

Report:

Performance of the public policy for the protection of Indigenous defenders criminalized and under threat

**Case analysis of the organizations FENAMAD,
OPIKAFPE, FEDIQUEP, and of the K'ana and
Chumpi Willkas peoples**

May, 2022



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This report focuses on the analysis of the implementation of the public policy for the protection of human rights defenders, focusing on criminalized Indigenous defenders in Peru

This document is based on four cases that show different modalities of criminalization against Indigenous defenders and for whom protection measures have been requested:

1) Federación Nativa del Río Madre de Dios y Afluentes - FENAMAD (*Native Federation of the Madre de Dios River and its Affluents*); 2) Organización de los Pueblos Indígenas Kichwas Amazónicos de la Frontera Perú Ecuador - OPIKAFPE (*Organization of Amazonian Kichwa Indigenous Peoples of the Peru-Ecuador Border*) and Federación Indígena Quechua del Pastaza – FEDIQUEP (*Quechua Indigenous Federation of the Pastaza*); 3) defenders belonging to the K'ana people; and 4) defenders belonging to the Chumpi Willkas people.

The cases are accompanied by EarthRights International, together with Derechos Humanos Sin Fronteras – DHSF (*Human Rights Without Borders*) and Perú Equidad. This report has been prepared with the purpose of promoting the implementation of an effective protection policy for criminalized Indigenous defenders.

Cusco, Iquitos, Lima, and Puerto Maldonado, May 2022

Introduction

Indigenous defenders and organizations in Peru suffer from threats, attacks, criminalization, and stigmatization. This problem has been recognized by the United Nations, which has made multiple recommendations to the Peruvian State¹ to combat this situation. It should be noted that until 2016, there was no explicit recognition in the Peruvian legislation of the existence and importance of the role of human rights defenders in Peru, nor was there a protection policy in place for them.

In this sense, having a public policy for the comprehensive protection of human rights defenders and groups has been demanded by the Peruvian civil society, which is made up of grassroots social organizations of Indigenous communities, peoples and nationalities, and human rights organizations.

Through Vice-Ministerial Resolution No. 007-2016 of April 6, 2016, presented at a public hearing before the Inter-American Commission on Human Rights (IACHR), the Ministry of Justice and Human Rights (Minjus) committed to designing and implementing a protocol for the protection of human rights defenders within two months². More than two years after this commitment was made before the IACHR, through the National Human Rights Plan 2018-2021, the State pledged to implement a mechanism for the protection of human rights defenders by 2021.

The protection protocol was approved in 2019 through Ministerial Resolution No. 0159-2019- JUS, which created the “Protocol to guarantee the protection of human rights defenders”. Subsequently in April 2021, the Supreme Decree that created the “Intersectoral Mechanism for the Protection of Human Rights Defenders” was approved and published.

1 In 2013, recommendation of the Human Rights Committee to the Peruvian State: “It also recommends that the State party effectively investigate allegations of attacks or acts of violence committed against human rights defenders and journalists, and bring the perpetrators to justice”.

Year 2016, recommendation of the Committee on the Rights of the Child to the Peruvian State: “The Committee reminds the State party that human rights defenders deserve special protection, given that their work is essential to promote the human rights of all, including those of children, which is why it strongly recommends that the State party take immediate steps to allow them ... to exercise their right to freedom of expression and opinion without threats or harassment.”

Year 2018, recommendation of the Committee against Torture to the Peruvian State: “The State party should take the necessary measures, including the adoption of the above-mentioned protocol of action, to ensure that human rights defenders and journalists can carry out their work and activities freely in the State party, without fear of reprisals or attacks.”

UN Universal Periodic Review of the Peruvian State, State recommendations: Ukraine: “The State party should take the necessary measures, including the adoption of the above-mentioned protocol of action, to ensure that human rights defenders and journalists can carry out their work and activities freely in the State party, without fear of reprisals or attacks”; Italy: “Protect the activities of human rights defenders”; Australia: “Consider adopting measures to protect human rights defenders against threats and intimidation to ensure that they are able to carry out their functions properly”; Poland: Intensify efforts to prevent attacks against human rights defenders; Panama: “Implement the necessary measures to promote the rights of human rights defenders, in order to protect them against harassment, intimidation or physical violence”; Ireland: “Introduce a comprehensive public policy that recognizes the role of human rights defenders, establishes mechanisms for their effective protection, and conduct thorough and impartial investigations into all cases of aggression, harassment and intimidation committed against them”; Norway: “Intensify efforts to protect environmental, Indigenous and land rights defenders, in line with the Declaration on Human Rights Defenders, especially in relation to the use of force and firearms in public gatherings and demonstrations.”

