio Huamaní and Herbert Huamán were acquitted by the Judicial Branch. However, that same year, the Public Prosecutor's Office appealed the decision and, as a result, the *Sala Penal de Apelaciones* (Criminal Court of Appeal) of Ica ordered a new trial to be held. This situation remains ongoing.

During the protests, three people died as a result of police repression with firearms, 30 police officers were injured, and 19 people were detained. The case concerning those who died was closed.

105. This case is detailed in the report of the Observatory for the Protection of Human Rights Defenders (Observatorio para la protección de los defensores de derechos humanos - OBS): *Criminalización de Defensores de Derechos Humanos en el Contexto de Proyectos Industriales: Un Fenómeno Regional en América Latina*, 2016. Available at: <https://www.fidh.org/IMG/pdf/criminalisationobsangocto2015bassdef.pdf>

Criminalisation of Walter Aduviri Calisaya for defending Aymara territory

Land and territory defender **Walter Aduviri Calisaya** and his community organised peaceful protests that became known as the *Aymarazo* in 2011 when the government awarded a mining concession to the Canadian company Bear Creek in the territory of the Aymara people, an indigenous community living in the south of the Department of Puno. The community had not been adequately consulted, and the project entailed the destruction of the sacred mountain, Apu Kaphia, and the serious risk of polluting water throughout the territory, including in the famous Lake Titicaca, a UNESCO World Heritage Site¹⁰⁶.

The mass peaceful protests caused the government to finally back down and revoke the mining permit. However, on August 14, 2019, after more than eight years of court proceedings, Mr Aduviri, then president of the Front for the Defence of Natural Resources in the Southern Zone of Puno (*Frente de Defensa de los Recursos Naturales de la Zona Sur de Puno*) and elected governor of the Department, was sentenced to six years in prison. The court found him guilty of "aiding and abetting a public nuisance offence" (*ser coautor no ejecutivo por el delito contra la tranquilidad pública*) during the *Aymarazo*.

His arbitrary detention is yet another example of the criminalisation, harassment, and abuse of criminal law, which is routinely employed to subdue human rights defenders in Peru.

In December 2020, Mr. Aduviri was released from prison following the decision of the Supreme Court of Peru (*Corte Suprema de Justicia*) to allow him to serve a four-year suspended sentence.

c) Freedom of association

Freedom of association or the right to organise is the cornerstone and basis on which the rights to collective bargaining and to strike are exercised¹⁰⁷. It allows all workers to form organisations of their own choosing, i.e., to associate freely in order to exercise their rights vis-à-vis employers.

Unionisation is essential to demanding government action to protect labour rights or improve living conditions, because "associations are a vehicle for citizens to unite their forces around a common cause, so that their demands have an impact. [...] Therefore it is unsurprising that States and [companies] may resort to measures to interfere with the right to freedom of association¹⁰⁸."

In Peru, when the petitions and demonstrations of union members or associates go against the government or its policies, measures are often deployed to repress or limit these actions of expression, and even criminal proceedings are brought against their main representatives, restricting their work.

106. For more information on this case see: <https://www.omct.org/es/human-rights-defenders/urgent-interventions/peru/2020/06/d25877/> and <https://www.omct.org/es/human-rights-defenders/statements/peru/2020/05/d25842/>

107. "Freedom of association is not just another human or fundamental right, but is a prerequisite or condition for the possession and exercise of other rights. In other words, it could be described as "the right to have rights": a right that generates or creates other rights" ERMIDA URIARTE, Oscar. "Crítica a la libertad sindical." In: *Derecho Pucp* No. 68: Revista de la Facultad de Derecho. Lima, Fondo Editorial PUCP, 2012. P. 33.

108. *Idem*. 19.

The case of the dockers of Villa María del Triunfo

On October 15, 2014, dockers at the Villa María del Triunfo fish market staged a protest in rejection of a series of anti-union practices carried out by the company that owned the fish market, Servicios Industriales Pesqueros Sociedad Anónima.

The workers carried out a protest that consisted of preventing entry to the market for a short period of time, but at no time was there any damage to property or injury to people. However, their main representatives were prosecuted and convicted for the offence of "rioting." The conviction acknowledged that the objective criteria for the offence of "rioting" were not met but convicted the workers on the grounds that they used language "for the purpose of intimidation."

The need to protect trade union leaders from harmful acts is enshrined in Article 28 of the Constitution, which requires the State to protect freedom of association. However, the legislation in force in both the private and public sectors adheres to an interventionist and restrictive model in its view of trade union rights, with severe restrictions and limits on the formation of trade unions and on collective bargaining, as well as controls on the right to strike¹⁰⁹.

Other labour standards also have a significant impact on this right. For example, the signing of temporary contracts is promoted, with provisions for around nine types of temporary contracts. This makes it harder to form a trade union and in turn leads to a reduction in the number of workers on open-ended contracts¹¹⁰.

The report, *Collective Bargaining in the Public Sector 2017* (Negociación Colectiva en el sector público 2017)¹¹¹, produced by the Peruvian National Civil Service Authority (*Autoridad Nacional del Servicio Civil - SERVIR*) shows there is a low rate of unionisation in the public sector. It is nonetheless triple the rate of union membership in the formal private sector. In fact, 2020 statistics from the MTPE show a total of 379,844 unionised workers, corresponding to 54% in the public sector and 46% in the private sector.

"Thus, the unionisation rate of formal wage earners in Peru reached 8.1% but shrinks to 5% when calculated for the total wage-earning population. In the formal private sector, the 2017 membership rate was 5.2%, whereas in the public sector it reached 16%. Although the membership rate fluctuated by similar percentages in the period 2013-2017, comparing it with 2013 figures leads us to conclude that in the last five years there has been a downward trend in the private sector, with union membership falling from 6.4% to 5.2%¹¹²."

Furthermore, according to SERVIR data for 2016, there is a significant gender gap in unionisation, especially in the private sector.

"Therefore, for that year, the union membership rate for men reached 7.4%, whereas for women it was only 1.5%. Of the total number of unionised workers, 90% were men and 10% women. In contrast, in the public sector, the differences in union membership by gender were less pronounced. Of the total number of unionised workers, 55% were men and 45% women¹¹³."

109. Labour Development Programme (Programa Laboral De Desarrollo – PLADES) Report: Situación De Los Derechos Sindicales En El Perú 2014-2018, March 2019. Available at: <http://www.plades.org.pe/publicaciones/informe-situacion-de-los-derechos-sindicales-en-el-peru-2014-2018/>

110. Peruvian Institute for International Trade Union Studies (Instituto de Estudios Sindicales Internacionales – IESI), La situación laboral y sindical del Perú (2012) p.4. Available at <https://www.iesiperu.org.pe/documentos/LASITUACIONLABORALYSINDICALENELPERU.pdf>

111. See: <https://lpderecho.pe/servir-descarga-pdf-negociacion-colectiva-sector-publico-2017/>

112. PLADES, Report: Situación De Los Derechos Sindicales En El Perú 2014-2018, op. cit. P.12 <https://drive.google.com/file/d/1CpviSR7c5ZUiVq8xV3kg4i4kLGJdPFBQ/view>

113. Ibid. p. 13

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Although these conditions undermine the exercise of the right to organise and prevent or hinder many workers from benefiting from better employment conditions, the State has failed to adopt any measures to change or reverse this situation.

d) Right to exercise customary law

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Article 149 of the Constitution recognises the existence of two systems of justice: the *formal* justice system, which is made up of the Judicial Branch, the Public Prosecutor's Office, the TC and all State jurisdictions, and the *special* justice system, which comprises peasant and native communities and *Rondas Campesinas*.

