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Visite au Pérou

Rapport du Rapporteur spécial sur la situation des défenseurs et défenseuses des droits de la personne, Michel Forst*

Résumé

Le présent rapport est soumis par le Rapporteur spécial sur la situation des défenseurs et défenseuses des droits de la personne, Michel Forst, qui a effectué une visite au Pérou du 21 janvier au 3 février 2020. Le Rapporteur spécial prend note des faits nouveaux positifs survenus, mais conclut qu'un grand nombre de défenseurs et défenseuses des droits de la personne sont dans l'impossibilité de mener leurs activités dans des conditions sûres et favorables. Il recense les quatre grandes menaces suivantes : manque de reconnaissance des défenseurs et défenseuses des droits de la personne et leur stigmatisation, mesures d'incrimination à l'égard des défenseurs et défenseuses des droits de la personne, fait que la sûreté des défenseurs et défenseuses des droits de la personne n'est pas garantie, et fait que l'exercice par les défenseurs et défenseuses des droits de la personne de leur droit à la liberté de réunion pacifique n'est pas garanti. Ces tendances sont particulièrement préjudiciables aux défenseurs et défenseuses des droits environnementaux et des droits fonciers qui font partie de groupes autochtones ou ruraux, aux défenseuses des droits de la personne, aux avocats et avocates, aux journalistes, aux personnes qui défendent les droits des personnes lesbiennes, gays, bisexuelles, transgenres et intersexes, et aux rescapés de la période de violence (1980-2000)

* Le résumé du présent rapport est distribué dans toutes les langues officielles. Le corps du rapport, annexé au résumé, est distribué dans la langue de l'original et en espagnol seulement.

Annex

Report of the Special Rapporteur on the situation of human rights defenders, Michel Forst, on his visit to Peru

I. Introduction

1. The Special Rapporteur on the situation of human rights defenders, Michel Forst, conducted an official visit to Peru from 21 January to 3 February 2020 at the invitation of the Government. The main objective of his visit was to assess the situation of human rights defenders in the country. That assessment was conducted in the light of the State's obligations and commitments under international human rights law and under the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders).

2. The Special Rapporteur visited the capital, Lima, as well as Piura, Puerto Maldonado (Madre de Dios Region), Cuzco and Pucallpa (Ucayali Region). During his visit, the Special Rapporteur met with the Minister of Foreign Affairs, the Minister of Justice and Human Rights and representatives of the Office of the President of the Council of Ministers, the Ministry of the Interior, the Ministry of Culture, the Ministry of Labour and Employment Promotion, the Ministry for Women and Vulnerable Populations, the National Council for the Integration of Persons with Disabilities, the Ministry for the Environment and the Ministry of Energy and Mines. The Special Rapporteur met with representatives of the Supreme Court of Justice and Cuzco High Court, and with the Public Prosecution Service and its representatives at the provincial levels. He also met with representatives of the regional and local authorities in Piura, Puerto Maldonado, Ucayali and Cuzco. In addition, the Special Rapporteur held talks with the Ombudsman's Office, which is the national human rights institution of Peru and the national preventive mechanism for torture.

3. The Special Rapporteur met with more than 450 human rights defenders – approximately 40 per cent of them women – drawn from various sectors of civil society and working in a number of fields, including lawyers, trade unionists, journalists and representatives of non-governmental organizations and peasant and indigenous communities.

4. During his visit, the Special Rapporteur participated in two public events. On 23 January 2020, he presented his report on women human rights defenders (A/HRC/40/60) during a public event organized by the Comité de América Latina y el Caribe para la Defensa de los Derechos de la Mujer (CLADEM) – Perú, the Estudio para la Defensa de los Derechos de la Mujer (DEMUS), Católicas por el Derecho a Decidir, Madres en Acción, the Organización Nacional de Mujeres Indígenas Andinas y Amazónicas del Perú, the Movimiento Manuela Ramos, the Centro de la Mujer Peruana Flora Tristán, Grufides, the Coordinadora Nacional de Derechos Humanos, the working group on women human rights defenders of the Coordinadora Nacional de Derechos Humanos, Amnesty International, and the "Defensoras no están solas", "Somos 2074 y muchas más", "Justicia Arcoíris" and "Somos la mitad, queremos paridad sin acoso" campaigns. On 30 January 2020, he participated in a public event on the rights of human rights defenders in the Amazonian region, held in Pucallpa and organized by the Federacíon de Comunidades Nativas del Ucayali y Afluentes (FECONAU) and the Instituto de Defensa Legal.

5. The Special Rapporteur wishes to express his gratitude to the Government for its invitation and for its cooperation before, during and after his visit. He extends his appreciation to the Government and municipal authorities that met with him and to the Resident Coordinator and the Office of the United Nations High Commissioner for Human Rights (OHCHR) presence for their invaluable support in connection with his visit. He is also grateful to all those who met with him and shared their experiences and insights.

II. Legal and institutional framework for the protection of human rights defenders

6. Peru is a party to all nine core international human rights treaties and to seven of the nine optional protocols. The country reports regularly to the human rights treaty bodies and has extended a standing invitation to the special procedure mandate holders of the Human Rights Council since 2002. It voted in favour of the United Nations Declaration on the Rights of Indigenous Peoples (General Assembly resolution 61/295) and the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (resolution 73/165), adopted by the General Assembly in September 2007 and December 2018 respectively.

7. Peru has ratified the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169).

8. Peru is a party to the main human rights treaties of the American human rights system and recognizes the competence of the Inter-American Court of Human Rights. Peru has signed the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement). In October 2020, Congress voted to dismiss the proposal for ratification of the Escazú Agreement.

9. The first three chapters of the Constitution (1993) recognize a series of civil, political, economic, social and cultural rights. Under article 55 of the Constitution, treaties which are entered into by the State and are in force form part of domestic law.

10. Peru included a particular focus on human rights defenders in its third National Human Rights Plan (2018–2021).[1] For the first time, human rights defenders were identified as a special category in need of protection, and the Plan included commitments to developing, by 2021, a mechanism for the protection of human rights defenders and, by 2019, a registry to monitor risk situations faced by human rights defenders.

Protocol on human rights defenders

11. On 25 April 2019, the Ministry of Justice and Human Rights in Peru adopted a protocol guaranteeing the protection of human rights defenders.[2] The protocol is directly binding only on the Directorate General of Human Rights, in the Ministry of Justice and Human Rights.[3]

12. The protocol establishes eight areas of responsibility for the Directorate General in its work to protect human rights defenders, including designing, implementing and managing a registry of cases of risk situations for defenders, setting up an early warning mechanism for timely action by the relevant authorities to respond to attacks or threats against defenders.[4]

13. The Directorate General receives the requests for activation of the protocol, assesses their eligibility and determines the type of protection response from a non-exhaustive list of measures, including protection measures, such as free legal aid or public recognition of the defender's situation, and urgent protection measures, such as coordination with relevant authorities to arrange an evacuation.[5] The purpose of these procedures is to reduce the risk faced by defenders without hindering their ability to continue promoting and protecting human rights.

14. The Directorate General has not yet implemented the registry of cases. Work on these matters is still ongoing.

15. Peru is in the process of developing a national action plan for business and human rights, which includes a baseline with a focus on human rights defenders along with other measures relevant for their protection.

[1] Available at http://spij.minjus.gob.pe/content/banner_secundario/img/muestra/PLAN-ANUAL.pdf.
[2] Ministry of Justice and Human Rights, Ministerial Decision No. 0159-2019-JUS.
[3] Protocol, para. 3.1.
[4] Ibid., para. 6.2.
[5] Ibid., paras. 7.2.12, 7.2.16 and 7.2.17.