2 Vice Ministerial Resolution N°. 007 - 2016 of April 6, 2016

In addition, on June 15, 2020, the Ombudsman's Office approved, through Administrative Resolution No. 029-2020/DP-PAD, the document "Guidelines for ombudsman intervention in cases of human rights defenders".

Although instruments have begun to be implemented for the protection of human rights defenders and organizations in Peru, criminalization continues to be one of the most serious problems they face. Unfortunately, it is still not sufficiently taken into account; as a result, territorial defenders are unprotected.

This lack of protection has a greater impact on Indigenous peoples, as it demands time and resources they lack. Since it is often linked to the stigmatization of defenders, criminalization is a form of silent violence that disrupts the organizational processes of communities, weakening and stifling their legitimate demands.

1

Criminalization of defenders in Peru



Kichwa defenders from the Doce de Octubre community prosecuted for exercising their right to protest against pollution caused by Pluspetrol.
Photo: Puinamudt

Criminalization consists of the manipulation of the punitive power of the State through the improper use of criminal law to attack human rights defenders to control, punish, or impede the exercise of their work.

This criminalization is layered with stigmatizing discourses against human rights defenders, which enhances the impact of criminalization³.

³ IACHR. Informe: Criminalización de la labor de las defensoras y los defensores de derechos humanos. Year 2015. Paragraphs 11 and 12

In Peru, the criminalization of Indigenous human rights defenders who defend their land and territory exists and is a widespread form of attack. It is important to note that it is not only manifested through criminal law, but also through other branches, such as administrative law or constitutional law, which are manipulated to incriminate defenders or organizations defending rights in various crimes or modalities of alleged responsibilities⁴.

This criminalization as a pattern of attacks against human rights defenders has also been recognized by the United Nations:

i) The United Nations Working Group on Business and Human Rights stated, after its visit to the country⁵, that they received testimonies from people who had participated in social protests due to adverse effects on human rights caused by companies. They explained how they face criminal charges and are subjected to various forms of intimidation and stigmatization as terrorists that oppose development.

In its report, the Panel noted that social conflicts and protests are generally due to legitimate grievances related to a) failure to guarantee the right to prior consultation, b) corruption of local officials, and c) failure to implement promised measures to mitigate adverse human rights impacts. It was also noted that the protests were repeatedly deterred by repressive police and criminalization. Community leaders had been accused of crimes such as “extortion”. It concluded: “The criminalization of protests does not help to achieve peace, and more efforts must be made to improve the conditions for dialogue”.

ii) Similarly, in his statement at the end of his official mission to Peru⁶, the former Special Rapporteur on Human Rights Defenders, Michel Forst, pointed out that the criminalization of human rights defenders is a recurrent pattern on the part of state institutions (ex officio) or at the request of third parties (non-state agents). Forst also indicated that this type of aggression against defenders is carried out against Indigenous peoples for exercising their own special jurisdiction.

“

In Peru, the criminalization of Indigenous human rights defenders who defend their land and territory exists and is a widespread form of attack.

”

⁴ In this report, we show how a defense organization is being criminally incriminated using constitutional law.

⁵ Statement of the Working Group on Business and Human Rights at the end of its visit to Peru, July 19, 2017. <https://www.ohchr.org/es/statements/2017/07/statement-end-visit-peru-united-nations-working-group-business-and-human-rights?LangID=S&NewsID=21888>

⁶ <https://www.ohchr.org/es/2020/01/end-mission-statement-michel-forst-united-nations-special-rapporteur-situation-human-rights?LangID=S&NewsID=25507>

2

The policy for
the protection of
defenders and
organizations



Defenders from the Llusco district (Chumbivilcas, Cusco) criminalized for exercising their right to protest against the Peruvian government and the mining company ANABI S.A.C.
Photo: Human Rights Without Borders (DHSF)- Cusco

Currently, the Peruvian State has an intersectoral mechanism for the protection of human rights defenders and two protocols for action by public institutions: the “Sectoral Protocol for the protection of environmental defenders”, and the “Protocol for prosecutorial action for the prevention and investigation of crimes against human rights defenders”. In addition, the intervention guidelines of the Ombudsman’s Office were approved, as well as two public policy management instruments that refer to the protection of defenders: 1) the National Human Rights Plan 2018 - 2021 (this document is considered in the absence of a National Human Rights Plan in effect); 2) the National Action Plan for Business and Human Rights 2021 - 2025.