The *special* justice system comprises rules and procedures based on their habits and customs that the authorities of peasant and native communities and *Rondas Campesinas* use to govern matters within their jurisdiction, which often stem from ancestral traditions that pre-exist national legal systems.

Legal basis nine of Plenary Agreement No. 01 - 2009/CJ-116 sets out the criteria for identifying whether special jurisdiction is applicable. These criteria are:

- a. Human element:* Existence of a group that is distinguishable by its ethnic or cultural origin and differentiated by its cultural identity.
- b. Organic element:* Existence of traditional authorities that exercise a role of social control in their communities.
- c. Regulatory element:* Existence of a legal system of its own, of customary law comprising traditional rules that are both substantive and procedural.
- d. Geographical element:* Judicial power and authority, which determine the application of traditional law, are exercised within the territorial scope.

Although, according to the Constitution, indigenous organisations are responsible for exercising jurisdiction within their territory, often conflicts of jurisdiction and even criminal charges have arisen due to the alleged commission of offences such as "usurpation of office" (*usurpación de funciones*), "kidnapping" or "injury," among others. This failure to understand the needs and practices of these peoples leads to violation of the right to *special* or indigenous jurisdiction and, in turn, of the right to cultural identity. This is because, according to current legislation, indigenous peoples have the right to apply their own system of justice within their territories, as well as the right to have special rules applied to them when they are tried in the ordinary justice system.

The *Ronderos* of Bambamarca

On April 5, 2015, 19-year-old **Royer Alali Muñoz Caruajulca**, a young *rondero*, was found dead in Bambamarca. The facts were reported to the Public Prosecutor's Office and the victim's father paid 150 Peruvian Soles for autopsy to be carried out. The Public Prosecutor's Office later stated that an autopsy was no longer necessary.

Consequently, the relatives requested the intervention of the *Rondas Campesinas*, which, in exercise of the powers recognised under Article 149 of the Constitution, summoned the Public Prosecutor, requesting explanations for the reported irregularities. The Public Prosecutor, guarded by 20 police officers, apologised to the relatives and the public, accepted that he had committed irregularities and promised to stand down from the investigation. This was recorded in a document and the case was assigned to a new Public Prosecutor, who ordered the exhumation of the body.

In the aftermath of these events, the Public Prosecutor of the Second Corporate Provincial Criminal Prosecutor's Office of Hualgayoc (*Segunda Fiscalía Provincial Penal Corporativa de Hualgayoc*) charged eight *ronderos* with the criminal offences of preventing or hindering the work (*impedimento o entorpecimiento en el ejercicio de las funciones*) of the magistrates from the Public Prosecutor's Office, under Article 367 of the Criminal Code. In addition, the Superior Mixed Prosecutor's Office of Chota (*Fiscalía Superior Mixta de Chota*) pressed charges against them for the offence of "rioting."

The Public Prosecutor's Office requested a 14-year prison sentence for the members of the *Rondas de Bambamarca* in connection with these crimes¹¹⁴. The case reached the oral trial stage, then all the defendants were acquitted in 2019.

Protecting the special justice system is essential to improve the degree of coordination between community justice and the public authorities, to promote a relationship that respects interculturality, and to eliminate the barriers to accessing justice faced by members of indigenous communities or indigenous peoples.

4. Private companies and attacks on human rights defenders

The business sector in Peru plays an important role in the climate of insecurity and attacks against human rights defenders, often allowing or encouraging these attacks. Thus, the economic model based on megaprojects and the lack of government action to ensure that companies comply with their human rights obligations constitute a source of vulnerability for human rights defenders in Peru. Defenders of land and territory have been particularly affected, as detailed above and documented by the UN Special Rapporteur on the Situation of Human Rights Defenders:

"I heard that security guards or police officers employed by oil and mining companies have at several occasions threatened to kill, harassed and attacked human rights defenders during peaceful protests. Indigenous people and other defenders have also denounced cases where local authorities have colluded with the private sector, and cases in which private companies had aided and abetted the commission of violations against human rights defenders. I have also met with human rights defenders who were internally displaced from their communities or places of work and could not return due to a lack of safety¹¹⁵."

114. Case No. 313-2015-0-0605-JR-PE-01

115. UN. End of mission statement by Michel Forst, UN Special Rapporteur on the Situation of Human Rights Defenders. Visit to Peru, January 21 - February 3, 2020. Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25507&LangID=E>

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Social organisations have also been able to document interference by business groups in decision-making spaces where key issues for defenders are discussed.

A prominent example was the UN Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean (the Escazú Agreement). In August 2019, a bill was sent to Congress to ratify this international treaty, which had already been signed by 24 countries in Latin America and the Caribbean, and which establishes standards for environmental protection, such as access to information, participation and justice in environmental matters.

The National Confederation of Private Business Institutions (*Confederación Nacional de Instituciones Empresariales Privadas* – CONFIEP) – a private organisation that brings together the Peruvian business community –, the Association of Exporters (Adex), and the Lima Chamber of Commerce (*Cámara de Comercio de Lima*) expressly asked the government not to ratify this treaty¹¹⁶. In a joint communiqué published by these organisations, they stated that signing the agreement would mean “abdicating our sovereignty over our national territory, since Peru would be exposed to international regulatory frameworks¹¹⁷.”

Finally, on October 20, 2020, six days before the closing date for accessions, the Foreign Affairs Committee (*Comisión de Relaciones Exteriores*) of the Legislative Branch decided not to ratify the agreement for various reasons, including that “it would affect the country’s sovereignty in the administration of justice”¹¹⁸ and that Peru already has adequate environmental legislation, which incorporates in practice the measures included in the Escazú Agreement¹¹⁹.

This refusal to sign is a serious blow to the protection of environmental human rights defenders in Peru. It also goes against the recommendations of the former Special Rapporteur on the Situation of Human Rights Defenders, Michel Forst, after his last visit to Peru:

“Private companies should demonstrate their commitment to human rights and defenders through adherence to the UN Guiding Principles on Business and Human Rights. They must ensure meaningful consultations with communities affected by their operations and establish or strengthen effective grievance mechanisms. Private companies must refrain from stigmatising and criminalising defenders.¹²⁰”

Private companies also maintain a very dangerous presence in other spaces, such as at the Defenders’ Roundtable (*Mesa de Defensores*), where they participate by obstructing many initiatives and even questioning the very concept of a human rights defender as set out in the UN Declaration, using arguments that are contrary to international standards.

The consolidated Business and Human Rights (BHR) database documents 120 attacks on defenders between 2017 and 2020. According to this database, 92 of these attacks (i.e., 76.6%) were associated with the operations of formal companies and were primarily criminalisation (40.83%) and murder (21.6%).

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116. See: Gestión Editorial, Confiep solicita al Congreso no ratificar Acuerdo de Escazú, (October 13, 2020). Available at: <https://gestion.pe/economia/escazu-confiep-ratificar-congreso-noticia/>

117. See: LR Editorial (July 24, 2020) Acuerdo de Escazú no atenta contra la soberanía nacional como afirman los gremios empresariales, La República (July 24, 2020). Available at: <https://larepublica.pe/politica/2020/07/24/acuerdo-de-escazu-no-atenta-contra-la-soberania-nacional-como-afirman-los-gremios-empresariales/>

118. See Miranda B. Escazú Acuerdo de Escazú: la controversia en Perú por el rechazo a ratificar el histórico pacto ambiental de América Latina y el Caribe, BBC News Mundo (October 21, 2020). Available at: <https://www.bbc.com/mundo/noticias-america-latina-54639163>, Gestión, Comisión de Relaciones Exteriores rechazó ratificación del Acuerdo de Escazú, Gestión.pe <https://gestion.pe/economia/acuerdo-de-escazu-sera-archivado-comision-de-relaciones-exteriores-rechazo-su-ratificacion-noticia/>

119. See BHRRC, Perú: Congreso aplaza la ratificación del Acuerdo de Escazú; sociedad civil destaca falta de compromiso ambiental, (October 21, 2020). Available at: <https://www.business-humanrights.org/es/%C3%BAltimas-noticias/per%C3%BA-congreso-aplaza-la-ratificaci%C3%B3n-del-acuerdo-de-escazu%C3%BA-sociedad-civil-destaca-falta-de-compromiso-ambiental/>

120. UN. End of mission statement by Michel Forst, United Nations Special Rapporteur on the Situation of Human Rights Defenders. Visit to Peru, January 21 – February 3, 2020. Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25507&LangID=E>

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Criminalisation¹²¹ was concentrated in the period 2017-2020, when 48 of the 49 recorded cases occurred.