III. Situation of human rights defenders in Peru

16. The situation of human rights defenders in Peru remains of concern to the Special Rapporteur. The Special Rapporteur concludes that large number of human rights defenders, and in particular environmental, land and indigenous peoples' rights defenders, are unable to operate in a safe and enabling environment.

17. He has identified the following four trends of concern:

(a) Stigmatization and lack of recognition of defenders;

(b) Criminalization of defenders;

(c) Persistent problematic practices in the management of assemblies in the context of social protests;

(d) Lack of effective protection responses for human rights defenders at risk.

18. The Special Rapporteur has also identified that the following categories of defenders that face greater risks and obstacles when promoting and defending human rights: land and environmental defenders (particularly defenders from indigenous peoples and peasant communities), women human rights defenders, defenders of the human rights of lesbian, gay, bisexual, transgender and intersex persons, defenders of sexual and reproductive rights, journalists that document human rights abuses and corruption, and defenders of victims of the period of violence (1980–2000) and its aftermath.[6]

A. Lack of recognition of human rights defenders and stigmatization

19. During the visit, the Special Rapporteur observed an uneven level of understanding among different parts of the State Administration with whom he met regarding the notion, role and work of human rights defenders. Some sectors and public officials of the central Administration recognized and valued the important contribution of defenders to Peruvian society. Most institutions and public officials at the State, regional and municipal levels seemed to lack awareness of the definition of defenders in conformity with the Declaration on Human Rights Defenders and the protection provided to them, and failed to recognize them as such or showed disregard for their human rights work.

20. This prevailing trend also manifests itself in the absence of public statements by authorities in support of defenders. It is coupled with a lack of self-awareness on the part of human rights defenders on their role as defenders. The Special Rapporteur noted that many of the individuals working to promote and protect human rights did not necessarily self-identify as such.[7]

21. The effects of the failure by most sections of the public authorities to recognize defenders are all the more serious in a context of a widespread reported pattern of stigmatization of defenders, particularly by non-State actors from sections of the extractive and agricultural industries, certain media outlets, and certain conservative religious groups and movements. This stigmatization was reported in all interviews with environmental and land rights defenders, defenders of lesbian, gay, bisexual, transgender and intersex rights and defenders of sexual and reproductive rights. The national human rights institution reported that acts of defamation, harassment and stigmatization were among the types of attacks most frequently suffered by human rights defenders in Peru.[8]

22. This stigmatization is inherently connected with a dismissal of the underlying rights for which the defenders advocate. The interests of some extractive and agricultural industries are tied to the portion of territory affected by the property or environmental conservation claims of land and environmental rights defenders, creating a situation of constant tension between these different stakeholders. Similarly, religious conservative groups express

[6] Ombudsman's Office, "Lineamientos de intervención defensorial frente a casos de defensores y defensoras de derechos humanos" (Administrative Decision No. 029-2020/DP-PAD), sect. 6.3.

[7] Ibid., sect. 5.2.

[8] Ibid., sect. 5.4.

opposition to the underlying claims for recognition advocated for by defenders of lesbian, gay, bisexual, transgender and intersex rights and by defenders of sexual reproductive rights. Thus, the failure to recognize certain forms of human rights defence by the authorities may contribute to the framing of such defence as illegitimate, silencing advocacy for the underlying rights. In this regard, the Special Rapporteur wishes to recall that the protection afforded to human rights defenders prevails irrespective of the merits of the underlying claim.[9]

23. Land and environmental rights defenders are particularly affected by this practice. Rather than the claims advocated for by land and environmental defenders being understood to be issues of human rights compliance, defenders are often publicly described as "anti-development" and "radical anti-mining groups", and accused of pursuing selfish or corrupt interests since they entail preventing the exploitation of economic resources, diverting parts of the revenue from such exploitation to affected communities or changing the method by which resources are extracted.[10] Prior to Congress's vote against ratification of the Escazú Agreement, Congress members reportedly referred to defenders as mercenaries for non-governmental organizations, foreign powers and radical groups that would use the Agreement to hamper development and create chaos and instability. In the context of latent or active social conflicts, where the interests of the industries and the local communities are most clearly opposed, the failure to accurately qualify the claims advocated for by human rights defenders must also be seen in conjunction with the intervention of law enforcement officials and the criminal justice system. Through the practice of criminalization (covered below), the advocacy efforts of defenders are further delegitimized.

24. The Special Rapporteur also observed this pattern with respect to defenders of lesbian, gay, bisexual, transgender and intersex rights and defenders of gender equality and sexual and reproductive rights.[11] The Special Rapporteur heard numerous examples of stigmatization and harassment perpetrated by a combination of religious and conservative groups. Particularly prevalent were attacks by conservative movements such as *Con mis hijos no te metas* ("Don't mess with my children"), which reportedly delegitimize, defame and harass lesbian, gay, bisexual, transgender and intersex defenders. Such harassment reportedly occurred online as well as offline, at times involving direct threats to their personal safety. Defenders of the rights of transgender persons reported experiencing ridicule and harassment even by law enforcement officials when raising complaints of attacks suffered. Journalists, particularly those working to expose corruption or corporate malpractice, reportedly faced harassment and abuse, particularly through social media, seeking to delegitimize their work. Lastly, despite efforts having been made to provide reparations to victims of the period of violence (1980–2000), the Special Rapporteur learned of numerous examples of harassment and stigmatization, particularly of women defenders who were victims of forced sterilization, or those seeking justice for violence committed by State agents during the conflict. The Special Rapporteur notes the gender dimension of these forms of attack, which seemed to disproportionately affect women human rights defenders. The type of harassment that they suffered was often of a discriminatory, misogynistic and sexual nature.

B. Criminalization of human rights defenders

25. The Peruvian context reveals a pattern of criminalization, in particular of environmental and land rights defenders. The phenomenon of criminalization is understood

[9] See Special Rapporteur on the situation of human rights defenders, "Who is a defender?", OHCHR. Available at www.ohchr.org/en/issues/srhrdefenders/pages/defender.aspx.

[10] The Special Rapporteur observed such stigmatization first-hand in meetings with the representatives of mining and energy companies from the National Confederation of Private Business Associations (known as CONFIEP). During the meeting, the work of land and environmental rights defenders was delegitimized by showing videos and news reports suggesting corruption on the part of the defenders and their suspected affiliation with terrorist groups.

[11] See Ombudsman's Office, *Derechos humanos de las personas LGBTI: Necesidad de una política pública para la igualdad en el Perú* (Lima, 2016). Available at www.defensoria.gob.pe/wp-content/uploads/2018/05/Informe-175--Derechos-humanos-de-personas-LGBTI.pdf.

in the present report to be the misuse of administrative or criminal law against human rights defenders in relation to their human rights work.[12]

26. According to information provided by civil society, at least 960 individuals have been subjected to criminalization in connection with their defence and promotion of human rights since 2002. Out of these, 538 were subjected to criminalization in the context of social protests.[13] This pattern of criminalization was overwhelmingly confirmed in interviews with civil society organizations and human rights defenders, in particular environmental and land rights defenders belonging to peasant or indigenous communities in rural areas. In its guidelines on defending human rights defenders, the national human rights institution listed criminalization as one of the forms of attacks most frequently suffered by human rights defenders.[14] The authorities rejected the claims regarding the practice of criminalization and the numbers provided by civil society. Indeed, during the meeting with the provincial office of the Public Prosecution Service in Cuzco, the practice was dismissed in its entirety.

