



Republic of Peru

Consolidated Joint Submission to the UN Universal Periodic Review
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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. Introduction¹

- 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

¹ The full version of this submission can be found [here](#).

excessive force leading to frequent injuries and deaths of protesters. Civic space in Peru is currently rated as ‘obstructed’ on the CIVICUS Monitor.²

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”.³ 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.

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

² <https://monitor.civicus.org/country/peru/>.

³ *Constitution of Peru*, <http://goo.gl/OiznTr>.

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.

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.⁴ However, criminal defamation statutes are systematically used against Peruvian journalists, and particularly against those covering sensitive social and political issues.

5. (E) Freedom of peaceful assembly

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.

⁴ *Constitución Política del Perú*, <http://goo.gl/OiznTr>.

2. Article 21 of the ICCPR guarantees the freedom of peaceful assembly. In addition, article 2.12 of the Peruvian Constitution⁵ 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.

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:

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.
- 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

⁵ Constitution of Peru, <http://goo.gl/OiznTr>.

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.

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.

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.

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.

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.
- 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.