These types of attacks were concentrated in the mining sector and the agricultural export sector.

Sector	Number
Mining	33
Agricultural exports	16

All cases of **criminalisation** except for one, were linked to the operations of **formal companies** in these two sectors.

Sector	Company	Number	Years when criminalisation began
Mining	Buenaventura	17	2015, 2017
Mining	Bear Creek Mine	10	2017
Mining	Glencore	5	2017, 2018
Mining	NN	1	2017
Agricultural export	Santa Regina	16	2019
TOTAL		49	

In the period 2015-2020, 26 **murders** were recorded¹²². These **murders** were concentrated in the following sectors:

Sector	Number
Mining	11
Agricultural export	2
Illegal logging	4
Palm oil	0 ¹²³
Hydroelectric	1
Oil	1
NN	1
TOTAL	20

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121. Eighty-six criminalised individuals are recorded in the CNDDHH database, several of whom face more than one trial.

122. Note that under-recording has taken place, as 10 lethal attacks were recorded in the CNDDHH database in 2016, which do not appear in the BHRRC database. The victims were mayors (3), territorial defenders (2), journalists (2), opponents of corruption (2) and a trade unionist (1).

123. The BHR database recorded six deaths, not confirmed by CNDDHH.

More than 50% of these **murders** were linked to the operations of **formal businesses**.

Sector	Company	Number	Years
Mining	Doe Run	1	2015
Mining	MMG Las Bambas	6	2015
Mining	Pluspetrol	1	2015
Mining	Southern	3	2015
Hydroelectric	Odebrecht	1	2015
Palm Oil	Pucallpa Plantations	1	2015
Oil	Petrotal	1	2020
NN	NN	12	2017, 2019, 2020
TOTAL		26	

Insults (*injurias*)¹²⁴ were the third most frequent type of attack on defenders, and were concentrated in the following sectors:

Sector	Number
Mining	10
Palm Oil	2
TOTAL	12

More than 80% of **insults** were linked to the operations of **formal companies**.

Sector	Company	Number	Years
Mining	MMG Las Bambas	10	2015, 2019
Palm Oil	NN	2	2018
TOTAL		12	

Intimidation and threats were the fourth most frequent type of attacks, and were concentrated in the following sectors:

Sector	Number
Mining	7
Agricultural export	1
Security companies	2
Food and drink	1
TOTAL	11

More than 90% of **intimidations and threats** were linked to the operations of **formal companies**.

124. It consists of the infringement of defenders' honour.

Sector	Company	Number	Years
Mining	Buenaventura	4	2015, 2016
Mining	Las Bambas	2	2019
Mining	Chinalco	1	2019
Agricultural export	NN	1	2018
Food and drink	AmBev	1	2018
Security company	Prosegur	2	2016
TOTAL		11	

Physical assaults, beatings, and other forms of violence against human rights defenders came in fifth place.

Sector	Number
Mining	3
Illegal logging	5
Security companies	1
TOTAL	9

50% of these attacks were linked to the operations of **formal companies**.

Sector	Company	Number	Years
Mining	Buenaventura	3	2015
Illegal logging	NN	5	2019
Security company	Prosegur	1	2016
TOTAL		9	

Death threats were the sixth most common form of attack. They were concentrated in the following sectors:

Sector	Number
Mining	1
Agricultural export	5
TOTAL	6

According to the data, **arbitrary detentions** are mostly concentrated in the mining sector and 75% of these attacks are related to legal economic activities.

Sector	Company	Number	Years
Mining	Las Bambas	1	2019
Mining	Hudbay Minerals	2	2017
Mining	NN	1	2017
TOTAL		4	

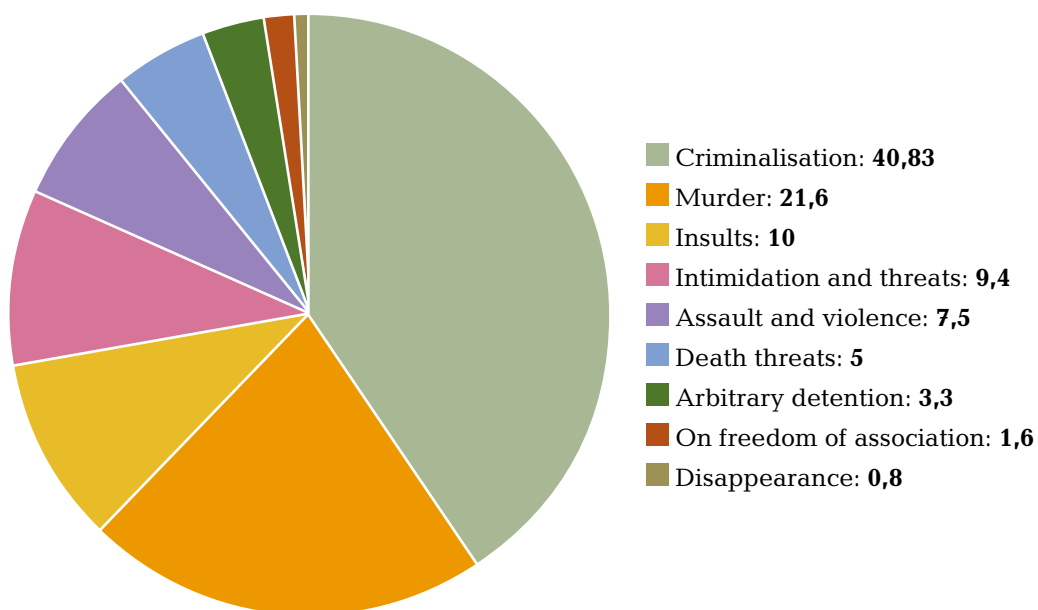
Attacks on **freedom of association** are concentrated in the following sectors.

Sector	Number
Mining	1
Clothing and textiles	1
TOTAL	2

These attacks are linked to the operations of **formal companies**.