PUBLIC POLICY FOR THE PROTECTION OF ORGANIZATIONS THAT DEFEND HUMAN RIGHTS

Intersectoral mechanism for the protection of human rights defenders

Sectoral protocol for the protection of environmental defenders under the Ministry of the Environment (Minam)

Protocol for Prosecutorial Action for the Prevention and Investigation of Crimes against Human Rights Defenders by the Public Ministry

Ombudsman's Office Intervention Guidelines for cases of human rights defenders.

Instruments for the implementation of public policy on human rights defenders

National Human Rights Plan

National Business and Human Rights Action Plan

Within the Executive branch, eight ministries and an agency attached to the Presidency of the Council of Ministers (PCM), the National Commission for Development and Life without Drugs (Devida), are in charge of implementing this mechanism. It is executed and coordinated by the Ministry of Justice and Human Rights (Minjus); however, to date, only the Ministry of Environment (Minam) has a protocol to implement the protection policy: the other entities do not yet have an approved protocol.

We consider serious omissions the fact that, to date, the Ministry of the Interior (Mininter), the Ministry of Culture (Mincul), and the Ministry of Women and Vulnerable Populations (MIMP) have not yet developed internal regulations to implement the protection of individuals or groups of defenders, in accordance with the Protection Mechanism.

“

Although, strictly speaking, the role of the Ombudsman's Office is to supervise the functioning of the policy for the protection of defenders and defender organizations⁷, we consider it important to include the document prepared by this institution as part of the public protection policy, given that it plays an important role in the protection of individual and collectives of defenders.

”

⁷ The Ombudsman's Office has a constitutional mandate to protect citizens from possible abuses or lack of action by the State: Article 162.- Powers of the Ombudsman's Office: it is the responsibility of the Ombudsman's Office to defend the constitutional and fundamental rights of the individual and the community, and to supervise compliance with the duties of the state administration and the provision of public services to citizens.

A. Instruments of the policy for the protection of individual and collectives of human rights defenders

2.1. Guidelines for ombudsman intervention in cases involving human rights defenders approved by Administrative Resolution No. 29-2020/DP-PAD of the Ombudsman's Office

Those considered human rights defenders include leaders or activists of Indigenous communities and environmental defenders. The collective approach to Indigenous human rights defenders has yet to be perfected.

This instrument is a document that sets out the guidelines for the intervention of the ombudsman's offices concerning the defenders, in addition to its actions vis-à-vis the entities in charge of protection.

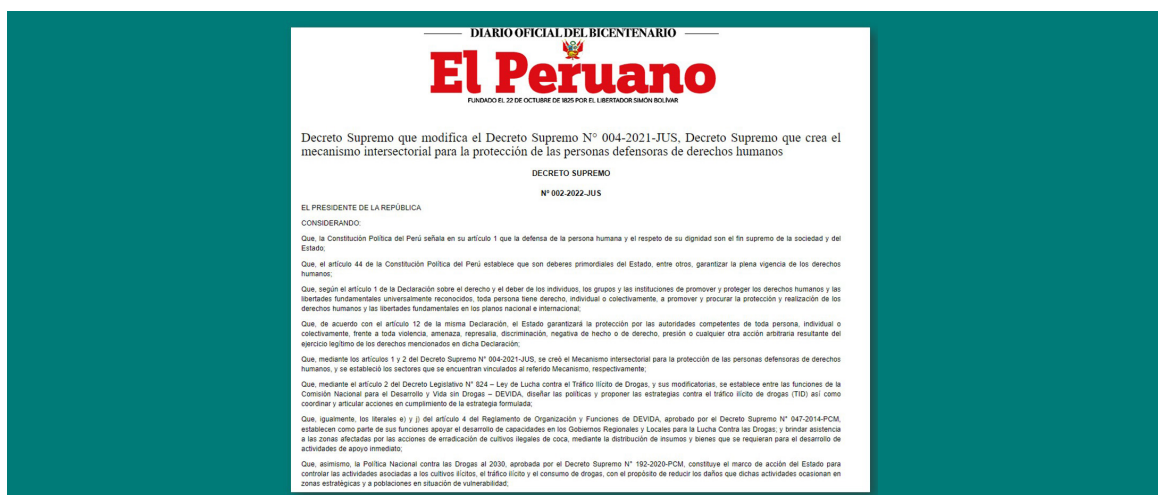
2.2. The Mechanism for the Protection of Human Rights Defenders created by Supreme Decree N°. 004-2021 of April 21, 2021⁸ of the Ministry of Justice and Human Rights

This regulation, according to its explanatory memorandum⁹, excludes cases of criminalization and refers only to cases in which defenders are being threatened by illegal economies.

a. Content

Following its mandate, this intersectoral mechanism contains the principles, measures, and procedures that seek to guarantee prevention, protection, and access to justice for human rights defenders in situations of risk that may arise as a consequence of their activities. The coordination and execution of this instrument is the responsibility of the Minjus (Article 3 of the Supreme Decree of creation¹⁰).