27. Although tracking the root causes of this phenomenon is complex, the Special Rapporteur received many reports highlighting the role of the Public Prosecution Service at the various provincial levels in the practice of criminalization. The Special Rapporteur met with public officials from the Public Prosecution Service in the course of the country visit. Prosecutors at the local, provincial and State levels held that action was taken by the Public Prosecution Service in accordance with the law only, and where there was sufficient evidence that an offence was likely to have been committed. However, the numerous testimonies received revealed a clear pattern of the Public Prosecution Service investigating and charging human rights defenders and appealing their acquittals, in a way that suggested bias in favour of the corporate or economic interests that the human rights defenders were challenging. On many occasions, criminal investigations and proceedings were initiated by the volition of the Public Prosecution Service upon receiving information about a specific occurrence, such as a protest. In other instances, criminal complaints were initiated by private actors. Testimonies received further suggested a practice of private actors using criminal law to silence opposition to their activities. The Special Rapporteur received many testimonies in different parts of the country pointing to the exertion of considerable pressure by private actors, including businesses, on the Public Prosecution Service to initiate investigations or criminal proceedings. Moreover, during interviews, several examples revealed a practice by the Public Prosecution Service of appealing acquittals, leading to prolonged legal battles, without consideration of the prospects for conviction. The groups of human rights defenders particularly affected by this practice are defenders of environmental and land rights, and those belonging to indigenous or peasant communities.

Land and environmental defenders belonging to indigenous and peasant communities

28. Within and outside social conflicts,[15] indigenous and peasant communities experience widespread criminalization. The most common categories of offences used to criminalize human rights defenders under the Criminal Code and the Organized Crime Act reportedly include the crimes of public disorder, obstruction of the functioning of public services, aggravated damages, violence and resistance to authority, extortion, kidnapping, usurpation, and criminal association to commit a crime.

29. Another category of cases concerned access to ancestral lands by indigenous and peasant communities. In this context, the activities of corporate actors is also manifest, as they represented the actors who in the first instance raised criminal complaints. For example, human rights defenders in San Juan Bautista de Catacaos, in a dispute with private companies

[12] See Ombudsman's Office, "Lineamientos de intervención defensorial". See also Inter-American Commission on Human Rights, *Criminalization of Human Rights Defenders* (Washington, D.C., Organization of American States, 2015).

[13] Information provided by Coordinadora Nacional de Derechos Humanos.

[14] Ombudsman's Office, "Lineamientos de intervención defensorial", sect. 5.4.

[15] In Peru, the phrase "social conflict" is defined by the Ombudsman's Office to be a complex process in which the main actors (society, the State and businesses) perceive that their objectives, interests, values or needs are contradictory, creating a situation that could lead to violence (see www.defensoria.gob.pe/wp-content/uploads/2020/05/Informe-de-adjuntía-Nº-001-2019-DP-APCSG-Los-costos-del-conflicto-social.pdf).

over access and title to their lands, were charged with multiple offences. Under efforts by agricultural company Santa Regina, in particular, to evict members of the community, 39 members, including those opposing the eviction and claiming land rights, are facing or have faced criminal charges and investigations raised by the company and the Asociación Civil San Juan Bautista. Many of the defenders are facing trial.

30. In other instances, including in Madre de Dios, indigenous and peasant communities holding titles to their ancestral lands were reportedly facing criminal charges for failing to prevent illegal logging on their territories, as mandated by existing environmental regulations. The perverse effect has been to make the community leaders of peasant and indigenous peoples and human rights defenders responsible for the actions of the actors who threaten and harass them and their communities.

31. The Special Rapporteur also learned of several examples in which the exercise of peasant patrol jurisdiction had given rise to criminal prosecution. In Peruvian domestic law, *rondas campesinas*, or peasant patrols, are recognized as social organizations formed by communities of peasants, hunters and indigenous peoples, which are entitled to exercise certain types of public powers, including law enforcement.[16] Despite this recognition, the exercise of such jurisdiction has led to criminal prosecution in the past,[17] and the Special Rapporteur witnessed the use of such criminalization as a means of discrediting human rights defenders.[18] A notable example concerns the media professional and human rights defender César Estrada, who was an active member of the peasant patrols until late 2016, and about whose case the Special Rapporteur has raised concerns on several occasions.[19]

32. The Special Rapporteur observes with concern that leaders of indigenous or peasant communities who are also environmental and land rights defenders are at higher risk of being charged, placed in pretrial detention and subjected to long prison sentences in the context of the mobilization of their communities and in the exercise and defence of their human rights. The Special Rapporteur wishes to recall article 10 of the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), under which the State is under an obligation to take into account the effects for the indigenous community of imprisoning its members, and to give preference to alternative modes of punishment.

Lawyers defending the rights of human rights defenders

33. The Special Rapporteur learned of examples of cases in which the lawyers of human rights defenders are subject to criminalization. Lawyer Juan Carlos Ruíz and medical doctor Fernando Osores were criminally prosecuted for their human rights work in support of the legal cases filed by four indigenous peoples' organizations in Espinar (Cuzco) against the Glencore mining project. Both defenders were acquitted at first instance of the charges of use of a false public document and issuance of false medical certificate.[20]

Journalists and others reporting on human rights abuse and corruption

34. The pattern of criminalization is not solely evidenced by the Public Prosecution Service, but also by private actors. In particular, such practice is facilitated through the

[16] Constitution, art. 149, and Act No. 27908. These organizations were first recognized in law in 1986, with Act No. 24571.

[17] Following the adoption of the Constitution of 1993, the prevalence of criminal prosecution for the exercise of peasant patrol jurisdiction has led to the adoption in 2001 of an amnesty law (Act No. 27599), concerning offences such as kidnapping for detention conducted under that jurisdiction. However, the national human rights institution points out that such instances of criminal prosecution still continue (see www.defensoria.gob.pe/modules/Downloads/informes/varios/2005/rondas_campesinas.pdf).

[18] The competencies of peasant patrol jurisdiction were recognized by the judiciary in 2009 (Plenary Agreement No. 1-2009/CJ-116) and affirmed again in 2019 (see JusticiaTV, "Poder Judicial reconoce autonomía, participación y capacidad de fiscalización de rondas campesinas", 25 February 2019).

[19] See communications from special procedures No. 5/2015 (3 December 2015), No. 2/2017 (11 April 2017) and No. 5/2020 (21 August 2020).

[20] See www.omct.org/es/human-rights-defenders/urgent-interventions/peru/2018/12/d25158/ and www.idl.org.pe/se-realizo-audiencia-por-proceso-penal-en-contra-de-juan-carlos-ruiz-y-fernando-osores/.

persistence of criminal defamation under articles 130–138 of the Criminal Code. Under the Code, defamation cases may be initiated exclusively by private actors. The Special Rapporteur observed a strategic use of these provisions to silence or discredit critical journalists, in particular those covering human rights violations and abuses in the context of environmental and land rights disputes, as well those unveiling instances of corruption.