Sector	Company	Number	Years
Miner	Buenaventura	1	2019
Clothing and textiles	Hugo Boss / Topy Top	1	2015
TOTAL		2	

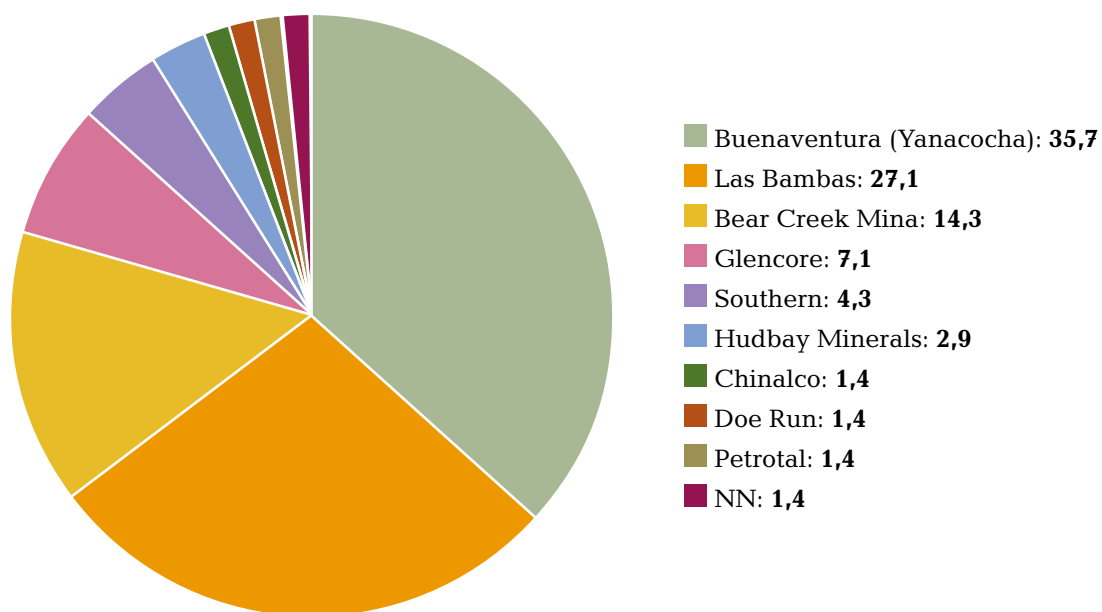
Type of attacks (%)



Sector involved

Sector	Number	Percentage
Mining	70	58.3
Agricultural export	25	20.8
Illegal logging	9	7.5
Palm oil	8	6.6
Security companies	3	2.5
Oil	1	0.8
Food and drink	1	0.8
Hydroelectric	1	0.8
Clothing and textiles	1	0.8
NN	1	0.8
TOTAL	120	100

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Mining companies involved (%)



VI. STATE MEASURES FOR THE PROTECTION OF DEFENDERS



July 20, 2018 - March against corruption, Lima. © Atoq Wallpa Sua

1. Insufficient protection measures.

Article 12 of the UN Declaration on Human Rights Defenders requires States to adopt measures to protect human rights defenders. The International Covenant on Civil and Political Rights (ICCPR) guarantees the freedom of expression, association and assembly. However, as we have mentioned, defenders in Peru face harassment, intimidation, criminalisation, violence, arbitrary detention and even death. The State also uses criminal legislation to limit and even suppress their work, in particular targeting those who defend environmental rights.

On April 25, 2019, the MINJUSDH approved the Protocol for the Protection of Human Rights Defenders¹²⁵ under which the Peruvian State fulfilled a commitment to the IACHR¹²⁶. This decision addressed the growing vulnerability of human rights defenders in Peru, which was highlighted by the Ombudsman's Office in early 2019 following the murders of two environmental defenders¹²⁷.

The Protocol defines a human rights defender in accordance with the standards established by the IACHR, which state that a human rights defender is any natural person who acts:

“[I]ndividually or as a member of a group, organisation, public institution or social movement, or legal entities, groups, organisations or social movements whose purpose is the promotion, protection or defence of human rights, under national and international law¹²⁸.”

125. Ministerial Resolution No. 0159-2019-JUS, Protocol to Guarantee the Protection of Human Rights Defenders, April 25, 2019. Available at: https://cdn.www.gob.pe/uploads/document/file/310740/RM_159_2019_JUS.pdf

126. This was announced at the 157th session of the IACHR on April 6, 2016.

127. See Ombudsman's Office (2017), Pedimos al Estado proteger a defensores de derechos humanos en asuntos ambientales. Available at: <https://www.defensoria.gob.pe/pedimos-al-estado-a-proteger-a-defensores-de-derechos-humanos-en-asuntos-ambientales/>

128. Protocol for the Protection of Human Rights Defenders, op.cit, 5.1.8.

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The Protocol also assigns the Directorate General of Human Rights (*Dirección General de Derechos Humanos*) of MINJUSDH the remit of designing and implementing the Registry of Complaints and Incidents of Risks for Human Rights Defenders (*Registro de Denuncias e Incidencias Sobre Situaciones de Riesgo de Defensores*). It also details the most frequent attacks faced by defenders: arbitrary detentions, intimidation, harassment, defamation, discrimination, reprisals, acts of torture, obstruction of defence work, threats to their personal safety, threats of rape and gender-based violence. Yet, it is concerning that this list does not explicitly include criminalisation as a risk for defenders, even though it is one of the primary harassment dynamics observed in Peru, according to the IACHR¹²⁹.

The Protocol lacks a national scope because it fails to specify mechanisms by which defenders from peasant or indigenous communities can directly access protection measures. It also lacks an intersectional, systemic approach that would allow for issues to be addressed holistically.

Therefore, while it is an important document that recognises the need to create tools to protect defenders, it is insufficient in that it lacks implementation and funding mechanisms.

Furthermore, protection measures for human rights defenders in Peru remain entirely precarious. In respect of the threats, risks or harassment that any Peruvian citizen may face, a commonly used measure is the granting of personal guarantees (*otorgamiento de garantías personales*), an administrative act issued by the local Sub-Prefect, which, in reality, consists of a document that produces no effective measures for protection of the life or physical integrity of the person applying for it.

The only legislation currently in force for the protection of defenders is:

Regulation	Main content
Law 29542 on the Protection of Whistle-Blowers in Administrative Matters and on Effective Collaboration (June 22, 2010)	Protects and grants benefits to public officials, civil servants or any citizen who makes a substantiated report of arbitrary or illegal acts occurring in any public entity that can be investigated or administratively sanctioned.
Decree Law 1327 Establishing Protection Measures for those who Report Acts of Corruption and Punishing Reports Made in Bad Faith (January 6, 2017)	Grants protection measures to any person who reports the occurrence of corruption in the Public Administration.
Decree Law 957 on the Victim and Witness Support Programme (Code of Criminal Procedure)	Provides legal and psychological support to those involved in criminal investigations (victims and witnesses).
Granting of Personal Guarantees (MININTER)	Can be requested from the District Sub-Prefecture, Provincial Sub-Prefecture or Regional Prefecture. They are deemed preventive measures of an administrative nature that are immediately granted to citizens in the event of any threat, coercion, harassment, violence, or other act that causes a public nuisance.

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129. IACHR (2015), Criminalisation of defenders, op, cit.

On June 15, 2020, the Ombudsman's Office published Guidelines for Ombudsman Intervention in cases of Human Rights Defenders (*Lineamientos de Intervención Defensorial frente a casos de Defensores y Defensoras de Derechos Humanos*), for the coordination of the Ombudsman response in cases of attacks on human rights defenders¹³⁰.

The Peruvian National Human Rights Plan (2017-2021) sets the target of implementing a protection mechanism by 2021. The State had committed to implementing one by 2019 but failed to do so. However, the implementation of such a mechanism could provide important information for designing a policy for the protection of human rights defenders. There is currently no State protection mechanism to ensure an enabling environment for the activity of human rights defenders in Peru. The State had committed to implementing one by 2019 but failed to do so. The Peruvian National Human Rights Plan (2017-2021) sets the target of implementing a protection mechanism by 2021. Its implementation could provide important information for designing a protection policy for human rights defenders.

2. Impunity for attacks and misuse of criminal law

According to a 2019 media report, compiling information from reports by the Ombudsman's Office and data collected by the CNDDHH: "from 2002 to date, at least 299 people, including civilians and police, have died as a result of social conflicts¹³¹."

Among these deaths, 17 occurred during the office of Alejandro Toledo (2001-2006), 193 during that of Alan García (2006-2011), 73 during that of Ollanta Humala (2011-2016), and 16 during the last government, 13 of which occurred during the administration of Pedro Pablo Kuczynski (2016-2018) and three during that of Martín Vizcarra (2018-2019)¹³².