It does not include collective subjects (e.g., communities, Indigenous peoples, or organizations) as human rights defenders.



8 Subsequently amended by Supreme Decree No. 004-2022-JUS of April 13, 2022.

9 Explanatory Memorandum of Supreme Decree No. 004-2021 of April 21, 2021

10 Article 1.- Creation of the Intersectoral Mechanism for the protection of human rights defenders. The Intersectoral Mechanism for the protection of human rights defenders is hereby created, consisting of the principles, measures, and procedures that seek to guarantee the prevention, protection, and access to justice of human rights defenders in the face of situations of risk that may arise as a result of their activities.

b. Entities included

It links eight sectors, including the Ministry of Justice and Human Rights (Minjus), the Ministry of the Interior (Mininter), the Ministry of the Environment (Minam), the Ministry of Culture (Mincul), the Ministry of Women and Vulnerable Populations (MIMP), the Ministry of Foreign Affairs (Cancillería), the Ministry of Energy and Mines (Minem), and the Ministry of Agrarian Development and Irrigation (Midagri). Subsequently, Devida was also incorporated¹¹.

Neither Indigenous peoples nor civil society are included in the governance of this mechanism. As a result, the defenders who directly suffer attacks and threats against their lives and work, the Indigenous organizations that represent them, and civil society organizations lack the possibility of contributing directly to the protection policy.

c. Protection time limits

The ordinary procedure involves 30 working days¹² that are counted from the presentation of the request to the issuance of the Vice Ministerial Resolution approving or denying the early warning.

In cases when the right to life is endangered or when, from the preliminary evaluation of the request, the gravity of the situation of risk or imminent danger is evident, the term does not exceed 15 working days.

d. Coverage requirements

Identification of the potential beneficiary, his or her current location, and details of the human rights defense activities he or she carries out. If the request is made by a third party, it must have the consent of the potential beneficiary, unless there is a serious impediment. It must contain a description of the facts related to the situation of risk faced by the potential beneficiary, accompanied by the corresponding evidence, if possible.

Likewise, express mention must be made of the protection measure or urgent protection measure requested. The request must include a physical or electronic address for notifying the applicant. In the absence of documentation related to the verification of the coverage requirements, a term of ten working days is granted for its correction; once the term has expired without correction, the Minjus recommends for it to be filed. It should be noted that the burden of proof regarding the defender and their situation of risk is placed on the applicants, not on the Minjus.

e. Aggressions not covered by the Mechanism

This mechanism considers various possible attacks on defenders. Regrettably, it does not expressly classify judicial criminalization as a risk situation for defenders, despite the fact that a large number of this type of cases have been registered¹³.

11 Office attached to the PCM, in charge of conducting the National Anti-Drug Policy until 2030.

12 Article 19 of the Mechanism.

13 OGMAL. Cases of Criminalization of Social Protest in Peru. Revised March 8, 2022. Available at: https://mapa.conflictosmineros.net/ocma_db-v2/incident/index/02034800.

f. Protective measures

Ten protection measures are established¹⁴. Among them, one important measure is that of legal defense, which could be used to denounce cases of criminalization of defenders before the Public Ministry. To the extent that the state justice system is used to attack defenders, legal weapons are required to counter these attacks.

Additionally, it is important that as a last resort, the possibility is left open of providing other measures that may be generated and adapted to respond to the needs of the defenders.

g. Omissions

It does not contain information, nor does it develop tools for defenders to directly request protection measures in different regions.

Requests for information for the preparation of this report

Regarding situations of risk and protection measures granted: On September 22, 2021, information was requested from the Minjus on the functioning of the Mechanism, specifically concerning the risk situations of defenders, and the prevention and protection measures adopted/requested.

On October 6, 2021, the Ministry responded that, as of that date, 105 defenders were registered in situations of risk, and that they were accorded protection measures. The protection measures provided were a total of seven training activities, including courses, sessions, and conferences aimed at defenders, police, and public officials¹⁵.

It is the Ministry of Justice's obligation to coordinate and execute the actions of the Mechanism within the scope of its competence:

“Article 3.- Coordination and implementation

The Ministry of Justice and Human Rights coordinates and executes the actions established in the Intersectoral Mechanism for the protection of human rights defenders, within the scope of its competence.