35. An example concerns Paola Ugaz, a journalist and human rights defender who is the victim of numerous criminal lawsuits against her, including for defamation. After the airing of a documentary in 2016 showing the predatory land-grabbing of the Asociación Civil San Juan Bautista in Piura, she was subject to a defamation lawsuit by the archbishop in the region. Although this lawsuit was later withdrawn owing to public backlash, similar lawsuits have since been filed against her by persons affiliated with the Sodalitium Christianae Vitae group, mainly for her role in the documentary. In 2019 and 2020, she had five lawsuits against her pending simultaneously, and has faced numerous campaigns aiming to delegitimize her. A notable aspect of the many defamation cases brought to the Special Rapporteur's attention is the reported absence of an effective examination by lower-instance courts of the frivolous nature of the lawsuits. These cases are therefore reportedly drawn out for much longer than necessary, with the personal, economic, reputational and emotional costs that such proceedings have.

36. The pattern of criminalization of defenders has many effects, but, importantly, it has devastating consequences for the defenders themselves and their relatives. Beyond the risk of criminal sanction, it has serious financial and social consequences for the defenders and a dissuasive effect on their work. Many defenders from modest economic backgrounds do not have the financial resources to face prolonged legal battles. Criminalization might also push defenders to disengage from the promotion and protection of human rights.

C. Obstacles to defenders' right of peaceful assembly

37. Article 21 of the International Covenant on Civil and Political Rights protects the right of peaceful assembly, regulating the scope of protection of assemblies and the proper management of assemblies by public authorities. Moreover, in the management of assemblies, other rights too are particularly affected, such as those covered under articles 6 (the right to life), 7 (prohibition of torture or cruel, inhuman or degrading treatment or punishment), 9 (right to security of person), 19 (freedom of expression) and 26 (equality and non-discrimination). The main obligation of the authorities with respect to the right to peaceful assembly is to facilitate its exercise, including through the protection of participants. The Special Rapporteur welcomes the recognition in the Peruvian legal system of these rights.[21] For a large part, the Special Rapporteur found that the right of peaceful assembly was recognized and respected in practice. Despite this, there were several problematic factors identified in the implementation of the State's duty to facilitate the exercise of the right of peaceful assembly in the context of assemblies in support of land and environmental rights. These concerns are not minor, as they relate in particular to contexts where tensions between local communities and corporate actors are high, and thus where the conduct of law enforcement is particularly crucial. Between January 2019 and August 2020, there were 2,974 registered acts of protests, which resulted in 242 cases of injuries and 8 deaths.[22] Social conflicts have in the past given rise to high levels of violence. According to available information, the highest number of victims was registered in 2015, with a total of 19 deaths and 872 injuries.[23]

38. According to the information gathered, the prefecture, responsible for receiving notifications of planned assemblies, in practice exercises its powers broadly to dictate the modalities for the execution of the planned assembly. In particular, the Special Rapporteur

[21] Constitution, art. 2; and Constitutional Court, Cases No. 4677-2004-PA/TC, judgment, 7 December 2005, and No. 0009-2018-PI/TC, judgment, 3 July 2020.

[22] See Ombudsman's Office, *Reporte de conflictos sociales No. 191: Enero 2020* (Lima, 2020); and Ombudsman's Office, *Reporte de conflictos sociales No. 198: Agosto 2020* (Lima, 2020).

[23] See https://elcomercio.pe/peru/conflictos-sociales-dejaron-62-muertos-1-894-heridos-ultimos-seis-anos-noticia-ecpm-660907-noticia/?ref=ecr.

heard testimonies of the many challenges that defenders faced in the organization and execution of peaceful assemblies to celebrate and promote lesbian, gay, bisexual, transgender and intersex rights. In coordinating the planning and execution of the assembly with the authorities, defenders were subject to requirements in terms of time, route and duration, which often defeated the purpose of the assembly. During the assembly itself, defenders reported numerous instances of insults or physical attacks by conservative individuals or groups, and a lack of protection from the police despite being present at the scene.

Use of military forces and private contracting of law enforcement officials

39. In carrying out its obligations to facilitate peaceful assemblies, the State is under an obligation to protect not only the rights of third parties, but also the participants of the assembly themselves. In this regard, law enforcement agencies should continually work on strategies to build confidence with the communities that they serve. There are several factors in the management of assemblies by the authorities that contribute to a climate of mistrust in the impartiality of law enforcement officials and the proportionality of the State's reaction to protests against extractive businesses.

40. First, Peruvian law permits agreements between the national police and private companies whereby police officers provide security services.[24] Whereas the contracts entered into reportedly have been subject of certain amendments, the practice prevails and was recently declared compatible with the Constitution.[25] These arrangements demonstrate and reinforce the institutional ties between the extractive corporate sector and law enforcement agencies. It furthermore demonstrates and reinforces a relationship of dependence between individual police officers and corporate actors. These same institutions, in some occasions the same individuals, are sent to police assemblies that disrupt the operation of the corporate actors to which they are inherently bound.

41. Second, there is a practice of introducing the military in the management of assemblies. This practice is authorized through the declaration of a state of emergency,[26] the adoption of special decrees,[27] and the conclusion of agreements for the protection of installations.[28] In these contexts, the military is sent to react to and protect against the disturbance caused by social conflict. In effect, it pits land and environmental defenders, on the one hand, against the private extractive sector and military forces, on the other. In this respect, the Special Rapporteur wishes to recall that as a general rule, the military should not be used to police assemblies (A/HRC/31/66, para. 66).[29] He also recalls that one of the main purposes of policing of assemblies by law enforcement officials is to protect the life, health and integrity of the participants themselves. The use of military forces whose main purpose is to protect the integrity of an oil installation, for example, would seem ill suited to achieving the primary aim of the State to facilitate exercise of the right to protest.

Unlawful use of force

42. The Special Rapporteur welcomes the decline in the numbers of deaths in the context of social protests in recent years. While there were 872 injuries and 19 deaths in 2015, the

[24] Participation by police officers in security details for private businesses was initially recognized in the 2006 act on national police personnel (Act No. 28857), then in the 2012 act on the national police (Legislative Decree No. 1148), and most recently in 2017 in the updated act on the national police (Legislative Decree No. 1267). In 2017, a decree was passed (Supreme Decree No. 003-2017-IN, subsequently amended by Supreme Decree No. 018-2017-IN) to allow for agreements to be entered into on the transfer of police officers to extraordinary services with businesses, including the extractive industry.

[25] See Constitutional Court, Case No. 00009-2019-PI/TC, judgment, 23 June 2020.

[26] Coordinadora Nacional de Derechos Humanos, *Informe Alternativo 2018: Cumplimiento de las obligaciones del Estado peruano del Convenio 169 de la OIT* (Lima, 2018), pp. 44–46.

[27] Such decrees have been adopted to permit military forces to ensure the protection of oil, gas and mining installations considered essential interests. See, for example, Supreme Decree No. 106-2017-PCM.

[28] See, for example, www.petroperu.com.pe/Storage/tbl_documentos_del_proceso/fld_1418_Archivo_file/314- w9Mu8Xz5Pe5Uw9S.pdf.

