



Republic of Peru

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**Submission by CIVICUS: World Alliance for Citizen Participation,
NGO in General Consultative Status with ECOSOC**

and

Asociación Pro Derechos Humanos (APRODEH)

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1. Introduction

- 1.1 CIVICUS is a global alliance of civil society organisations and activists dedicated to strengthening citizen action and civil society around the world. Founded in 1993, we proudly promote marginalised voices, especially from the Global South, and have members in more than 170 countries throughout the world.
- 1.2 Asociación Pro Derechos Humanos (hereafter APRODEH) is a Peruvian non-governmental organisation committed to the integral defence and the promotion of human rights. Our mission is to contribute to legal and political processes conducive to guaranteeing the actual enjoyment of all rights. Since our founding in 1983, we have prioritised links with vulnerable and excluded groups.
- 1.3 In this document, CIVICUS and APRODEH examine the Government of Peru's compliance with its international human rights obligations to create and maintain a safe and enabling environment for civil society. Specifically, we analyse Peru's fulfilment of the rights to freedom of association, assembly, and expression and unwarranted restrictions on human rights defenders (HRDs) since its previous UPR examination in November 2012. To this end, we assess Peru's implementation of recommendations received during the 2nd UPR cycle relating to these issues and provide a number of specific, action-oriented follow-up recommendations.
- 1.4 During the 2nd UPR cycle, the Government of Peru received 15 recommendations relating to civic space. Of these recommendations, 14 were accepted and one was noted. An evaluation of a range of legal sources and human rights documentation addressed in subsequent sections of this submission demonstrate that the Government of Peru has not implemented 11 recommendations relating to civil society space. The government has persistently failed to address unwarranted restrictions on civic space, and implementation gaps were found regarding indigenous consultation laws and human rights training for the security forces.
- 1.5 CIVICUS and APRODEH are deeply concerned by the situation of journalists and HRDs, particularly those covering sensitive issues and working to advance environmental, indigenous peoples' and land rights.
- 1.6 CIVICUS and APRODEH are further alarmed by the use of both legal and extra-legal restrictions on the right to freedom of peaceful assembly, and particularly by the use of excessive force leading to frequent injuries and deaths of protesters. Civic space in Peru is currently rated as 'obstructed' on the CIVICUS Monitor.¹

¹ <https://monitor.civicus.org/country/peru/>.

- In Section B, CIVICUS and APRODEH examine Peru's implementation of UPR recommendations and compliance with international human rights standards concerning freedom of association.
- In Section C, CIVICUS and APRODEH examine Peru's implementation of UPR recommendations and compliance with international human rights standards related to the protection of HRDs, civil society activists and journalists.
- In Section D, CIVICUS and APRODEH examine Peru's implementation of UPR recommendations and compliance with international human rights standards concerning to freedom of expression, independence of the media and access to information.
- In Section E, CIVICUS and APRODEH examine Peru's implementation of UPR recommendations and compliance with international human rights standards related to freedom of assembly.
- In Section F, CIVICUS and APRODEH make a number of recommendations to address the concerns listed.

2. (B) Freedom of association

- 2.1** During Peru's examination under the 2nd UPR cycle, the government received two recommendations on the right to freedom of association and creating an enabling environment for civil society organizations (CSOs). Both recommendations were accepted. The Peruvian government committed to organising a visit of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association (117.5) and to "effectively enforce national labour laws, including laws related to freedom of association" (116.42). As evidenced below, the government has failed to take adequate measures to fully realize these recommendations. It has, however, extended an open invitation to all UN special procedure mandate holders.
- 2.2** Article 2.13 of the Peruvian Constitution recognises every person's right to "associate and form foundations and various forms of not-for-profit organisations without prior authorisation and in agreement with the law".² The Constitution also protects organisations against administrative dissolution. Moreover, article 22 of the International Covenant on Civil and Political Rights (ICCPR), to which Peru is a state party, also guarantees the freedom of association. Despite these commitments, the enjoyment of these rights has been hindered in Peru by the introduction of more stringent controls on CSO funding and the criminalisation and outright violence against HRDs.
- 2.3** CSOs are primarily regulated by the 1984 Civil Code,³ which offers little practical guidance regarding CSO registration. As a result, public registries in each jurisdiction exercise wide discretion to allow, deny or delay registration, often leading to

² Constitution of Peru, <http://goo.gl/OiznTr>.

³ Civil Code, http://www.oas.org/juridico/pdfs/mesicic4_per_cod_civil.pdf.

arbitrariness. Additional regulations are contained in the Law of Technical Cooperation, the Law for the Creation of the Peruvian Agency for International Cooperation (APCI), the Income Tax and the Income Tax Exemption laws, and norms concerning the Registry of Legal Entities and the prevention of money laundering and terrorist financing.⁴