The entities coordinate and execute the actions defined in this regulation, within the scope of their competencies.”

Supreme Decree N° 002-2022-JUS

14 i) Police patrols to homes and workplaces of defenders. ii) Legal assistance through public defense. iii) Public statements of support. iv) Public visits to risk areas to provide support for human rights defense activities. v) Comprehensive care for victims of violence under Law No. 30364, Law to Prevent, Punish and Eradicate Violence against Women and Family Members. vi) Special visas or residence permits for political or humanitarian reasons for foreign defenders. vii) Consular support in case of being forced to flee to another country. viii) Environmental monitoring and administrative measures in situations of environmental and natural resource damage. ix) Filing of appropriate legal actions in the event of possible environmental crimes. x) Other relevant actions.

15 1) A training program on protection mechanisms (June 14-23) for environmental defenders and the general public. 2) A virtual course on the role of human rights defenders organized with Mininter and aimed at police instructors (June 25 to July 21). 3) Training course for Human Rights Defenders in the Amazon for Indigenous organizations from Loreto, Ucayali, Junin and Cusco (June 28 to July 26). 4) Participation in two sessions (August 31 and September 2) of a capacity building course for environmental and Indigenous defenders. 5) Training activities (June 17) for SERNANP officials. 6) Conference for Indecopi officials (August 25, 2021).

On collective protection measures: On February 24, 2022, information requests were made to the Minjus on the number of collective protection measures provided to Indigenous peoples or communities that defend human rights, and the modalities of the provided collective protection measures.

On March 10, 2022, the Directorate of Human Rights Policies and Management of the Minjus reported that, within the framework of the early warning procedure of the Intersectoral Mechanism, no collective protection measures have been granted. However, three monitoring actions have been carried out that have provided collective protection to the communities on three occasions: a police inspection and two public visits to “affected native communities”.

It is important to note that the Ministry of Justice assumes that the simple visit of officials to an Indigenous community is a measure that provides protection, which is striking given that there is no further information on a work agenda generated as a result of these visits.

2.3. Sectoral protocol for the protection of environmental defenders approved by Ministerial Resolution No. 134-2021-MINAM of July 23, 2021

This protocol establishes the guidelines for coordinating, implementing, and evaluating the application of prevention, recognition, and protection measures by the environmental sector. Its objective is to guarantee the rights of environmental defenders within the framework of the National Environmental Management System and the Intersectoral Mechanism for the protection of human rights defenders.

In addition, it is noted that the Environmental Crimes Functional Unit (Unida) of the Ministry of the Environment, within the framework of the Intersectoral Mechanism for the Protection of Human Rights Defenders, is the office responsible for the following functions: (i) coordinate and promote technical assistance actions to strengthen the capacities of Indigenous defenders and environmental defenders; (ii) coordinate the Minam with relation to the intersectoral mechanism for the protection of human rights defenders; (iii) inform the Minjus about identified risk situations; (iv) coordinate and communicate to the Minam the protection measures and support for the implementation of urgent protection measures; (v) prepare the Report on the situation of environmental defenders in Peru; among other functions.

To date, there is no information on how it is working.

This protocol has an approach that prioritizes the protection of environmental defenders that are threatened and at risk due to illegal economies, such as illegal logging, illegal land trafficking, illegal mining, or drug trafficking.



2.4. Protocol for prosecutorial action for the prevention and investigation of crimes against human rights defenders approved by Resolution No. 439-2022-MP-FN of the National Public Prosecutor's Office.

This protocol is a step forward in the protection of human rights defenders because it clearly establishes the obligation of the Public Ministry to investigate crimes against human rights defenders. It also establishes prevention procedures and investigation guidelines, including due diligence and international human rights standards for crimes against human rights defenders. Furthermore, it defines the procedures for the care and protection of human rights defenders, their families, and witnesses.

The importance of this protocol is that it expressly refers to the principle of non-criminalization of human rights defenders, stating that, in the event of complaints against human rights defenders, prosecutors must comply with the following:

Identify whether the complaint was made as a tool to hinder their work (...). Special attention should be paid if the complaint against the human rights defenders is made as a consequence of the exercise of their right to freedom of expression and protest.

Equally important is the fact that this protocol defines Indigenous Peoples as human rights defenders (5.1.8.).

However, it is important to highlight that it does not have a research approach to the attacks suffered by organizations, communities, or Indigenous peoples that recognizes the collective dimension.