[29] See also Human Rights Committee, general comment No. 37 (2020), para. 80.

numbers fell to 134 injuries and 5 deaths in 2018, and 174 injuries and 2 deaths in 2019.[30] The decline in the numbers of injuries and deaths seems to correspond to a decline in the number of social conflicts, and cannot conclusively be attributed in a change in the management of assemblies. Moreover, the number of deaths does not in and of itself indicate whether the use of lethal or non-lethal force not resulting in death is compatible with human rights law. On the contrary, the Special Rapporteur received numerous allegations of excessive use of force by law enforcement officials during policing of assemblies, allegations that the Ministry of the Interior rejected. United Nations special procedures further communicated allegations of excessive use of force during mass protests in November 2020, when two individuals lost their lives and almost a hundred were injured.[31] The Special Rapporteur regrets that no reliable statistics were provided on the use of force in the management of assemblies, or on the use of lethal or less-lethal weapons. In this regard, the Special Rapporteur recalls that instances of the use of such weapons should be recorded for the purposes of ensuring accountability. The Special Rapporteur further recalls that only the minimum force necessary may be used in the dispersal of such assemblies, and that any use of lethal and less-lethal weapons must conform to the requirements of human rights law.[32]

43. Testimonies received suggest that at times the police officers managing assemblies lacked adequate training and equipment, and that those transferred from other regions lacked a sufficient understanding of the local context.[33] In particular, the national human rights institution has pointed out that the lack of planning of police operations and lack of understanding of the local context in areas of social conflict are risk factors to the safety of human rights defenders.[34] Combined, these factors contribute to a higher risk in the escalation of violence in the management of assemblies. In this regard, the Special Rapporteur recalls that the State has an obligation to ensure adequate training of law enforcement officials tasked with policing assemblies, and ensure adequate planning and equipment. It should sensitize police officers to the specific needs of the protesters and to the vulnerability of, for example, indigenous communities.[35]

Policing and criminalization of assemblies blocking transit roads

44. Serious threats to defenders arise when they advocate for their rights with the effect of disrupting extractive activities by private companies, particularly through the disruption of road traffic. For indigenous and peasant communities, a historically disenfranchised section of the population who inhabit territories where mining, gas or oil projects are approved, such methods are in practice the only means by which they can make their voices heard by the authorities. During the country visit, civil society actors and the authorities alike referred to this particular context as a trigger for the dispersal of assemblies. Such dispersals often involve the use of force, leading to further escalation of violence.

45. In interviews with representatives of the authorities, the prevailing perception was that this type of assembly was unlawful, albeit occasionally tolerated. This notion of an inherent unlawfulness in the blocking of roads was also expressed in interviews with the extractive sector. The Peruvian legal system contributes to this perception. Through a 2015 amendment to article 200 of the Criminal Code, on extortion, the provision now criminalizes, inter alia, blocking transit roads or impeding the execution of lawful business through the use of threats or violence, to gain an undue economic advantage from the authorities or any other form of advantage. The punishment is imprisonment of no less than five years, and of no less than 15 years if two or more persons participate.

[30] Information provided by the national human rights institution.

[31] See communication from special procedures No. 8/2020 (30 November 2020), which will be made available at https://spcommreports.ohchr.org/Tmsearch/TMDocuments.

[32] See Human Rights Committee, general comments No. 36 (2018) and No. 37 (2020).

[33] See Ombudsman's Office, "Lineamientos de intervención defensorial" and Ombudsman Decision No. 009-2012/DP.

[34] See Ombudsman's Office, "Lineamientos de intervención defensorial".

[35] Human Rights Committee, general comment No. 37 (2020), paras. 76 and 80.

46. Given the perception of illegality, these assemblies are often disrupted through the use of force when the communities have not received prior authorization or when they are protracted.

47. The dispersal of the assembly on occasion leads to further escalation of violence. After the disruption of assemblies, there is a practice of criminally charging the leaders and defenders of the indigenous or peasant communities for crimes committed by third parties. Because of this troubling trend, the Special Rapporteur encourages greater awareness among the authorities and private actors of the scope of protection of these forms of assemblies. As highlighted by the Human Rights Committee, the mere fact of an assembly blocking transit roads does not place its participants outside the scope of protection under article 21 of the International Covenant on Civil and Political Rights.[36] Moreover, the right applies even where the assembly does not meet all requirements under domestic law, and also where it is used as a form of civil disobedience.[37]

48. Likewise, the use of threats or violence by some members of the assembly does not in and of itself render the assembly non-peaceful, and isolated acts of violence should not be attributed to the assembly as such or to its organizers.[38] The assembly, or parts thereof, loses its protection when it is violent. Violence, in this regard, entails the use of physical force against others that is likely to result in injury or death, or serious damage to property. Consequently, any restriction of peaceful assemblies or parts of assemblies that remain peaceful must have a legitimate aim, be provided by law and be necessary and proportionate. As highlighted by the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/31/66, para. 62), dispersal may be justified where the assembly prevents access to essential services, such as blocking the emergency entrance to a hospital, or where interference with traffic or the economy is serious and sustained.

Targeting of human rights defenders organizing assemblies

49. Under international human rights law, the permissibility of holding organizers responsible for the acts of participants is narrow,[39] precisely because of the serious chilling effect that such a practice has on the exercise of the right of peaceful assembly. Thus, there are exceptions to the principle of individual responsibility. Despite this, organizers of assemblies, particularly in the context of social conflicts, are targeted for their role in organizing and leading assemblies. In assemblies organized by indigenous or peasant communities against the activities of extractive businesses, the organizers are often also the leaders and defenders of the respective communities. The Special Rapporteur learned of numerous instances in which such community leaders had been charged with or held criminally responsible for the acts of participants in the assemblies.

D. Failure to protect human rights defenders at risk

50. Human rights defenders face risks to their life as a result of their human rights work. The national human rights institution reported that, as of early December 2020, four environmental and land rights defenders had been killed in Peru in 2020.[40] The Special Rapporteur has identified three main weaknesses in the mechanisms for protecting human rights defenders: (a) failure on the part of authorities to register complaints of threats brought to their attention; (b) a lack of effective systems for ensuring the physical safety and protection of defenders at risk; and (c) a lack of effective investigations of attacks against human rights defenders and failure to prosecute and punish those responsible.

[36] Ibid., para. 15.
[37] Ibid., para. 16.
[38] Ibid., para. 17.
[39] See Human Rights Committee, general comment No. 37 (2020).
[40] See communications from special procedures No. 2/2020 (15 June 2020) and No. 9/2020 (27 November 2020), which will be made available at https://spcommreports.ohchr.org/Tmsearch/TMDocuments.

Failure to register complaints brought to the attention of the authorities

51. Testimonies were received confirming that in practice, local law enforcement and other authorities, in particular the prefecture, exercised some level of discretion in the registration of criminal complaints by human rights defenders about threats that they had received. No such discretionary power is afforded to those authorities under domestic law, however. This practice was prevalent, in particular, in relation to defenders of land and environmental rights, particularly members of indigenous and peasant communities, and defenders of lesbian, gay, bisexual, transgender and intersex rights. The failure to register complaints impairs both the ability of the authorities to prevent attacks against human rights defenders, and the prospects for ensuring accountability for attacks against defenders, leading to a climate of impunity.

Lack of effective systems for ensuring the physical safety and protection of human rights defenders at risk

52. The Special Rapporteur did not encounter an effective system for offering protection measures to defenders at risk in areas with social conflicts, namely environmental and land rights defenders, particularly those belonging to indigenous or peasant communities.

53. The protocol guaranteeing the protection of human rights defenders aims to set up a scheme of protection for defenders at risk. From the adoption of the protocol in April 2019 until November 2020, the Directorate General of Human Rights of the Ministry of Justice and Human Rights and its coordination team, composed of three members of staff, has received 21 requests for activation of the protocol, most of which concern defence of the right to a healthy environment (seven requests) and indigenous peoples' rights (eight requests). The Ministry has admitted nine cases for assessment, of which it has issued four early warnings, three of which include urgent measures of protection. The Ministry has often aimed to hold dialogue and liaise directly with local authorities to ensure that support to the individual defender is provided at the local level. The Special Rapporteur commends the genuine efforts made by the Ministry and its officials for these diligent efforts. However, the Special Rapporteur notes that the effects and scale of these measures remain limited. In particular, since the protocol is binding only on the Directorate General, part of the Ministry, ensuring the implementation of protection measures could pose a challenge.