Although there is no official information on the total number of victims, according to the CNDDHH, in its report entitled *The Criminalisation of Protest* (*La Criminalización de la Protesta*) in its *Annual Report (2015-2016)* (*Informe Anual (2015-2016)*)¹³³, 78 human rights defenders were killed during the government of Ollanta Humala Tasso, and in the few months of Pedro Pablo Kuczynski's government preceding the publication of the report, there had already been 9 deaths. These killings responded to three markedly different dynamics:

- 33.3% were murders carried out by hired killers linked to extractive industries. An overwhelming majority (98.71%) of these cases occurred in the sphere of influence of formal companies, such as Brazil's Odebrecht.
- 17.98% of the defenders murdered by hired killers were trade union leaders in the construction sector.
- 67% died as a result of law enforcement action in social protest situations.

130. Office of the Ombudsman. Administrative Resolution No. 029-2020/dp-pad, June 15, 2020. Available at: <https://www.actualidadambiental.pe/wp-content/uploads/2020/07/Lineamientos-de-Intervenci%C3%B3n-Defensorial-para-Defensores-de-Derechos-Humanos-Resoluci%C3%B3n-Administrativa-029-2020-DP-PAD.pdf>

131. La República Editorial, Van 299 fallecidos por los conflictos sociales en los últimos cuatro gobiernos, (August 19, 2019) Available at: <https://larepublica.pe/politica/2019/08/19/conflictos-sociales-van-299-fallecidos-en-los-ultimos-cuatro-gobiernos-toledo-alan-garcia-humala-ppk/>

132. Huacasi W, Conflictos sociales dejaron 299 muertos desde el 2002, La República, (August 19, 2019). Available at: <https://www.pressreader.com/peru/peru-la-republica/20190819/282583084657742>

133. CNDDHH. Informe Anual 2015-2016. Available at: <https://derechoshumanos.pe/2017/04/informe-anual-2015-2016/Criminalización-De-La-Protesta-Y-La-Situación-De-Los-Defensores-Y-Defensoras-De-Los-Derechos-Humanos>. Available at: <http://derechoshumanos.pe/informe2015-16/Criminalizacion-de-la-protesta.pdf>

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This situation has been developing within a legal framework that favours impunity, even though in the last Universal Periodic Review (UPR), in 2017, the Peruvian government committed to establishing measures to protect the work of human rights defenders. Law No. 30151¹³⁴ –providing for the lack of capacity to be charged (*inimputabilidad*) of members of the Armed Forces and the PNP when they use their weapons and cause injury or death in the line of duty¹³⁵– is still in force, “despite the principles of necessity, legality and proportionality being enshrined” in national and international law¹³⁶. The facts demonstrate the excessive use of police force in demonstrations or protests.

Investigations into victims’ deaths are usually closed by the Public Prosecutor’s Office, without identifying who is responsible or the circumstances surrounding the death. Many of these deaths occur under a state of emergency declaration. While the justice system subjects leaders to lengthy investigations, in the province of Cotabambas –the area of influence of the Las Bambas project– alone, following the most recent dialogue roundtable in 2019, the Minister of Justice (*Ministro de Justicia*) admitted to the excessive prosecution of social leaders: “based on an initial count, 180 prosecutions are pending against social leaders for protests against the project¹³⁷. ”

Peru shows a dangerous trend towards criminalisation as a means of resolving social protests. This points to the arbitrary and selective use of the criminal justice system¹³⁸.

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134. According to Saldaña Cuba, J., & Portocarrero Salcedo, J; op. cit: “a few weeks after this change was enacted, the First Criminal Court of Huancavelica (Primer Juzgado Penal de Huancavelica) acquitted four police officers charged with murder following the conflict over the construction of the University of Tayacaja (Universidad de Tayacaja) in 2011. In the decision, the judge pointed out that, even though the events took place beforehand, the principle of benign retroactivity (*retroactividad benigna*) requires Law 30151 to be enforced for the benefit of those being prosecuted. Consequently, the colonel in charge and the non-commissioned officers investigated for the death of three young people by pellets and shots from AKM police rifles have never been punished.”

135. Criminal Code. Article 20.- Lack of capacity to be charged

The following persons are exempt from criminal liability:

(...) 11. Members of the Armed Forces and the National Police of Peru who, in the performance of their duty and in the use of their weapons, or other means of defence, cause injury or death.

136. Colectivo EPU Perú (2017), *La Situación de los Derechos Humanos en el Perú - Balance y Perspectivas desde el mecanismo del Examen Periódico Universal 2017*. Available at: http://www.aprodeh.org.pe/wp-content/uploads/2018/02/LA_SITUACION_DE_LOS_DERECHOS_HUMANOS_EN_EL_PERU_BAL.pdf

137. Vasquez M. “Terrorizando al que busca frenar la criminalización”, *Noticias Ser*, (June 14, 2019). Available at: <http://www.aprodeh.org.pe/terrorizando-al-que-busca-frenar-la-criminalizacion-de-la-protesta/>

138. Saldaña, José & Portocarrero, J. (2017), op. cit.

Government	Conflict	State of Emergency	No. of civilian deaths	Investigation into civilian deaths	Investigation of social leaders and demonstrators
Alan Garcia (2006-2011)	Bagua (2009)	YES	10	Closed at preliminary investigation stage	88 people under investigation from 2009-2020 , sentences ranging from six years to life imprisonment were requested; in 2020 all were acquitted, after enduring many years' proceedings.
Ollanta Humala (2011-2016)	Espinar (2012)	YES	03	Closed at preliminary investigation stage	Three leaders, under investigation since 2012 in Ica; in 2017 they were acquitted, but the judgment was later declared null and void, and a new trial was ordered; with a request for 8 years' imprisonment.
	Las Bambas (2015)	YES	03	Acquittal but decision appealed	19 leaders - in October 2020, all defendants were acquitted . The acquittal was appealed by the Public Prosecutor's Office and the Attorney General's Office. Decision still pending.
Pedro Pablo Kuczynski (2016-2018)	Las Bambas (2016)	YES	10	Under investigation	In 2016, the Public Prosecutor's Office charged the Leader of the Fuerabamba Campesino Community (<i>Comunidad Campesina Fuerabamba</i>) with involvement in a criminal organisation extorting money from the mining company.

Source: Compiled by us with data from the National Human Rights Council of Peru (Consejo Nacional de Derechos Humanos – CNDH), José Saldaña and Jorge Portocarrero.

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Legislative changes in the field of criminal procedure have also contributed to the restriction of human rights defenders' rights to freedom of assembly, expression, and demonstration. Despite being an exceptional measure, pre-trial detention is being employed indiscriminately in contexts of protest or conflict, moving it out of line with the legal requirements (risk of flight or obstruction, evidence of criminal liability and sentences in excess of four years)¹³⁹.

This is compounded by recent amendments regarding flagrancy, detention, incommunicado detention, the granting of powers to the PNP to carry out investigations and the authorisation of the Armed Forces and the PNP to remove corpses in areas declared in a state of emergency, which could affect the criminal and procedural guarantees for human rights defenders.