- 2.4** No legislation bans access to funding for Peruvian CSOs. However, obstacles to receiving foreign funds have mounted as a result of increasing APCI controls. In 2015, for instance, tighter controls were ordered on CSOs implementing projects in regions with social and environmental conflicts,⁵ after the government accused European international cooperation agencies of unduly funding social protest.⁶
- 2.5** In the case of workers' rights, the freedom of association is limited by a series of barriers to the establishment of trade unions - including excessive representative requirements, restrictions to affiliating in confederations, and the exclusion of certain categories of workers - and to unions' ability to carry out their functions. Article 14 of the Industrial Relations Law⁷ requires a minimum of 20 members to form a union in some cases (as a result of which there are no unions in small and medium-sized companies), and a maximum of 50 in other cases. Additionally, article 19 of Supreme Decree No. 003-82-PCM⁸ prohibits public servants' federations and confederations from affiliating to confederations encompassing organisations not representing State employees. Law No. 28518 and the General Education Law exclude trainee workers from collective bargaining. The Industrial Relations Law requires an excessive majority in a ballot to call a strike (Article 73b), bans certain forms of strikes, such as those deliberately reducing productivity (Article 81), allows the Administrative Labour Authority to declare a strike illegal (Article 82) and to decide the extent of the minimum service to be provided by essential public services during a strike (Article 83), and authorises the Ministry of Labour to end strikes deemed to pose serious risks to the enterprise or production sector, or as having serious potential consequences (Article 68).⁹
- 2.6** Cases of state surveillance and infiltration of CSOs have also been documented. In June 2014, for instance, the Quechua Indigenous Federation of Pastaza detected three infiltrated police officers in their communal assembly. This occurred in the context of

⁴ ICNL, *Civic Freedom Monitor: Peru*, <http://goo.gl/pQAzDd>.

⁵ ANDINA, 25 May 2015, "Apci supervisará proyectos de ONG en zonas con alto índice de conflicto", <http://goo.gl/txAmUW>.

⁶ Carta de Embajadores de Estados Miembros de la Unión Europea en Perú al Ministerio de Relaciones Exteriores, 25 May 2015, <http://goo.gl/m5FPB1>.

⁷ Legislative Decree No. 25593, *Ley que regula las relaciones laborales de los trabajadores sujetos al régimen de la actividad privada*, 1992, <http://goo.gl/4V7ln7>.

⁸ Supreme Decree No. 003-82-PCM, 1982, <http://goo.gl/iHFxNd>.

⁹ ITUC, *Survey of Violations of Trade Union Rights: Peru*, <http://goo.gl/Q1zsd6>.

an indigenous peoples' strike demanding dialogue with the government over pollution of Amazon territory attributed to the oil company Pluspetrol.¹⁰

3. (C) Harassment, intimidation and attacks against human rights defenders, civil society activists and journalists

- 3.1** Under Peru's previous UPR examination, the government received three recommendations on the protection of HRDs, journalists and civil society representatives. Of these recommendations, two were accepted and one was noted. The government therefore committed to "engage constructively" (116.74) and "protect human rights defenders from threats and intimidation" (116.72). Additionally, three relevant recommendations were provided – and supported by the Peruvian government – regarding the proper implementation of prior consultation mechanisms in the context of extractive projects (116.111, 116.112 and 116.113). However, as examined in this section, none of the three recommendations on the protection of HRDs was implemented, and while legislation to establish prior consultation mechanisms was passed, inconsistent regulation failed to guarantee its effective and integral implementation.
- 3.2** Article 12 of the UN Declaration on Human Rights Defenders mandates states to take measures to protect HRDs. The ICCPR further guarantees the freedoms of expression, association and assembly. However, in spite of these protections, HRDs in Peru routinely face harassment, intimidation, criminalisation and physical violence, including extra-judicial killings. Worryingly, no state protection mechanism exists to guarantee an enabling environment for activism.
- 3.3** Criminal legislation is routinely used to suppress the legitimate work of HRDs, particularly - but not exclusively - against indigenous, environmental, peasant and land rights activists, who are often judicially harassed in retaliation for organising and speaking up. Procedural guarantees for those accused have weakened as a result of Administrative Resolution 096-2012-CE-PJ, issued by the Chief Justice in May 2012. This resolution moved judicial proceedings against peasants, social leaders and local authorities to places far away from where the alleged crimes had occurred, effectively limiting access to justice for people of limited means.¹¹
- 3.4** Spurious and politically motivated charges against HRDs and their organisations have included conspiracy to commit a crime, money laundering, financing from illegal sources, extortion and the obstruction of roads. Based on unfounded criminal charges, court proceedings are frequently dropped or end in acquittal nevertheless resulting in harassment. A case in point is that of Milton Sanchez Cubas, a leader of the

¹⁰ SERVINDI, 6 June 2014, "Quechuas del Pastaza entregan tres policías infiltrados en asamblea nativa", <http://goo.gl/4176rd>.

¹¹ Administrative Resolution No. 096-2012-CE-PJ, <http://goo.gl/pC0kOG>.

opposition against the Conga mining project in Cajamarca, who has been subjected to dozens of different court proceedings plagued with irregularities, and never convicted.¹² Another prominent case concluded in September 2016 with the acquittal of 52 indigenous persons who stood accused of killing 12 police officers during clashes in 2009. Clashes had taken place as security forces tried to disperse individuals occupying a road in Bagua, in the Amazon region, and resulted in 33 being killed - including 23 police officers - and over 200 more suffering injuries. While no state official was held accountable, dozens of indigenous demonstrators and two of their leaders were subjected to judicial proceedings lasting several years.¹³ Many other civil society leaders who have been judicially persecuted over the years have received suspended prison sentences and onerous fines.¹⁴ The state has consistently resorted to the arbitrary imposition of preventive detention of members of indigenous communities, social leaders and women HRDs claiming rights through social mobilisation.¹⁵