B. Instruments for the implementation of public policy for the protection of individuals and groups of human rights defenders

2.5. National Human Rights Plan (2018 - 2021) approved by Supreme Decree. It is currently not in force

One of its strategic guidelines is the design and implementation of policies in favor of special protection groups, including human rights defenders.

In this plan, actions were included that lacked a baseline and concrete goals:

¹⁷ Guideline N.º 3

Strategic action	Indicator of this action	Baseline
A.E.1: Strengthen the human rights-based approach in civil servants in the exercise of their functions, thus promoting full citizenship and strengthening of democratic institutions.	Percentage of civil servants aware of the issues and problems of the rights of human rights defenders .	No baseline target (2021): 100 percent of training beneficiaries have been made aware of the problems and rights of human rights defenders.
A.E.2: Strengthen training and capacity building in human rights. The human rights education program is aimed at justice system employees, to guarantee respect, protection, and the promotion of special protection groups.	Percentage of justice system employees aware of the problems and rights of human rights defenders	No baseline target (2021): 100 percent of training beneficiaries have been made aware of the problems and rights of human rights defenders.
A.E.3: Promote mechanisms to guarantee the safe exercise of peaceful and nonviolent work, paid or free of charge, of human rights defenders throughout the national territory.	Registry of risk situations of human rights defenders.	(2021): A mechanism implemented for the protection of human rights defenders.

In terms of compliance with this plan, although it is important to train civil servants and justice system employees on the problems of human rights defenders, there is no specific objective. Therefore, the measurement of the percentage of compliance is unknown; furthermore, there is no official information on the plan's progress.

Additionally, it is important to make known that the objective proposed from 2018 to 2021 (in three years) was the creation and implementation of a mechanism for the protection of human rights defenders. This has been fulfilled; however, the aggressive problems suffered by individuals and groups of human rights defenders have increased. In this sense, a human rights policy instrument should have as its goal the real reduction of these situations of risk and threat, beyond the long-term implementation of mechanisms and dependencies.

2.6. National Action Plan for Business and Human Rights 2021-2025 approved by Supreme Decree No. 009-2021-JUS of June 11, 2021

This Plan recognizes the tense relationship between specific business activities and the individual and collective rights of Indigenous peoples. It also warns of the need to record evidence of the companies' commitment to the protection of the rights of Indigenous peoples and human rights defenders.

The Plan contains only two actions (out of 97) aimed at promoting a risk-free life for human rights defenders. The two measures are as follows:

Action 10

Promote a change in the cultural perception of unions as defenders of human rights and ensure access to unionization. The Ministry of Labor and Employment Promotion (MTPE) is responsible for providing training on union participation. This action lacks specific goals.

Action 89

Disseminate information on how to access the Intersectoral Mechanism for the Protection of Human Rights Defenders, and prepare a report on the situation of human rights defenders under the responsibility of Minam for the year 2022.

Clearly, the Plan proposes two measures that are too limited for the problems faced by human rights defenders. There are no clear indicators for measuring compliance with the actions linked to access to the Intersectoral Mechanism, which is one of the major challenges for Indigenous peoples.

When referring to human rights defenders, the Plan focuses on individuals but does not recognize that peoples, communities, defense fronts, or Indigenous organizations may also be human rights defenders.¹⁸

However, what is most striking about this diagnosis is that it states that the violations against defenders are a result of illegal economies, which ignores the violations they suffer as a result of the actions of companies. When reference is made to these violations, it is expressly stated that this is information provided by civil society. Also, in the Plan's diagnosis, the "Mechanism for the protection of human rights defenders" is mentioned, but the omission of the phenomenon of criminalization is not mentioned.

According to the MINJUSDH registry, the violation of the rights of human rights defenders is due to various factors, including economic informality, lack of legal security in the tenure of communal lands, the resulting land trafficking and criminality associated with illegal mining and illegal logging, and drug trafficking. However, the civil society database identifies violations in both formal and informal activities, including those arising in the context of socio-environmental conflicts.

The recent creation of the Intersectoral Mechanism for the protection of human rights defenders, under the leadership of MINJUSDH, is a valuable instrument that links eight

¹⁸ Page 43 of the National Business and Human Rights Plan, 2021 - 2025

ministries and should be strengthened, based on the PNA, through the incorporation of the business and human rights approach and the CER.

The business sector shows its commitment to respecting human rights defenders. In this regard, the SNMPE is part of the Roundtable of Human Rights Defenders where protection measures are foreseen. Likewise, it reports on the Guide for Complaints and Claims, which includes measures to respect human rights. Except for women and unionized workers as a result of the long tradition of labor law, in Peru there were no specific mechanisms for the protection and redress against violations that could affect human rights defenders¹⁹.