54. Sub-prefectures, which are regional representatives of the Ministry of the Interior, have the competency to adopt protection measures with respect to individuals at risk. Although everyone may thus apply for protection measures at sub-prefectures, there seemed to be failures in terms of both the procedure and the effectiveness of response. With regard to the procedure, the standard of proof seemed to be set unreasonably high and the burden of proof placed on the applicant. Particularly in the context of illegal mining and logging, the task of acquiring ample proof of the threat places the defender at serious risk of irreparable harm. Where guarantees were granted, the effectiveness of the response remained a serious challenge.

55. Intervention by law enforcement officials in situations of risk or attacks varied markedly between regions and areas. The indigenous and peasant communities in the Amazon region of Ucayali have for a number of years suffered a sustained threat from local corporate actors and criminal groups originating from the Valle de los Ríos Apurímac, Ene y Mantaro region and operating along the border with neighbouring Brazil. Despite precautionary measures having been decided by the Inter-American Commission on Human Rights in respect of the community of Nueva Austria del Sira for the purpose of ensuring their personal safety, no effective means of doing so had been implemented. Indigenous community leaders and human rights defenders from these regions have raised the matter with the authorities at various levels and requested that they implement safety measures, with no effective response to date. A defender with whom the Special Rapporteur met during the visit had faced numerous threats over a long period, a situation known to the authorities. Subsequent to the visit, the same defender was murdered.[41] Similarly, the indigenous and

[41] See communication from special procedures No. 2/2020 (15 June 2020) and State reply (21 August 2020).

peasant communities in Madre de Dios were suffering attacks and threats with the influx of illegal mining activities, particularly after the construction of the interoceanic highway. Efforts by the authorities to combat the illegal activities and protect the communities and defenders from threat had proved ineffective.

56. The reasons for the failure to ensure the safety of human rights defenders can be partly attributed to the lack of resources, particularly for law enforcement officials to reach remote areas. An egregious result, the Special Rapporteur learned, was demands from local law enforcement officials in Ucayali that victims pay for the cost of transportation to deploy to remote areas. Equally worrisome were numerous allegations of widespread corruption at the local level of authority and collusion with criminal or corporate actors, seriously hampering the efficiency of law enforcement officials in protecting members of indigenous communities and environmental defenders.

Lack of effective investigations of attacks against human rights defenders and failure to prosecute and punish those responsible

57. The pattern observed during the visit of criminalization of human rights defenders and community leaders active in denouncing adverse impacts of extractive industries or violations by the illegal business sector should be contrasted with the numerous examples of failure by the police and prosecution to investigate attacks against human rights defenders and to prosecute and punish those responsible.

58. In Ucayali, the Special Rapporteur learned of the constant threat faced by numerous of the indigenous Amazonian communities, including threats to life, physical attacks, and murder by illegal loggers and other unknown actors. In 2014, four leaders and human rights defenders of the indigenous community of Saweto were murdered after denouncing illegal logging on their ancestral territories. The investigation into the murders, involving known suspects, had been ongoing for over half a decade when, in March 2020, the hearings for the formulation of charges were postponed for a third time.[42] Meanwhile, the relatives of the victims, one of whom the Special Rapporteur met, were facing constant threats to their life for advocating for justice for the murders and against the continued illegal logging on the territories of the community.

59. This was not an isolated case. In Piura, defender members of the San Juan Bautista de Catacaos community had experienced two murders, gunfire injuries, death threats, harassment and other violent attacks by individuals with reported links to corporate actors operating on their territories. Despite the long and clear patterns of threats, the Special Rapporteur learned of limited success in apprehending and prosecuting those responsible for the offences. In Madre de Dios, defenders alerting the authorities to illegal mining activities and attacks and harassment by the actors concerned were required to accompany prosecutors and the police to identify the site and the perpetrators, putting the lives of defenders at risk through retaliation and deterring future reporting of such violations to the authorities.

60. In this respect, the Special Rapporteur wishes to emphasize that effective investigations, with a view to prosecuting and punishing those responsible for abuses, are a necessary precondition for ensuring accountability, preventing impunity and avoiding the denial of justice. More broadly, the failure to investigate acts of violence and threats against human rights defenders has a chilling effect on their ability to defend human rights.

IV. Specific groups of human rights defenders at risk

A. Environmental and indigenous peoples' rights defenders

61. Environmental and indigenous defenders, particularly leaders or members of indigenous or peasant communities, are those facing greater risks and threats in connection to their human rights work denouncing the adverse impact of extractive industries, legal and

[42] Geraldine Santos, "Caso Saweto: remueven a fiscal que iba a acusar a asesinos de líderes indígenas", Ojo Público, 6 March 2020.

illegal. The indigenous and peasant communities they defend remain in a situation of structural discrimination and poverty, including lack of access to essential services such as health, water, electricity as well as education. It is estimated that 35 per cent of territories belonging to peasant communities currently have concessions for exploitation and 9 per cent of the amazon region has been designated for exploitation, affecting the territories of 69 indigenous communities and 1,952 peasant communities.[43] It is in this context that most social conflicts are taking place in Peru. In September 2020, the national human rights institution reported that 66.1 per cent of the 142 active social conflicts were related to environmental issues, out of which 61.6 per cent were related to mining, 19.2 per cent to oil and gas and 6.4 per cent to environmental pollution.[44]

62. In order to effectively address the threats faced by environmental and indigenous human rights defenders, the Special Rapporteur urges the Government to take all necessary measures to tackle the underlying root causes of social conflicts: lack of legal protection, lack of legal security for acquired rights, lack of effective consultations and lack of remedy following environmental pollution. While understanding that these factors relate to broad structural challenges faced by the State, and consequently that change will necessarily be progressive, the Special Rapporteur found that insufficient measures have been put in place to effectively achieve change, particularly given the risks to the life and health of the affected population, including human rights defenders.

Lack of legal protection

63. The Special Rapporteur heard testimonies about the cumbersome process that indigenous or peasant communities needed to follow for the acquisition of legal title to their ancestral lands or the lands that they have traditionally occupied. This has also been well documented by the national human rights institution.[45] In practice, acquiring title to their ancestral lands and securing their demarcation required the leadership of courageous indigenous human rights defenders and the legal support of civil society actors and lawyers, and often involved legal obstacles, as well as physical attacks against and criminalization of the leaders and human rights defenders of the communities.

64. In some examples, the titling and demarcation process has lasted many years,[46] with concessions being granted to exploit the land while the process was ongoing. The process for the Asháninka native community of Saweto started in 2006, with the titling to a portion of their ancestral lands being granted only in 2015.[47] The Shipibo-Conibo native community of Santa Clara de Uchunya initiated the process of the extension of their communal titling in 2015, which was granted in 2020.[48] Meanwhile, illegal loggers had acquired parcels of the territory for exploitation, which were sold to palm-oil company Plantaciones de Pucallpa and later to Ocho Sur P, another palm-oil company currently operating on the ancestral lands of the community. An attempt was made to formalize such predatory acquisition of land titles by loggers in the region through a regional decree. The Special Rapporteur welcomes the repeal of the decree in 2020 by the regional government.[49]

[43] Coordinadora Nacional de Derechos Humanos, *Y los pueblos indígenas en el Perú? Cumplimiento de las obligaciones del estado peruano a 30 años del convenio 169 de la OIT* (Lima, 2019), p. 24.