- 3.5 Criminal legislation is also employed against journalists, as seen in the case of the Panorama TV reporters who in April 2016 revealed irregularities in the area of military intelligence, including the embezzlement of state funds and the writing of fraudulent intelligence reports. In response, the Defence Ministry filed a criminal complaint against the TV outlet for spreading national secrets. Personally accused of treason, the journalists who worked in the investigation face up to 15 years in prison if convicted.¹⁶
- 3.6 HRDs, and particularly land, indigenous and environmental rights defenders, have also been stigmatised, threatened, subjected to surveillance, physically attacked and even killed. Over the past few years, for instance, security forces and private security personnel of the Yanacocha gold mining company have systematically intimidated peasant leader Máxima Acuña, her family and other locals opposed to mining on their land in the Cajamarca region. Despite precautionary measures issued by the Inter-American Commission on Human Rights (IACHR), state protection for threatened individuals has rarely if ever been granted.¹⁷ As a result, murders of HRDs are a relatively common occurrence. Among recently assassinated HRDs is Edwin Chota Valera, killed by illegal loggers in September 2014, along with three other leaders of the Asháninka indigenous community of Alto Tamaya-Saweto, Ucayali. The activists

¹² GRUFIDES, 13 November 2014, "Cajamarca: 16 dirigentes sociales podrían ser arrestados acusados de secuestro agravado", <http://goo.gl/uCzG7O>.

¹³ Gestión, 22 September 2016, "Absuelven a 52 indígenas acusados de matar a 12 policías en Perú", <http://goo.gl/3igQN6>.

¹⁴ See for instance the case of Tía María, in La República, 26 May 2016, "Tía María: Dirigentes del valle de Tambo en la clandestinidad", <http://goo.gl/7U2PqX>.

¹⁵ ICJ (2016) *Industrias Extractivas, Derechos Humanos y conflictos sociales en Perú. Informe de Misión*, pp. 42-47, available in: <http://goo.gl/HFQJ9O>.

¹⁶ Vanguardia (Mexico), 1 July 2016, "Denuncia contra periodistas en Perú es una 'restricción a la libertad de prensa': SIP", <http://goo.gl/pxRVhF>.

¹⁷ El Comercio, 18 September 2016, "Se reporta un nuevo incidente entre Máxima Acuña y Yanacocha", <http://goo.gl/CpKY5M>.

were killed in retaliation for their resistance to illegal logging on their ancestral lands. While members of their community had previously raised concerns about their safety, the authorities had failed to provide adequate protection measures.¹⁸

- 3.7** Much of the violence against indigenous HRDs in Peru appears to be correlated with the country's insufficient progress in the protection of indigenous peoples' rights, and particularly in the implementation of the provisions concerning prior consultation with indigenous and peasant communities affected by extractive projects. In April 2013, the Peruvian Ministry of Culture published a regulatory framework on the 2011 Law on the Right of Indigenous Peoples to Prior Consultation.¹⁹ 34 consultation processes were initiated between 2013 and 2016. Civil society however has expressed concerns over the inconsistent implementation of both ILO Convention 169 and the abovementioned law. Although more than 48% of the Andean indigenous communities' territories have concessions for mining activities, there are currently only ten consultation processes pertaining to stages subsequent to the granting of the mining concession to private extra-community parties.²⁰ Extractive concessions have been granted even in territories populated by indigenous peoples living in voluntary isolation. In addition, in May 2015 Law No. 30327²¹ was passed allowing land expropriation and reducing requirements for the approval of environmental impact assessments for major development projects.²² Most recently, Legislative Decree No. 1333²³ created a special regime for public and private access to land to foster investment in priority areas. Despite the fact that it will likely affect communal territories, indigenous peoples were not consulted about this decree.²⁴
- 3.8** Union leaders have also been attacked. According to the General Workers' Confederation of Peru (CGTP), 15 leaders from the civil construction union were assassinated between 2011 and 2015, allegedly by members of unrepresentative "pseudo unions" within the sector, dedicated to extorting and competing with legitimate workers' organisations.²⁵
- 3.9** Physical attacks against journalists, including murder, have had a chilling effect on the work of independent media. Journalists have been targeted for similar reasons as

¹⁸ La República, 2 January 2015, "Edwin Chota, mártir por culpa de la indiferencia", <http://goo.gl/Lov2UD>.

¹⁹ Law No. 29785, *Ley del derecho a la consulta previa a los pueblos indígenas u originarios, reconocido en el Convenio 169 de la Organización Internacional del Trabajo (OIT)*, 2011, <http://goo.gl/3eEtjt>.

²⁰ Ministry of Culture, *Procesos de consulta previa*, <http://goo.gl/OWi5tr>.

²¹ Law No. 30327, *Ley de promoción de las inversiones para el crecimiento económico y el desarrollo sostenible*, 2015, <http://goo.gl/4Gxv6w>.

²² Red Muqui, *Paquetes normativos 2013 – 2015 y su impacto en los derechos fundamentales en el Perú. Análisis*, <http://goo.gl/EZaeDU>.

²³ Diario Oficial El Peruano, Ley 1333, 5 January 2017, <http://goo.gl/2VgZfq>.

²⁴ GRUFIDES, 28 February 2017, "Pacto de Unidad exige derogatoria de Decreto Legislativo 1333", <http://goo.gl/R8PByu>.

²⁵ La República, 17 July 2014, "Hay unos 60 'sindicatos' que extorsionan en obras de construcción civil en Lima", <http://goo.gl/fhOK04>; Diario Uno, 23 October 2015, "Justicia para los 15 sindicalistas asesinados", <http://goo.gl/7QR5Po>; Diario Uno, 25 October 2015, "<Mafias están asesinando a dirigentes sindicales>", <http://goo.gl/ZrndoR>.