C. Omissions in the public policy for the protection of defenders

Although to date six ministries and Devida have not implemented protocols or action guidelines for the protection of human rights defenders, the omission of three ministries is particularly serious considering the current attacks against Indigenous defenders:

2.7. The role of the Ministry of the Interior regarding the right to defend the rights of human rights defenders

The Mininter still lacks an effective norm (protocol or guidelines) for the implementation of specific protection measures for individuals or groups of human rights defenders.

Concerning the cases studied in this report, two aspects have been identified in the actions of the PNP regarding the protection of human rights defenders:

- ❑ Personal guarantees are assured as protection measures for defenders.
- ❑ In the case of human rights defenders in Espinar, the analysis showed that the PNP's Operational Plan in the context of the social conflict of June and July 2020 was aimed at preventing the citizens' right to protest. Also, the PNP and the social organizations of Espinar (organizations formed by the criminalized leaders) were considered to be adversarial organizations; they were even put on par with terrorist organizations²⁰.

In other words, in the case of the Mininter, not only is there a serious omission of its duty to protect human rights defenders and organizations, but also, according to its own official documents, it stigmatizes human rights defenders and restricts and prevents them from exercising their rights.

¹⁹ Page 56 of the National Action Plan for Business and Human Rights

²⁰ Regarding this case, the police operations plan for dealing with the social protest of July 2020 in Espinar reflects this action, since it contains provisions such as:

- a. "Assess the behavior of protesters with the aim of persuading them."
- b. "To verbally warn them that there is an intention to use force, so that this is taken into account, considering that, in most cases, the warning of the use of force is a psychological factor for the opponent, that results in the dispersion of the crowd in a peaceful way".
- c. "Optimize the use of tear gas in the vicinity of buildings where people congregate".
- d. "To dissolve the crowd, it is advisable to proceed on the least compact side or the side that offers the least resistance, adopting crowd control formations in order to divide the crowd and disperse it in the direction of the road that has been selected".

It is also worth noting that, despite the protest arising as a result of actions taken by the company, the operational plan is only directed towards the population of Espinar, and does not consider nor does it name the company causing this unrest. Finally, the most serious aspect is that it considers the inhabitants of Espinar, the social and community organizations, as well as the members of non-governmental organizations as "adversarial forces", whom it describes as instigators of the violence. Likewise, its analysis considers that terrorist organizations operate in Espinar.



2.8. The role of the Ministry of Women and Vulnerable Populations (MIMP) regarding the right to defend the rights of human rights defenders

The MIMP does not yet have an effective norm (protocol) for the implementation of specific protection measures for individuals or collectives of human rights defenders.

2.9. The role of the Ministry of Culture regarding the right to defend the rights of Indigenous human rights defenders

The Ministry of Culture is the governing body in matters of Indigenous or original peoples²¹, in a way that can be understood as inconsistent with their rights. Despite this responsibility, to date, the Mincul still lacks an effective norm for the implementation of specific measures for the protection of individuals or groups of human rights defenders.

It is the Mininter's obligation to approve guidelines to implement protection measures:

Second: Approval of the guidelines for the implementation of protection measures or urgent protection measures.

By means of a Ministerial Resolution, the Ministry of the Interior, in coordination with the Ministry of Justice and Human Rights, approves the Action Guidelines for the implementation of the protection measures or urgent protection measures that are granted employing a Vice Ministerial Resolution of the Ministry of Justice and Human Rights, and that will be the responsibility of the National Police of Peru. The Action Guidelines contain the financing strategies that allow the implementation of this Supreme Decree and the guidelines of the Activity Plan to achieve the timely execution of the measures.

Supreme Decree No 002-2022-JUS

²¹ Legislative Decree No. 1360. Article 1.- Purpose: The purpose of this norm is to specify the exclusive functions of the Ministry of Culture as the governing body in matters of Indigenous or original peoples.

3

Cases of
Indigenous
defenders
criminalized and/
or at risk in Peru



The criminalization of Indigenous defenders is a complex and widespread phenomenon in several regions of the country. Although it affects dozens of communities that are protesting against the violation of their rights by various extractive companies, we have taken four emblematic cases that reflect different forms of criminalization. In all of them, the “Mechanism for the Protection of Human Rights Defenders” has been invoked; however, in none of these cases have the defenders obtained any effective protection measure.

3.1. Judicial intimidation and criminalization of the Federación Nativa del Río Madre de Dios y Afluentes - FENAMAD and its president, Julio Cusurichi, for defending the lives of the isolated Mashco Piro people.