[44] See Ombudsman's Office, *Reporte de conflictos sociales No. 199: Septiembre 2020* (Lima, 2020).

[45] See Ombudsman's Office, *El largo camino hacia la titulación de las comunidades campesinas y nativas* (Lima, 2018).

[46] Ibid.

[47] Santos, "Caso Saweto".

[48] Information provided by the Ucayali regional government.

[49] Regional Ordinance No. 10-2018-GRU-C, which was the subject of action by the Committee on the Elimination of Racial Discrimination under its early warning and urgent action procedure. See letter dated 29 August 2019 from the Chair of the Committee addressed to the Permanent Representative of Peru to the United Nations Office and other international organizations in Geneva. Available at https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/PER/INT_CERD_ALE_PER_8976_E.pdf.

Lack of legal security for acquired rights

65. As previously mentioned, there is also the challenge of legal security for acquired land rights. Even when they have been granted legal title to land, these communities are still under threat from the formal and informal business sectors and illegal exploitation. The indigenous community of Tres Islas, with the support of civil society organizations and its community leaders and human rights defenders, won a legal battle for the annulment of more than 140 mining concessions and 11 agricultural projects unlawfully granted in violation of the rights of the community.[50]

Lack of effective consultations

66. In matters affecting communities, including the exploitation of natural resources, the communities concerned must be consulted, as required under international and domestic law.[51] According to the information received by the Special Rapporteur during the mission, consultations are perceived not to be conducted in good faith, and are seen as a mere formality. Consultations are held either too early or too late in the process, often in a language not spoken and understood by the affected communities, and without adequate participation by indigenous women. This prevents effective participation and influence in the process by the affected communities. The Peruvian legal system does not recognize the requirement under article 19 of the United Nations Declaration on the Rights of Indigenous Peoples that the indigenous peoples concerned be consulted with a view to acquiring their free, prior and informed consent.[52] The consequent inability of communities to veto decisions affecting them hampers the extent to which their views and interests are taken into account in decision-making. In addition, there has been an alleged failure to fulfil agreements reached between the Government and the affected communities to address their concerns related to extractive projects.[53]

Lack of remedy following environmental pollution

67. Another major cause of social conflict is environmental pollution. The Special Rapporteur commends the State for its efforts made to address pollution caused by ongoing activity by business or industry, through the Environmental Assessment and Enforcement Agency, and the establishment of a specialized unit in the Public Prosecution Service dealing with environmental crimes. Despite this, the Special Rapporteur found that the Public Prosecution Service lacked the resources and powers required to operate effectively to combat existing impunity for environmental crimes, and there seemed to be a lack of coordination with other administrative bodies in effectively combating such crimes. In particular, the Special Rapporteur notes that there are no legal grounds to administratively annul concessions for extractive businesses where they demonstrably violate environmental standards or face credible allegations of human rights abuse. The Government has developed funds to remedy the consequences of past pollution.[54] Despite this, in situations where no existing company can be held liable, environmental and indigenous defenders and their communities have had no effective means of holding anyone accountable for the damage done to their territories or ensuring that such damage is remedied.

[50] See Madre de Dios High Court, case No. 675-2017, judgment, 12 March 2019.

[51] ILO Indigenous and Tribal Peoples Convention, 1989, (No. 169), arts. 6 and 15 (2), and United Nations Declaration on the Rights of Indigenous Peoples, art. 19.

[52] See Constitutional Court, case No. 00022-2009-PI/TC, judgment, 9 June 2010.

[53] For example, in the following study, the conclusion is drawn that the State failed to guarantee the health of the communities as agreed: Ombudsman's Office, "Salud de los pueblos indígenas amazónicos y explotación petrolera en los lotes 192 y 8: ¿Se cumplen los acuerdos en el Perú?" (2018), pp. 34–35.

[54] Ministry of Energy and Mines, report No. 071-2020-MINEM/DGAAH/DGAH, 18 February 2020 (information provided by the Government).

B. Women human rights defenders

68. Women human rights defenders play a critical role in the promotion of human rights, whether women's rights in particular or the human rights of their communities. However, women face many threats as a result of both their human rights activism and their gender identity. Over recent years, women human rights defenders and their organizations have faced growing stigmatization, intimidation and criminalization. They have also encountered increasing difficulty in gaining access to funding for their human rights activities. The Special Rapporteur found that there was a lack of public data on attacks against women defenders and a lack of a systemic and intersectional approach by the authorities when women defenders filed complaints and sought remedy and reparation.

69. Indigenous and rural women human rights defenders are some of the most at-risk groups of defenders in Peru. Persistent historical discrimination and racism have hampered their access to the most basic human rights, such as their rights to health, to education and to a safe, clean, healthy and sustainable environment.[55] The negative, racist and sexist stereotyping of indigenous women is perpetuated by media outlets, in particular through television shows such as *La paisana Jacinta*. During the official visit, the Special Rapporteur met with one of the four courageous indigenous women rights defenders who had filed a lawsuit in 2014 to end the broadcasting of the show. A judicial sentence of November 2018 ordering Channel 2 (now known as "Latina") to stop broadcasting the programme and to remove it from YouTube was annulled in June 2019. A subsequent judgment, of October 2020, prohibited the reproduction of the show.[56] Women who have opposed large-scale projects such as those of the extractive industry have also faced intimidation and physical attacks, as in the case raised by the Special Rapporteur concerning defenders denouncing the negative impact of the Yanacocha mine.[57] The Special Rapporteur received testimonies of women defenders receiving threats of sexual violence and public shaming. They have also been subject to criminalization by companies.

70. In the field of sexual and reproductive rights, women and girls face public attacks led by alliances between political parties, conservative civil society organizations and religious groups. Women advocating for access to reproductive health care and sexual health education and for the rights of lesbian, gay, bisexual, transgender and intersex persons have been the targets of smear campaigns on social media and of threats of sexual violence and legal action.

C. Lesbian, gay, bisexual, transgender and intersex defenders

71. Lesbian, gay, bisexual, transgender and intersex human rights defenders in Peru face hate speech, incitement to violence and online threats against them by some media outlets, private individuals and politicians, both for their human rights work and for their sexual orientation or gender identity. Such attacks often intensify following public interviews or participation in public events, or when running for elections. They also face additional obstacles to staging protests, such as the "Kisses against homophobia" event held annually on 14 February. The Special Rapporteur received reports of physical and verbal attacks by the police and private individuals during a public demonstration held in 2017 in front of Congress. Teachers who contributed to the recent preparation of an education programme, covering gender equality, lesbian, gay, bisexual, transgender and intersex rights and sexual and reproductive rights, risk losing their job and have faced various forms of intimidation and harassment.

[55] See Ombudsman's Office, *Situación de los derechos de las mujeres indígenas en el Perú* (Lima, 2019). Available at www.defensoria.gob.pe/wp-content/uploads/2019/12/Informe-de-adjuntia-002-2019-PPI-Digital.pdf.

[56] Cuzco High Court, case No. 00798-2014-0-1001-JM-CI-01, judgment, 13 October 2020.

[57] See communication from special procedures No. 5/2020 (21 August 2020).

D. Other categories of defenders

Defenders of the rights of those affected by period of violence (1980–2000)

72. Organizations that have been seeking justice and reparation for the thousands of victims of violence, including sexual violence, and of forced sterilization during the period of violence (1980–2000) have received threats and have reported insults from public servants when they presented cases to the Public Prosecution Service.