HRDs, including reporting on the impact of lucrative megaprojects or drug trafficking, denouncing corruption and public mismanagement, and covering social conflict and protests. Among assassinated journalists is Buchelli Cueva, a radio owner and host reporting on corruption in local politics who was tortured and killed at his home in July 2014.²⁶ In November 2014, 22-year-old journalism student and magazine writer Fernando Raymondi was also killed. At the time of his death, he was writing about a string of killings carried out by local gangs. The most recent casualty was radio host Hernán Choquepata Ordóñez, shot dead on 20 November 2016 during a live broadcast in Camaná, Arequipa. Ordóñez hosted a programme in which listeners voiced their complaints and criticised the authorities, and had received death threats prior to his assassination.²⁷

3.10 Peruvian journalists are also frequently subjected to threats, intimidation, surveillance and the theft or confiscation of equipment,²⁸ as well as specifically targeted while covering demonstrations.²⁹ According to the National Journalists' Association (ANP), 114 aggressions against reporters were documented in 2016. These were perpetrated by both state and private actors, including public officials, civilians, unidentified attackers, and police, military and private security officers.³⁰ An illustrative case is that of César Estrada Chuquilin, a member of the Network of Indigenous Communicators of Peru, who was the target of intimidation, threats, beatings, confiscation of equipment and judicial harassment for reporting critically on the Conga mining project.³¹ In October 2015, he was the victim of an assassination attempt.³² As repeatedly denounced by the Peruvian Press Council, impunity for crimes against journalists generally prevails.³³ This trend was confirmed by the recent case of Marco Ramón, a young photojournalist who was shot in the face by police while covering a protest in January 2017, despite having identified himself as a

²⁶ La República, 11 July 2014, "En Pacasmayo, torturan y asesinan a periodista Donny Buchelli Cueva", <http://goo.gl/2Y5W0Q>.

²⁷ ANP, n/d, "Asesinan a periodista en Arequipa", <http://goo.gl/r1Xd4L>.

²⁸ Cases of intimidation and threats are too numerous to list. A few prominent cases that were documented in 2014 – including those of online journalists Pedro Escudero Cárdenas and Germán Escudero Saldarriaga, radio director Henry Pinedo, TV reporter Manuel Calloquispe Flores and weekly editor Santos Porras – are described in Freedom House's *Freedom of the Press 2015: Peru*, available in: <https://goo.gl/8dkUIK>.

²⁹ For a recent example, see the case of Alan Benavides, who suffered police repression while covering the mobilisation of students and workers in Lima against the Trans-Pacific Partnership Agreement (TPP) in February 2016. Cf. Federación de Periodistas del Perú (FPP), 15 March 2016, "Alto a la represión contra el periodismo!", <http://goo.gl/rL5slQ>.

³⁰ Crónica Viva, 31 December 2016, "ANP: Perú registró 114 ataques a periodistas durante el 2016", <http://goo.gl/c14lvo>.

³¹ Front Line Defenders, *Cesar Estrada Chuquilin*, <http://goo.gl/NEgwFrv>.

³² GRUFIDES, 4 November 2015, "Organización de Derechos Humanos expresa su preocupación por la integridad del periodista César Estrada Chuquilin", <http://goo.gl/JcEMyv>.

³³ El Comercio, 3 November 2016, "Consejo de la Prensa pide sanción a crímenes contra periodistas", <http://goo.gl/4maVSY>.

reporter. Nobody has been held accountable³⁴ for the attack against Ramón, who now faces a possible loss of an eye.³⁵

4. (D) Freedom of expression, independence of the media and access to information

- 4.1** Under the 2nd UPR cycle, the government received two recommendations relating to freedom of expression and access to information. The government supported the more general recommendation of “taking the necessary steps to eliminate any legal provisions that may be viewed as limiting freedom of expression” (116.73) while noting the more specific one calling for the repeal of criminal defamation laws (119.5). As discussed below, the government did not subsequently take any effective measures to implement these recommendations.
- 4.2** Article 19 of the ICCPR guarantees the right to freedom of expression and opinion. Articles 2 and 61 of the Constitution of Peru also guarantee the right to freedom of expression and the freedom of the press.³⁶ However, criminal defamation statutes are systematically used against Peruvian journalists, and particularly against those covering sensitive social and political issues.
- 4.3** Although open censorship is rare in Peru, informal pressures and the ever-present threat of defamation charges often result in self-censorship. Indeed, defamation remains a criminal offence punishable with prison. According to article 132 of the Peruvian Criminal Code, it is punishable with fines and prison sentences between one and three years if committed through ‘a book, the press or other social communications media’.³⁷ Additionally, press freedom organisations have criticised the 2011 Law on Personal Data Protection (in force since May 2015) for undermining the work of investigative journalists, although state officials have repeated assurances that this law does not restrict access to public information but rather protects private data.³⁸ Furthermore, a Cybercrime Law that was hastily passed by Congress in late 2013 currently restricts the use of government data by attaching 3- to 6-year prison sentences to the newly defined crime of intercepting computer information from public institutions.³⁹ It also establishes 3- to 5-year prison sentences for building databases to track personal, professional, or financial information about individuals

³⁴ Altavoz, 23 January 2017, “Esta es la historia de Atoq Ramon, el fotoperiodista de Peru.21 herido en Puente Piedra”, <http://goo.gl/TDWnSh>

³⁵ Altavoz, 23 January 2017, “Esta es la historia de Atoq Ramon, el fotoperiodista de Peru.21 herido en Puente Piedra”, <http://goo.gl/TDWnSh>

³⁶ *Constitución Política del Perú*, <http://goo.gl/OiznTr>.