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139. According to the 2016 Report of the International Commission of Jurists (ICJ), the reality of Peru's prison system means that around 50% of those incarcerated are in pre-trial detention and are awaiting sentencing. The report issues a warning about the indiscriminate use of pre-trial detention. ICJ (2016), Industrias extractivas, Derechos Humanos y conflictos sociales en Perú. Fact-finding mission report available at: <https://www.icj.org/wp-content/uploads/2016/03/Peru-DESC-extractives-Publications-Reports-Facts-Finding-Mission-Report-2016-SPA.pdf>

VII. CONCLUSIONS

- Human rights defenders in Peru face enormous challenges. Their work is stigmatised, criminalised, and even repressed. They suffer this stigmatisation both individually and collectively. Those who defend rights are labelled “terrorists,” “enemies of development,” “opponents of the system” and other labels assigned by the media and public officials. This treatment seeks to delegitimise the work of defenders and fuels a climate of attacks and rejection.
- At the time of publishing this report, more than 700 people have been criminalised. This situation is affecting not only land and territory defenders—Peru is one of the most dangerous countries in which to defend the environment—but also journalists, trade unionists, LGBTIQ and women’s rights defenders, and truth and justice defenders. In recent years, at least 299 people have died as a result of social conflict. The case was closed on most of these deaths without establishing who was responsible, or obtaining justice and reparations, creating a clear context of impunity.
- The sources of vulnerability of human rights defenders in Peru are varied and include the widespread erosion of minimum guarantees for citizens, the changing role of the police and the judicialisation of the defence of human rights. On the one hand, in recent years, the Peruvian State has made a series of constitutional and criminal reforms that restrict fundamental rights, which has created a punitive legal framework for the defence of human rights and led to increased criminalisation of human rights defenders, including in the context of social protest. An example of this, is the amendment of the pre-charge detention period from 24 to 48 hours, or in certain cases up to 15 days. Another example is the amendment of criminal offences, with the creation of generic definitions and the incorporation of protest-related acts as crimes, thereby impinging on the principle of legality. Likewise, the amendment of Article 20, paragraph 11 of the Criminal Code, provides for the discretionary use of weapons by the PNP and the Armed Forces, exonerating them from criminal liability. In addition, the Public Prosecutor’s Office uses preventive complaints as a means of discouraging defenders from their work, with “crime prevention” investigations being opened against them in connection with potential acts related to social protest.
- Successive reforms and measures packages adopted by the Executive Branch under legislative powers granted by the Congress of the Republic—such as preventive complaints by the Special Prosecutor’s Offices for Crime Prevention of the Public Ministry—reflect a heavy-handed policy towards the social conflicts that have arisen in the country in recent years. Accordingly, they are used to prosecute or investigate those exercising their right to protest.
- The role of the police is a key source of vulnerability of human rights defenders. At least 29 agreements between extractive companies and the PNP are currently in force. These agreements subordinate the PNP to these extractive companies and result in increased police presence in places of conflict, which fuels the arbitrary use of force and arbitrary detentions. The new Law on Police Protection violates constitutional and international standards recognising the right to life and personal integrity, as well as the principles governing the use of force, thus fostering impunity. Furthermore, this law eliminates the principle of proportionality, which was previously enshrined in Legislative Decree No. 1186 on the Use of Force by the PNP, doing away with an indispensable requirement for ensuring that State security forces do not behave in an arbitrary or abusive manner when carrying out their duties.

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- The prosecution of defenders takes place primarily in four areas: persecution of freedom of expression, criminalisation of social protest, and obstruction of freedom of association or the use and enjoyment of customary law. The criminal offence of defamation is frequently used against journalists as a form of intimidation and is the main threat to freedom of expression. During 2019, both the ANP and the CPP recorded various cases of intimidation against journalists and media outlets, and a number of prosecutions (defamation lawsuits) are underway. In their last report, published in early 2020, they documented an increase in attacks against journalists.
 - Environmental defenders or defenders of land and territory are particularly vulnerable, as their territories are often militarised or declared in a continuous state of emergency. Most deaths in social protest contexts are of indigenous peoples. Rather than the protection of human rights, the current regulation of CNAs is primarily intended to defend and ensure the normal operation of strategic sectors of the Peruvian economy – most of which are challenged by indigenous communities. Thus, public security is granted to extractive projects, and the protection of private infrastructure or companies is prioritised.
 - Given the above, protection measures for human rights defenders are inadequate. Although the Peruvian State has approved the Protocol for the Protection of Human Rights Defenders, it has failed to effectively implement any protection mechanism to reduce the risks and vulnerability to which defenders are exposed. Despite progress, victims of the internal armed conflict are yet to receive comprehensive reparations, and there are still serious obstacles to the full identification of those responsible for human rights violations, with their victims facing lengthy legal proceedings. In the case of deaths, investigations are usually closed by the Public Ministry without identifying those responsible or the circumstances. Many of these deaths occur when a state of emergency has been declared.
 - The conclusion in terms of companies and human rights is bleak. The figures consulted show a total of 120 attacks on human rights defenders between 2017 and 2020. Of these attacks, 76.6% were linked to the operations of formal companies and primarily consisted of criminalisation (40.83%) and murder (21.6%). Most attacks on defenders took place in the mining (58.3%) and agricultural export (20.83%) sectors. There was documented interference of corporate groups in decision-making spaces where key issues for defenders are discussed, such as the negotiation of the Escazú Agreement. In the end, the Escazú Agreement was not ratified by the Peruvian authorities. This will have a significant impact on the defence of rights.

VIII. RECOMMENDATIONS

1. Recommendations for the authorities

On the protection of human rights defenders in Peru

General measures

- The Executive Branch should move towards a comprehensive public policy that addresses the prevention, protection, and investigation of attacks against human rights defenders, including the structural causes of vulnerability of human rights defenders. It should include a new model to address social conflict that avoids criminalising defenders of land and territory, reforms to the Criminal Code, and greater safeguards concerning the role of the police, among others. This public policy should involve the participation of different State institutions, especially MINJUSDH, MINDEF and the Public Ministry.
- The Executive Branch should implement a registry of attacks under the Protocol for the Protection of Human Rights Defenders, and a comprehensive protection mechanism that should be intersectoral, have a gender and differential perspective, be allocated sufficient budget, and address the structural causes of attacks on human rights defenders.
- The Congress of the Republic should exercise powers of control and oversight over Legislative Decrees, protecting the work of human rights defenders and the right to freedom of expression, freedom of assembly, and the fight against corruption.
- The Peruvian State should recognise and disseminate the work of human rights defenders, giving visibility to their work and contribution to strengthening democracy and defending fundamental rights, thereby creating favourable conditions for them to carry out their work, free of threats, smear campaigns or harassment.
- The Executive Branch should effectively and comprehensively implement reparations programmes for victims of human rights violations (1980-2000), supporting the clarification of truth and justice in the requests made by the Public Ministry and the Judicial Branch to identify those responsible for serious human rights violations. Likewise, it should implement a comprehensive reparations programme for women, journalist, LGBTIQ, trade union and social conflict victims (dead or injured), developing prevention policies and establishing responsibility.

Specific measures by gender

- The Peruvian State should incorporate, recognise, and guarantee comprehensive support for women and LGBTIQ human rights defenders.
- The Executive Branch should maintain and strengthen all legislation that explicitly protects the right to life, personal integrity and non-discrimination against individuals based on their sexual orientation and gender identity, implementing a gender perspective in public policies and effective measures to combat all forms of violence against women and LGBTIQ individuals.
- The Ombudsman's Office should include a gender perspective in its reports, which analyses the situation of vulnerability of women and LGBTIQ human rights defenders and the specific impact of violence on them.
- MINJUSDH, the Public Ministry and the PNP should implement a protocol for the support and protection of women and LGBTIQ defenders, which includes a gender perspective, when they suffer attacks and harassment –particularly acts of sexual and gender-based violence or discrimination.

- The Peruvian State should implement a National Observatory that documents the number and particulars of women defenders whose human rights are being impinged on because they protect the rights of others.
- The Ministry of Women and Vulnerable Populations should provide training on gender perspective, gender stereotypes, and gender violence and its impact on women, to public officials working for the comprehensive support of women human rights defenders.
- The Peruvian State should carry out public campaigns on women's rights and structural discrimination, to address the persistence of gender stereotypes against women, gender roles and unequal power relations, to raise awareness of the importance of their work and their rights, and to mitigate the stigmatisation and attacks against them.