Children defenders

73. In meetings with children and adolescent defenders, the Special Rapporteur promotes, and encourages the Government to promote, the participatory rights of children in all decisions that affect them. Adolescent defenders of sexual and reproductive rights and reform in the education system are reportedly exposed to harassment and abuse for their activism, especially online.

V. National human rights institution: Ombudsman's Office

74. National human rights institutions play a key role in ensuring a safe and enabling environment for human rights defenders. The Ombudsman's Office – the national human rights institution in Peru – is a key actor in the protection of human rights defenders and the promotion of the right to defend human rights. Its staff members are also human rights defenders, who sometimes face risks. The Special Rapporteur learned that some staff members have faced threats or attacks for doing their work. In his meetings with defenders, many of them expressed confidence in the Office and the role that it played to support them. In other regions, the contrary perception was expressed, particularly by indigenous communities voicing their disappointment and lack of confidence in the Office's actions.

75. On 15 June 2020, the Office adopted guidelines for the defence of human rights defenders.[58] The guidelines were adopted in response to reports received by the Office of attacks since 2013 and the situation of vulnerability faced by human rights defenders. They provide guidance for the protection of human rights defenders at risk and on modes of intervention by the Office.

76. The Special Rapporteur strongly welcomes the Office's adoption of the guidelines, and encourages it to work more closely with human rights defenders in rural and remote areas, with a focus on indigenous peoples and environmental defenders. The Special Rapporteur recommends that the Office review and challenge laws that restrict the recognition and effective enjoyment of human rights.

VI. Conclusions and recommendations

77. **During the visit, the Special Rapporteur encountered diametrically opposed views on the challenges facing Peru. A genuine effort to protect and promote the work of defenders must begin with recognition across State institutions and the private sector of current challenges. In the light of the above findings, the Special Rapporteur recommends the following measures.**

78. **The Special Rapporteur recommends that the Government take immediate steps to recognize and promote the work of human rights defenders and to combat their stigmatization. To this end, it should implement a State-wide campaign to promote a change of narrative that portrays defenders, including women, as key actors for the public good and positive change.**

79. **The Government should promote the active public participation of women human rights defenders, including indigenous and rural women, in the design,**

[58] Ombudsman's Office, "Lineamientos de intervención defensorial".

implementation and evaluation of all policies and protocols that affect them and their communities.

80. **The Government should end the practice of criminalization of human rights defenders, in particular by:**

(a) **Ensuring that the Public Prosecution Service reviews its practices and adopts necessary measures, including training and capacity-building, in order to cease its practice of criminalization;**

(b) **In accordance with almost unanimous recommendations by United Nations human rights monitoring mechanisms, repealing the provisions in the Criminal Code that criminalize defamation;**

(c) **Ensuring the effective implementation of article 10 of the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), in respect of the sentencing of members of indigenous communities, and ensuring its application also with respect to pretrial detention, in accordance with article 9 of the International Covenant on Civil and Political Rights.**

81. **The Government should ensure the safety of human rights defenders, in particular by:**

(a) **Implementing the measures necessary to ensure that complaints by defenders to the authorities – the Ministry of the Interior, the Public Prosecution Service, the Ministry of Justice and Human Rights and the national human rights institution – are registered without exception;**

(b) **Ensuring that law enforcement agencies have the means to safeguard the life and health of defenders at risk; in particular, redoubling efforts to protect against threats by non-State actors in the illegal extractive industry;**

(c) **Strengthening its efforts to implement the registry of risk situations for human rights defenders, and ensuring that it reflects the full picture of the data available concerning attacks suffered by human rights defenders, including criminalization and gender-specific attacks;**

(d) **Strengthening the obligations incumbent on the State, regional and municipal authorities in ensuring the implementation of the protocol guaranteeing the protection of human rights defenders adopted by the Ministry of Justice and Human Rights;**

(e) **Adopting a multisectoral mechanism for the protection of defenders by 2021, as foreseen in the National Human Rights Plan, ensuring the inclusion of a gender-, age- and culturally sensitive approach;**

(f) **Ensuring effective implementation of the protocol and upgrade its normative ranking to bind all State, regional and local institutions, ensuring the necessary human and financial resources for its effective implementation;**

(g) **Increasing the budget and human resources of the national human rights institution to increase its presence at the regional and local levels;**

(h) **Combating impunity by ensuring prompt and effective investigations to prosecute and punish those responsible for violations committed against defenders, including by law enforcement officials;**

(i) **Taking immediate and effective measures to combat corruption in regional and local governments, particularly in areas with social conflicts, and in the judiciary and the Public Prosecution Service, in order to ensure the effective operation of the local authorities responsible for protecting defenders.**

82. **The Government should ensure the right of peaceful assembly of human rights defenders, in particular by:**

(a) **Ending the practice of criminally charging defenders and community leaders organizing assemblies for the acts of third parties, in accordance with international human rights law;**

(b) **Amending article 200 and other provisions of the Criminal Code, adopting guidelines (subject to prior public consultations) on the management of assemblies that block road transit and reviewing the practice of criminally prosecuting individuals for participating in or organizing such assemblies;**

(c) **Repealing its regulations permitting agreements on the transfer of services of the national police or the armed forces to private companies, and thoroughly reviewing its practices of declaring a state of emergency and adopting special decrees to enable the military to assume responsibility for the management of assemblies.**

83. **Given the serious and sustained threats to land and environmental defenders, particularly those belonging to indigenous peoples and peasant communities, the Government should take immediate steps to address the root causes of these threats, in particular by:**

(a) **Ratifying the Escazú Agreement;**

(b) **Ensuring legal recognition and the effective protection of the ancestral lands of indigenous peoples through the provision and registration of land ownership titles and demarcation procedures. To this end, it should review the current legislative framework and administrative procedures to avoid undue delays in the titling process;**

(c) **Reviewing its practice of granting concessions to extractive businesses in areas in which the title to land is subject to dispute or ongoing titling processes by indigenous communities, given the irreparable harm that these activities cause to the communities' enjoyment of the right to land, territories and natural resources;**

(d) **Ensuring respect for the right of indigenous communities to be consulted in order to obtain their free, prior and informed consent, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples, and ensuring meaningful consultation processes to guarantee the protection and respect of the rights of indigenous communities, as guaranteed in that Declaration and in the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169);**

(e) **Ensuring respect for human rights by non-State actors, including corporate actors, by taking appropriate legislative and other measures. For example, the necessary amendments to the legal framework should be made to permit the annulment of concessions for extractive activities where there are consistent and credible reports of human rights abuse and violations of environmental standards.**

84. **The Special Rapporteur recommends that the United Nations country team should promote the work of defenders and ensure their safe and easy access to the United Nations presence in the country.**

85. **The Special Rapporteur recommends that the international community should make greater efforts to reach the diverse community of defenders, particularly those in remote areas, with support and funding and through the monitoring of trials.**

86. **The Special Rapporteur recommends that private companies take immediate steps to demonstrate their commitment to human rights and human rights defenders through adherence to the United Nations Guiding Principles on Business and Human Rights. They must immediately cease any practice of stigmatization and criminalization of human rights defenders.**

87. **Private companies must assess human rights due diligence throughout their operations, and ensure cooperation with human rights defenders and meaningful consultations with communities affected by their activities. They should establish or strengthen grievance mechanisms, in particular where human rights defenders are under threat of attacks in connection with business operations, adopting specific measures for specific groups of human rights defenders.**