³⁷ *Código Penal del Perú*, <http://goo.gl/ws6r9K>.

³⁸ Law No. 29733, *Ley de Protección de Datos Personales*, <http://goo.gl/ynuSsl>. See also La República, 26 May 2015, “Ley de Protección de Datos Personales: ¿afecta libertades?”, <http://goo.gl/mehDrs>.

³⁹ Law No. 30096, *Ley de Delitos Informáticos*, 2013, <http://goo.gl/3xxivQ>.

or companies - a practice frequently used by transparency CSOs to monitor government contractors.⁴⁰

- 4.4** Defamation charges are frequently brought against Peruvian journalists, although prison sentences are often suspended. Press freedom organisations have identified defamation laws as the main threat to the freedom of expression in the country, leading not just to criminal prosecution but also to intimidation and self-censorship. Recent examples abound. For instance, in March 2014, César Quino Escudero, editor of the biweekly magazine *El Observador*, was handed a 6-month suspended prison sentence, a fine and 120 days of community service for defaming the governor of Ancash, who has a long record of suing critical reporters for defamation.⁴¹ More recently, in September 2016, the editor of the weekly paper *Prensa al Día*, Ronald Daniel Ormeño Gonzales, was jailed for failing to pay a fine resulting from a libel conviction.⁴² Another journalist, Milagros Rodríguez Hidalgo of *Diario Tumbes 21*, was ordered to pay a disproportionate fine⁴³ as a result of a defamation case triggered by her reporting of alleged corruption in the regional administration.⁴⁴
- 4.5** Although Peru has had a Transparency and Access to Public Information Law since 2002,⁴⁵ actual access to official documents remains difficult and uneven, with several exceptions justifying the withholding of information by a number of state agencies, and various debilitating de facto obstacles at the regional and local levels. In addition, Legislative Decree No. 1129 of December 2012 denies public access to any information related to national security and defence, and establishes that any person revealing such information could be criminally charged and imprisoned.⁴⁶ As expressed by the Peruvian CSO Instituto de Prensa y Sociedad (IPYS), this norm enshrines secrecy as the rule rather than the exception in the area of security and defence.⁴⁷ The decree was challenged by the Ombudsman in Peru's Constitutional

⁴⁰ IPS, 27 November 2013, "Peru's New Cybercrime Law Undermines Transparency Legislation", <http://goo.gl/y63d1b>.

⁴¹ El Comercio, 25 March 2014, "Áncash: fallo contra periodista amenaza libertad de expresión", <http://goo.gl/AsaS9E>. Governor Álvarez later faced murder charges for the assassination of a political opponent; see NTN 24, 2 July 2014, "Justicia peruana ordena la captura de un gobernador acusado del asesinato de su principal opositor", <http://goo.gl/2ybNcu>.

⁴² Crónica Viva, 14 September 2016, "ANP exige libertad de periodista querellado por difamación", <http://goo.gl/5BzCkR>.

⁴³ RSF, 5 October 2016, "Perú: RSF denuncia procesos judiciales abusivos contra dos periodistas", <http://goo.gl/7hD3bq>.

⁴⁴ In addition, State willingness to improve the environment for journalistic work was called into question by the appointment of retired military intelligence official Daniel Urresti as Interior Minister in June 2014. Urresti, who served until February 2015, was eventually forced to resign following denunciations of police abuses and involvement in the 1988 murder of journalist Hugo Bustíos. Cf. Perú21, 2 July 2014, "Ministro Urresti es procesado por asesinato de periodista en Ayacucho", <http://goo.gl/dX0iFP>.

⁴⁵ Law No. 27806, *Ley de Transparencia y Acceso a la Información Pública*, 2002, <http://goo.gl/PMdzWb>.

⁴⁶ Legislative Decree No. 1129, *Decreto legislativo que regula el sistema de defensa nacional*, <http://goo.gl/Vs35Y3>.

⁴⁷ Instituto de Prensa y Sociedad (IPYS), 10 December 2012, "El IPYS denuncia grave atentado del gobierno contra la transparencia, el acceso a la información y la libertad de expresión", <http://goo.gl/esfsWl>

Court,⁴⁸ but a ruling has not yet been issued at the time of reporting. On a more positive note, the president of the Council of Ministers recently announced the decision to create an autonomous agency to ensure citizens' effective right to access public information.⁴⁹

5. (E) Freedom of peaceful assembly

- 5.1** During Peru's examination under the 2nd UPR cycle, the government received seven recommendations on the right to freedom of assembly, all of which were accepted. Accordingly, the government committed to establish "adequate and mandatory training on international rights standards" for the security forces (116.54) and "mechanisms aimed at preventing security forces from using force in any excessive or unjustified manner" (116.34). However, as evidenced below, the government has failed to adequately realize most of these recommendations. Six recommendations on freedom of assembly were not implemented, while one was only partially implemented. Guidelines were issued to regulate the use of force, but no mandatory human rights training to police and military forces was provided to prevent abuses.
- 5.2** Article 21 of the ICCPR guarantees the freedom of peaceful assembly. In addition, article 2.12 of the Peruvian Constitution⁵⁰ also guarantees the right to freedom of assembly, specifically stating that gatherings in public spaces do not require prior authorisation but simple advance notification. However, the system in practice functions as one of prior authorisation. Additionally, recent legislative developments have increased impunity for police violence against demonstrators.
- 5.3** A current order by the Peruvian Ministry of the Interior requires the submission of a "request for guarantees" at least three days before a demonstration,⁵¹ establishing a de facto system of administrative authorisation. The minimum 3-day notice is sometimes difficult to comply with, given that immediate calls to assemble in reaction to current events, enabled by social media, are increasingly frequent. Omitting the procedure is viewed as misconduct, and it is up to the jurisdictional police whether an "unauthorised" demonstration may proceed, and under what conditions.⁵²

⁴⁸ Defensoría del Pueblo, 15 February 2013, *Proceso de Inconstitucionalidad*, <http://goo.gl/oaNo0a>.