Specific measures for defenders of land and territory, including indigenous peoples

- The Executive Branch should establish a legal and institutional framework that identifies and provides special protection for the life and personal integrity of human rights defenders in environmental matters, who are under continuous threat in carrying out their work.
- The Congress of the Republic should adopt a firm stance in defence of the rights of indigenous peoples, for a healthy environment and the preservation of natural resources. It should reconsider the ratification of the Escazú Agreement as soon as possible, and repeal or amend Decree Law 1333 and Law No. 30723.
- The Executive Branch should promote, with the participation of civil society, a public policy to create legal security in the territories of indigenous peoples, and to strengthen the institutional framework for conflict prevention, particularly in as-yet untitled indigenous territories. Specifically, the MINAGRI should design and approve a public policy in coordination with the Ministry of Culture (*Ministerio de Cultura* - MINCUL) with goals, defined indicators, and an allocated budget.
- The Executive Branch should refrain from creating legal and judicial barriers to the recognition of indigenous peoples as full legal subjects, and produce and update official information on indigenous peoples, native communities, peasant communities and *Rondas Campesinas*.
- The Executive Branch should amend the instruments and legislation on the right to prior consultation, based on the experience of implementing ILO Convention 169.
- The Executive Branch should strengthen the protection of indigenous peoples' right to access justice by increasing the number of interpreters and Ombudsmen who are fluent in indigenous languages, as well as the creation of a Registry of Administrators of Justice (*Operadores de Justicia*) who are fluent in indigenous languages.
- The Peruvian State should train all institutions working for the comprehensive support of human rights defenders on differential approach, structural discrimination and their impacts on indigenous communities and defenders in Peru.

Specific measures for journalists

- The Peruvian State should strictly comply with international standards on freedom of expression, ensuring that journalists and the media can carry out their work without undue interference, and guaranteeing society its right to be informed.
- The Executive Branch should promote the amendment of its domestic legislation on criminal offences, such as "aggravated defamation" (*difamación agravada*), which are used to criminalise those who exercise their freedom of expression in the public interest or in relation to public officials.

Specific measures for trade unionists

- Administrators of justice should finalise without further delay open investigations and cases in connection with the murder or criminalisation of trade union leaders between 2011 and 2020, particularly in the construction sector.
- The Ministry of Labour and Employment Promotion should cancel the registrations of pseudo-unions and criminal organisations that are continuing to operate, which were made under the automatic registration of trade unions.

The role of the justice system in protecting defenders

- The Judicial Branch should combat impunity by ensuring the immediate, thorough, and transparent investigation of all violations and murders of human rights defenders, the prosecution and punishment of those responsible, and access to effective remedies for victims.
- The Judicial Branch should assess the status of human rights defenders in its actions and decisions, to identify whether the complaint against them was used as a mechanism to hinder their work. It should act scrupulously to ensure that the conduct of the person being prosecuted corresponds to the criminal offence with which they have been charged, to avoid criminalising the legitimate activities of those who defend human rights.
- The Public Ministry should adopt a binding protocol to ensure that investigations into attacks against human rights defenders assume the initial hypothesis that these charges are due to defenders' activities defending human rights, in line with international human rights standards.

On the sources of vulnerability for human rights defenders in Peru

Concerning the restrictive legislative framework for human rights

- The Executive Branch should repeal Law 30558 on the Reform of Article 2(F), Paragraph 24, of the Political Constitution of Peru, of May 4, 2017, insofar as it extends the time limit of pre-charge detention and has specifically impinged on defenders of human rights. Accordingly, the Executive Branch should comply with the constitutional case-law reflected in TC Judgment No. 06423-2007-HC/TC, which confirms the requirement to limit detention to the period strictly necessary to carry out the appropriate formalities.
- The Executive Branch should review the main criminal laws referred to in this report, which have played a role in the criminalisation of human rights defenders, including the misuse of criminal offences with an excessively broad definition, such as abetment (*coautoría no ejecutiva*), which are used to criminalise the organisation and planning of peaceful protests, and to stigmatise the work of human rights defenders.
- The Congress of the Republic should exercise the oversight of Supreme Decrees establishing states of emergency that impinge on the criteria of exceptionality and temporariness, particularly in territories where indigenous populations are demanding the protection of their environment and territory.

Concerning the role of the police

Excessive use of force

- The Ministry of the Interior should strengthen the training of its members on the use of force and conflict intervention, ensuring the provision of non-lethal weapons and protective equipment to police officers. It should strengthen internal control processes to ensure investigations aimed at correcting institutional failures, as well as identifying those who are personally responsible. It should establish administrative procedures that allow victims of the arbitrary use of force to access compensation without having to go to court.
- The Judicial Branch should ensure the clarification of the facts and the search for the truth, considering the international instruments protecting the work of defenders, and, if necessary, checking the compatibility of domestic legislation with international human rights treaties. It should promote a Plenary Agreement, to set criteria on the exercise of the right to protest, distinguishing protest from the crimes of "extortion," "rioting," "criminal organisation" (*organización criminal*) or similar offences.
- The Executive Branch and the Congress of the Republic should repeal laws that allow for the disproportionate use of force by the Armed Forces and the PNP to control social protests, such as Legislative Decree No. 1186 on the Use of Force by the PNP.
- The Executive Branch should implement international recommendations on officer identification and the recording of police assets and operations, so that citizens and protest observers can identify police officers.
- The PNP and the Armed Forces should strengthen their internal control systems to produce exhaustive, independent, and technically sound analyses that will not only eradicate the prevailing impunity for the arbitrary use of force, but also determine what institutional reforms are necessary to prevent it occurring in future.
- The Executive Branch, the PNP and the Armed Forces should train all police in international standards on the use of force and firearms.

Agreements between the PNP and extractive companies

- The Executive Branch should rescind the agreements that are currently in force between the PNP and extractive companies throughout the country, and refrain from entering into new agreements.
- The Executive Branch should amend the General Law on the National Police of Peru (Legislative Decree No. 1267), specifically its Sixth Supplementary Provision, to exclude extractive companies from the protection the PNP offers to individuals under agreements for the provision of extraordinary services. It should likewise amend Supreme Decree No. 003-2017-IN accordingly.
- The Executive Branch should create a Multisectoral Commission to prepare an independent report documenting the consequences of the signature of agreements between the PNP and extractive companies in recent decades, especially in social conflict contexts. This Commission should be made up of the Presidency of the Council of Ministers (*Presidencia del Consejo de Ministros*), the Ministry of Interior, the Ombudsman's Office, representatives of sub-national governments and civil society, and it should be governed by human rights, intercultural and gender approaches.

On the judicialisation of the defence of human rights

- The Executive Branch should reverse the policy of criminalisation that restricts or impinges on the legitimate work of human rights defenders, repealing provisions that exacerbate this situation—such as the use of the Armed Forces in support of the PNP to control public order, agreements that delegitimise and privatise policing and continuous state of emergency declarations—thereby ensuring the security and protection of the population and communities.
- The Congress of the Republic should promote the review of criminal offences and repeal regulatory measures that limit the legitimate work of human rights defenders, promoting measures and recognition to avoid their stigmatisation and lobbying the government to elaborate protection policies for a harassment-free climate of risk reduction that ensures their personal integrity.
- The Public Prosecutor's Office should ensure that due process is observed when conducting investigations against defenders, gathering sufficient evidence to determine if an offence took place, and to avoid unfounded charges or investigations or the use of unnecessary coercive measures against defenders. It should help to clarify the truth and enforce the right to justice for victims killed and injured by the abusive use of force.