⁴⁹ Entorno Inteligente, 18 August 2016, "PERÚ: Destacan creación de autoridad autónoma que transparentará información pública", <http://goo.gl/KA05H2>.

⁵⁰ *Constitution of Peru*, <http://goo.gl/OiznTr>.

⁵¹ Required information, to be provided in writing, includes the identities and personal addresses of the conveners, the date, time and route of the rally, its motive and the estimated number of participants. In addition, an official agreement must be signed including the planned route and a commitment not to alter public order, interfere with traffic, damage property or carry arms or blunt objects. See <http://goo.gl/YFLXER>.

⁵² For an example of restrictions imposed through prior notification procedures, see CELS (2016) *Latin American State Responses to Social Protest*. Buenos Aires: CELS. Available in: <http://goo.gl/eSEZZa>.

- 5.4** Article 200 of the Peruvian Criminal Code broadly defines the crime of extortion as any action that through violence, threats or by keeping someone hostage, forces a person to concede any benefit or advantage, economic or otherwise.⁵³ As interpreted by the authorities, this crime has come to encompass the occupation of premises, the obstruction of transportation routes and streets, and the disruption of public services. Attached penalties are between 5 and 10 years in prison, and up to 25 years if two or more people have taken part. As a result of this overbroad interpretation, any act of protest creating obstacles to traffic or transportation can be criminally prosecuted.
- 5.5** Additionally, Law No. 30151, in force since January 2014, modified the Criminal Code in order to grant immunity from prosecution to “armed forces and police personnel who in fulfilment of their duty and using their weapons or other means of defence, cause injury or death,” regardless of compliance with national regulations or international standards.⁵⁴ On the other hand, in August 2015 the Constitutional Court ruled the unconstitutionality of the articles of Legislative Decree No. 1095 (2010) allowing for the use of the Armed Forces to support the police against “hostile” social groups, and for military officers accused of human rights abuses against civilians to be tried in military courts. Although this ruling seeks to align legislation to international human rights standards ruling out the use of military courts for human rights cases, it still allows a role for the armed forces in restoring public order even in the absence of the declaration of a state of emergency.⁵⁵
- 5.6** The incorporation of minimum principles regarding the use of force into Peru’s legal framework has not yet had a significant impact on the practices of security forces. Legislative Decree No. 1186,⁵⁶ adopted in August 2015, incorporated principles on the use of police force, including the graduated and exceptional use of lethal weapons and the obligation to provide medical care, communicate with next of kin of the injured or dead, and report on events. However, legislation still allows for the use of lethal weapons in the event of a “violent, tumultuous assembly,” without clearly defining these conditions. Excessive use of lethal force has therefore continued, and barely a month after the decree came into effect three protestors were killed by the police in the Las Bambas mining camp.⁵⁷
- 5.7** Additionally, it is common practice for the Peruvian government to arbitrarily declare a state of emergency – provided for in Article 137 of the Constitution – for 30 or 60 days to prohibit demonstrations and public gatherings in high-impact conflicts, and

⁵³ *Criminal Code*, <http://goo.gl/ws6r9K>.

⁵⁴ Law No. 30151, *Ley que modifica el inciso 11 del artículo 20 del Código Penal, referido al uso de armas u otro medio de defensa por personal de las Fuerzas Armadas y de la Policía Nacional del Perú*, 2014, <http://goo.gl/33A6Me>.

⁵⁵ Tribunal Constitucional, Resolución Administrativa No. 080-2015-P/TC, 9 July 2015, <http://goo.gl/iWQoTT>.

⁵⁶ Legislative Decree No. 1186, *Decreto Legislativo que regula el uso de la fuerza por parte de la Policía Nacional del Perú*, 15 August 2015, <http://goo.gl/pXCjBi>.

⁵⁷ See CELS (2016) *Latin American State Responses to Social Protest*. Buenos Aires: CELS. Available in: <http://goo.gl/eSEZza>.

to militarise control of public order. This has occurred repeatedly during mass protests against mining. While a state of emergency is in place, constitutional guarantees on the personal freedoms of movement and peaceful assembly and the inviolability of private residences are suspended and the police and armed forces are put in charge of protecting roads, industrial sites and government buildings. A state of emergency was declared for 30 days in the provinces of Cotabambas, Grau, Andahuaylas, Chincheros, Espinar and Chumbivilcas after four people died and 22 were wounded during protests against Las Bambas in September 2015.⁵⁸ Subsequent efforts to unblock a local road resulted in another death and several additional injuries.⁵⁹ Additionally, human rights organisations have repeatedly denounced the existence of undisclosed service-providing agreements between the national police and mining companies, as a result of which the police often functions as mining corporations' private security agency.⁶⁰

- 5.8** Despite the principles of necessity, legality and proportionality being enshrined in their *Manual of Human Rights Applied to Police Duties*,⁶¹ there is evidence of excessive force against demonstrators being systematically applied by the security forces. The Ombudsman's Office has recorded the deaths of 58 civilians and 1019 civilians injured as a result of the use of excessive force in demonstrations between 2012 and 2015.⁶² Similarly, according to monitoring by *Coordinadora Nacional de Derechos Humanos* (CNDDHH), a domestic human rights umbrella organisation, repression of social protests between January 2013 and December 2016 left 30 dead at the hands of the National Police. Little progress has been made in investigations to determine the circumstances of these fatalities, and impunity is reported to have prevailed in 88.9% of cases.⁶³ Impunity was recently reinforced by Law No. 30151: barely a month after the bill entered into force, a court of first instance acquitted four police officers accused in the deaths of four civilians during a 2011 demonstration in the city of Huancavelica that was repressed with firearms.
- 5.9** A majority of those killed and injured in protests have been members of peasant and indigenous communities involved in conflicts surrounding extractive projects. An emblematic example is Las Bambas, one of the largest mining projects in Peru's

⁵⁸ Desinformémonos, 30 September 2015, "Estado de emergencia en Perú, tras represión a inconformes con proyecto minero", <http://goo.gl/Xh3OCx>.

⁵⁹ HispanTV, 15 October 2016, "1 muerto y 20 heridos por represión policial en protesta en Perú", <http://goo.gl/u4vPHT>.

⁶⁰ Coordinadora Nacional de Derechos Humanos, 3 November 2016, "Policía Nacional sí presta servicios a empresas mineras, brindándoles protección y seguridad", <http://goo.gl/EclKoE>.

⁶¹ The Manual stipulates that the use of force should be avoided in crowd dispersal or limited to the minimum necessary, and recommends firearms be used only when there is an imminent threat of death or serious injury. See CELS (2016) *Latin American State Responses to Social Protest*. Buenos Aires: CELS. Available in: <http://goo.gl/eSEZZa>

⁶² El Comercio, 29 May 2015, "Conflictos sociales en Perú han dejado 63 muertos desde el 2011", <http://goo.gl/yslivF>.

⁶³ Coordinadora Nacional de Derechos Humanos, *Criminalización de la protesta. Observatorio de casos*, <http://goo.gl/zHpb4i>.

history – a Chinese investment worth US\$10 billion. At least four people were killed in protests against these operations in September 2015, and another individual was killed in October 2016. Dozens were injured on both occasions.⁶⁴ Beyond environmental conflicts, various student protests have recently been met with excessive force, including use of tear gas, birdshots and flares, resulting in dozens injured and arrested.⁶⁵

6. (F) Recommendations to the Government of Peru

CIVICUS and APRODEH call on the Government of Peru to create and maintain, in law and in practice, an enabling environment for civil society, in accordance with the rights enshrined in the ICCPR, the UN Declaration on Human Rights Defenders and Human Rights Council resolutions 22/6, 27/5 and 27/31.

At a minimum, the following conditions should be guaranteed: freedom of association, freedom of expression, freedom of peaceful assembly, the right to operate free from unwarranted state interference, the right to communicate and cooperate, the right to seek and secure funding and the state's duty to protect. In light of this, the following specific recommendations are made:

6.1 Regarding freedom of association

- Take measures to foster a safe, respectful, enabling environment for civil society, including through removing legal and policy measures unwarrantedly limiting the right to association.
- Abstain from harassing or stigmatising the legitimate activities of CSOs and international cooperation agencies. Cease ongoing smear campaigns mounted to accuse them of promoting social conflagration in areas with socio-environmental conflicts.

⁶⁴ Perú21, 29 September 2015, “Las Bambas: Ya son 4 los muertos por protesta contra proyecto minero”, <http://goo.gl/9j1fFY>; Perú21, 14 October 2016, “Las Bambas: Un muerto y varios heridos dejó enfrentamiento entre comuneros y Policía”, <http://goo.gl/YCZJzW>.

⁶⁵ Among them was a march of about 1,500 students and youths who protested against the Trans-Pacific Partnership (TPP) in Lima in February 2016; and a demonstration by students of the Universidad Nacional Federico Villarreal in demand of an investigation into corruption allegations against university authorities in August. As recently as January 2017, police forces fired indiscriminately and injured several people who were protesting against new tolls arbitrarily imposed on a road into Lima. To date, nobody has been held accountable. Cf. Telesur, 25 February 2016, “Peru’s police violently clash with anti-TPP protesters”, <http://goo.gl/5NdpXJ>; El Comercio, 8 August 2016, “Villarreal: marcha llegó a Congreso en medio de enfrentamientos”, <http://goo.gl/e8Czll>; Diario Uno, 26 January, “Piden justicia por heridos en protesta de Puente Piedra”, <http://goo.gl/ZQwfhh>.

- Stop unwarranted raids on civil society groups and unjustifiable disruptions to conferences, seminars and other activities organised by CSOs. More specifically, respect the autonomy of indigenous community organisations and prevent undue interferences and their infiltration by security agents.
- Refrain from acts leading to the closure of CSOs or the suspension of their peaceful activities, and instead promote meaningful political dialogue encompassing and embracing diverging views, including those of HRDs, CSOs, journalists and political activists.
- Amend Supreme Decree 010-2003 to remove undue restrictions on freedom of association in compliance with articles 21 and 22 of ICCPR, including the right of dismissed unionised workers to maintain their union membership until a final decision regarding their reinstatement has been made.
- Guarantee the effective and independent functioning of autonomous trade unions by removing undue limitations on the right to strike.