On the role of private companies

- The Executive Branch should support the drafting of legally binding international instruments on transnational corporations and other companies, and on the operations of private military and security companies, respectively. It should also enact other relevant legislative reforms, particularly on human rights due diligence and corporate social responsibility.
- The Public Prosecutor's Office should ensure that employees of private military and security companies who have committed human rights violations are brought to justice and that victims have access to effective remedies.

2. Recommendations for companies

- Take measures to identify, prevent, mitigate, and account for adverse human rights impacts and ensure that their activities, including those resulting from their business relationships, do not cause or contribute to human rights violations. These due diligence processes should be based on the meaningful and direct participation of rights-holders who could potentially be affected, and therefore require that special attention is paid to defenders of land rights, where necessary.
- Implement participatory processes that fully involve rights-holders at every level of land transactions – especially affected populations and communities and those who advocate for their rights. The participation of rights-holders should be promoted in good faith and in a meaningful way, to ensure their participation, protection, and access to information.
- Pay attention to expressions of concern and discontent that arise outside company-facilitated processes, such as in public gatherings, and avoid stigmatising those who express concern.
- Ensure that companies, contracted security companies and other contractors, respect the rights of land rights defenders and do not cause or contribute to any harassment or violence against them.
- Actively disclose information about their investment projects, including key documents such as investment contracts and impact assessments, to support the work of land rights defenders and prevent conflict.

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- Implement grievance mechanisms, including at project or company level, which are legitimate, accessible, predictable, fair, transparent, human rights-compliant, sources of continuous learning, and based on dialogue and engagement. These mechanisms should ensure the participation of independent third parties whenever possible. Furthermore, they should ensure that the views of human rights defenders are considered through their participation, and that specific procedures are implemented to address the negative impact on land rights defenders' human rights.

3. Recommendations to the international community

- Promote the implementation of the recommendations made to Peru by international human rights mechanisms. In particular, follow up on the situation of human rights defenders, both in multilateral fora and in bilateral relations with the country.
- Promote, in bilateral relations with Peru, its ratification of the Escazú Agreement and effective measures to prevent, investigate and punish the excessive use of force as a form of repression of social protest.
- Support the essential role of human rights defenders and human rights organisations by taking action to give public visibility to the legitimacy of their work, as well as by providing specific technical and financial support.
- The IACHR should provide technical support for the elaboration of a comprehensive public policy for the protection of human rights defenders in Peru.
- The UN Special Rapporteur on the Situation of Human Rights Defenders should intensify her communication and dialogue with the Peruvian authorities to promote effective measures to guarantee the defence of human rights in Peru.
- Countries that provide financial resources to Peru should make their support conditional on the attainment of real results in the protection of human rights defenders, and on the investigation and punishment of those responsible for crimes against human rights defenders.



The National Coordinator for Human Rights (CNDDHH) is a coalition of civil-society organisms that work towards the defense, promotion and education of human rights in Peru.

Since its establishment in 1985, the CNDDHH is constituted as the primary institution of reference in Latin America that reunites a collective of human rights organisms in a country. Today, the National Coordinator for Human Rights has a Special Consultative Status before the Social and Economic Council of the United Nations (UN) and is accredited to participate in the activities of the Organization of American States (OAS).

Mission

To help develop a culture of human rights and peace in the country, to place human rights issues on the public agenda and to work for the consolidation of a democratic institution.

Principles

- Rejection of any form of violence
- Independence from the State and political parties
- Option for a democratic society as an essential value for human co-existence
- Unrestricted defense of the right to life
- Rejection of death penalty



The OMCT works with around 200 member organisations which constitute its SOS-Torture Network, to end torture, fight impunity and protect human rights defenders worldwide. Together, we make up the largest global group actively standing up to torture in more than 90 countries. Helping local voices be heard, we support our vital partners in the field and provide direct assistance to victims. Our international secretariat is based in Geneva, with offices in Brussels and Tunis.

Assisting and supporting victims

OMCT supports victims of torture to obtain justice and reparation, including rehabilitation. This support takes the form of legal, medical and social emergency assistance, submitting complaints to regional and international human rights mechanisms and urgent interventions. OMCT pays particular attention to certain categories of victims, such as women and children.

Preventing torture and fighting against impunity

Together with its local partners, OMCT advocates for the effective implementation, on the ground, of international standards against torture. OMCT is also working for the optimal use of international human rights mechanisms, in particular the United Nations Committee Against Torture, so that it can become more effective.

Protecting human rights defenders

Often those who defend human rights and fight against torture are threatened. That is why OMCT places their protection at the heart of its mission, through alerts, activities of prevention, advocacy and awareness-raising as well as direct support.

Accompanying and strengthening organisations in the field

OMCT provides its members with the tools and services that enable them to carry out their work and strengthen their capacity and effectiveness in the fight against torture. OMCT presence in Tunisia is part of its commitment to supporting civil society in the process of transition to the rule of law and respect for the absolute prohibition of torture

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Establishing the facts

Investigative and trial observation missions

Through activities ranging from sending trial observers to organising international investigative missions, FIDH has developed rigorous and impartial procedures to establish facts and responsibility. Experts sent to the field give their time to FIDH on a voluntary basis. FIDH has conducted more than 1,500 missions in over 100 countries in the past 25 years. These activities reinforce FIDH's alert and advocacy campaigns.

Supporting civil society

Training and exchanges

FIDH organises numerous activities in partnership with its member organisations, in the countries in which they are based. The core aim is to strengthen the influence and capacity of human rights activists to boost changes at the local level.

Mobilising the international community

Permanent lobbying before intergovernmental bodies

FIDH supports its member organisations and local partners in their efforts before intergovernmental organisations. FIDH alerts international bodies to violations of human rights and refers individual cases to them.

FIDH also takes part in the development of international legal instruments.

Informing and reporting

Mobilising public opinion

FIDH informs and mobilises public opinion. Press releases, press conferences, open letters to authorities, mission reports, urgent appeals, petitions, campaigns, website... FIDH makes full use of all means of communication to raise awareness of human rights violations.

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Notes

Notes



El Observatorio para la
Protección de los Defensores
de Derechos Humanos

The Observatory is an action programme based on the belief that strengthened co-operation and solidarity among human rights defenders and their organisations will contribute to break the isolation they are faced with. It is also based on the absolute necessity to establish a systematic response from NGOs and the international community to the repression of which defenders are victims.

With this aim, the Observatory seeks to establish:

- A mechanism of systematic alert of the international community on cases of harassment and repression of defenders of human rights and fundamental freedoms, particularly when they require urgent intervention;
- The observation of judicial proceedings, and whenever necessary, direct legal assistance;
- International missions of investigation and solidarity;
- A personalised assistance as concrete as possible, including material support, with the aim of ensuring the security of the defenders victims of serious violations;
- The preparation, publication and world-wide dissemination of reports on violations of the rights and freedoms of individuals or organisations working for human rights around the world;
- Sustained action with the United Nations and more particularly the Special Rapporteur on Human Rights Defenders, and when necessary with geographic and thematic Special Rapporteurs and Working Groups;
- Sustained lobbying with various regional and international intergovernmental institutions, especially the Organisation of American States (OAS), the African Union (AU), the European Union (EU), the Organisation for Security and Co-operation in Europe (OSCE), the Council of Europe, the International Organisation of the Francophonie (OIF), the Commonwealth, the League of Arab States, the Association of Southeast Asian Nations (ASEAN) and the International Labour Organisation (ILO).

To ensure its activities of alert and mobilisation, the Observatory has established a system of communication devoted to defenders in danger. This system, called Emergency Line, can be reached through:

E-mail: Appeals@fidh-omct.org

OMCT Tel: + 41 22 809 49 39 Fax: + 41 22 809 49 29

FIDH Tel: + 33 1 43 55 25 18 Fax: + 33 1 43 55 18 80

fidh

OMCT
SOS-Torture Network