6.2 Regarding the protection of human rights defenders

- Establish a national protection mechanism to ensure that HRDs are able to carry out their legitimate activities without fear or undue hindrance or legal and administrative harassment, in accordance with resolution 27.31 of the Human Rights Council.
- Conduct impartial, thorough and effective investigations into all cases of attacks, harassment, and intimidation against HRDs, and bring perpetrators of such offences to justice.
- Repeal laws and decrees that unwarrantedly restrict the legitimate work of HRDs in line with the UN Declaration Human Rights Defenders. Specifically, Article 200 of the Criminal Code should be modified so that the typified crime of extortion is not misapplied to HRDs for taking part in social protests.
- Ensure that judicial measures of preventive imprisonment are not unwarrantedly employed against HRDs exercising their rights to expression, assembly and association in the context of social conflicts, thereby safeguarding the rights to personal freedom and due process enshrined in the ICCPR.
- Address violence and discrimination against indigenous HRDs by applying appropriate tools and mechanisms for meaningful good-faith consultation and participation of local communities regarding large-scale or high-impact development projects, and ensure participatory impact assessments and redress for any harm caused. Guarantee the exercise of the right to prior, free and informed consent by indigenous communities.

- Senior government officials should publicly condemn instances of harassment and intimidation of civil society activists and organisations.

6.3 Regarding freedom of expression, independence of the media and access to information

- Ensure freedom of expression and media freedom by bringing national legislation into line with international standards, including article 19 of the ICCPR.
- Reform defamation legislation and privacy provisions to ensure that they are not used to censor reporting on sensitive issues, including on the Internet. More specifically, review Legislative Decree No. 1129 in order to align it with best practices and international standards in the area of freedom of expression.
- Ensure that journalists and writers may work freely and without fear of retribution for expressing critical opinions or covering topics that the government may find sensitive.
- Guarantee the safety and physical integrity of journalists during demonstrations by training law enforcement officials and establishing police protocols based on non-violent procedures.
- Take adequate steps to lift restrictions on freedom of expression and adopt a framework for the protection of journalists from persecution, intimidation and harassment.
- Develop an action plan ensuring that Internet laws comply with the government's commitment to guarantee freedom of expression and information, so as to ensure free access to electronic media, loosen electronic media ownership rules and allow national bloggers, journalists, other Internet users to play a full and active role in promoting and protecting human rights.
- Guarantee unfettered access for all persons in Peru to domestic and foreign media information, both offline and online.
- Refrain from censoring social and conventional media and ensure that freedom of expression is safeguarded in all forms, including the arts.
- Establish mechanisms to facilitate public access to information in line with best practices available.

6.4 Regarding freedom of assembly

- Adopt best practices on freedom of peaceful assembly, as put forward by the UN Special Rapporteur on the Right to Peaceful Assembly and Association in his 2012 annual report, which calls for simple notification rather than explicit permission to assemble.
- Ban the use of lethal weapons and the intervention of military forces to control public demonstrations, and abstain from declaring a state of emergency based solely on the existence of public demonstrations.
- Amend Legislative Decree No. 1095 in order to ban the intervention of the military forces to dissolve demonstrations or public assemblies.
- Modify the “request for guarantees” procedure in order to fully guarantee the right to freedom of assembly.
- Unconditionally and immediately release all demonstrators, journalists and HRDs detained for exercising their right to freedom of peaceful assembly, and review their cases to prevent further harassment.
- Immediately and impartially investigate all instances of extra-judicial killing and excessive force committed by security forces while monitoring protests and demonstrations.
- Repeal Article 20.11 of the Criminal Code that exempts military and police officers causing injury or death from criminal responsibility for their actions.
- Provide recourse for judicial review and effective remedy, including compensation, in cases of unlawful denial of the right to freedom of assembly by state authorities.
- Review and if necessary update existing human rights training for police and security forces with the assistance of independent CSOs to foster more consistent application of international human rights standards, including the UN Basic Principles on the Use of Force and Firearms.
- Abstain from private security service agreements between police departments and companies with investments in development projects that are at the root of public protests and socio-environmental conflicts.
- Senior government officials should publicly condemn the use of excessive and lethal force by security forces in the dispersal of protests. A formal investigation into such instances should be launched, and perpetrators should be brought to justice.

6.5 Regarding access to UN Special Procedures mandate holders

- The Government of Peru has extended a standing invitation to all UN Special Procedure mandate holders. Official visits should be prioritized with the: 1) Special Rapporteur on the situation of human rights defenders (scheduled for the second half of 2017); 2) Special Rapporteur on the rights to freedom of peaceful assembly and of association; 3) Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and 4) Special Rapporteur on the Independence of Judges and Lawyers.

6.6 Regarding State engagement with civil society

- Implement transparent and inclusive mechanisms of public consultations with CSOs on all issues mentioned above and enable more effective involvement of civil society in the preparation of law and policy.
- Include CSOs in the UPR process before finalizing and submitting the national report.
- Systematically consult with civil society and NGOs on the implementation of UPR including by holding periodical comprehensive consultations with a diverse range of civil society sectors.
- Incorporate the results of this UPR into public policies aimed at promoting and protecting all human rights, taking into account the proposals of civil society; and present a midterm evaluation report to the Human Rights Council on the implementation of the recommendations of this session.