- ☐ Criminalization begins as a result of the actions of a formal extractive company: Yes, in response to a logging company.
- ☐ Criminalization modality: Use of constitutional law to achieve the self-incrimination of an Indigenous organization.
- ☐ Date of request for protection measure: December 21, 2022.
- ☐ The requested protection measure was granted: No.
- ☐ Date protection measure granted: Not applicable.
- ☐ Protection measure has been implemented: Not applicable.

a. Aggression faced

In 2020, at one of the peak moments of the pandemic, FENAMAD, as the petitioner of a precautionary measure before the IACHR for the protection of the Mashco Piro people in isolation, alerted the State about the risks to their life and integrity due to the reactivation of timber extraction by the company Maderera Canales Tahuamanu S.A.C.

Due to the State's silence, FENAMAD published a statement denouncing the situation. The company used this statement to incriminate FENAMAD through a supposed notarized letter of rectification which stated that FENAMAD was an advisor to illegal loggers. FENAMAD did not publish it and reiterated that its own statement was based on official and truthful information; it also stated that the company's letter contained false information that incriminated it in crimes.

In light of the non-publication of the letter of rectification, the lumber company sued FENAMAD through a constitutional injunction. It was alleged that the company's rights to honor, good reputation, and image, and to rectification had been infringed. In the first and second instance, the Judiciary ruled in favor of the timber company and ordered FENAMAD and its president, Julio Ricardo Cusurichi Palacios, to "avoid situations like this" (i.e., to make reports of human rights violations). The sentence also obliged them to publish the letter, incriminating them as advisors to illegal loggers.



Julio Cusurichi, President of FENAMAD

b. Request for protection measures

On December 21, 2021, FENAMAD submitted a request for protection measures to the Mechanism for the Protection of Defenders of the Ministry of Justice and Human Rights. To date, this request is pending.

REQUESTED MEASURES:

To the Ministry of Justice and Human Rights: To be present in the process as an observer or as *amicus curiae*.

To the Ministry of Justice and Human Rights: Provide training to the Superior Court of Madre de Dios on the importance of the work of human rights defenders and the obligations of the Peruvian State towards defenders.

To the Ministry of Justice and Human Rights: Issue a report on the situation of criminalization and stigmatization of Indigenous defenders.

To the Ministry of Justice and Human Rights: Follow up on compliance with Precautionary Measure 262-05, especially the orders issued by the IACHR regarding the cessation of forestry activities in the territory of the Mashco Piro people in isolation.

To the Ministry of Justice and Human Rights: Coordinate with the Regional Government of Madre de Dios the launch of the procedure for exclusion and compensation of areas of forest concessions overlapping the territory of the Mashco Piro peoples in isolation, following the provisions of Article 77 of the Forestry Management Regulations of Law No. 29763.

To the Ministry of Environment: Prepare a report on the process of deforestation and opening of roads in the area of expansion of the Madre de Dios Territorial Reserve based on satellite images and other tools available to the sector.

To the Ministry of Culture: To join the process as an observer or as *amicus curiae*.

FENAMAD

21/12/21

Protection measures requested

22/02/22

Answer received vía Whatsapp

02/03/22

A meeting was held

More than four months after the request, a protection measure has not been taken.

Two full months later, the Ministry of Justice requested a working meeting with FENAMAD. The deadline stipulated in the mechanism was not met. To date, there is no protection measure in place

3.2. Defenders of Espinar, defender V.M.M., journalist and former president of the Association of Urbanization and Young Villages - AUPE

- ❑ Criminalization modality: Harassment through constant notifications of fiscal investigations and follow-up by the Ministry of the Interior.
- ❑ Date of request for protection measure: August 29, 2020.
- ❑ The requested protection measure was granted: Yes.
- ❑ Date of granting of the protective measure: March 9, 2022
- ❑ The protection measure has been implemented: No.

a. Aggression faced

In May, June, and July 2020, in the context of a pandemic and social immobilization, a series of social protests took place in the province of Espinar due to the fact that the Glencore Antapaccay Mining Company refused to deliver economic funds as part of the Framework Agreement for a “Humanitarian Bonus”²². Instead, the company unilaterally decided to distribute food baskets. It should be noted that the Framework Agreement between the company and the citizens of Espinar established a contribution to Espinar of three percent of the company's profits. The defenders who participated in and led these protests suffered a series of aggressions.

One of the defenders who was a victim of these and other aggressions has been V. M. M. M, a journalist and representative of a social organization of Espinar. Due to his constant activity of denunciation, he faces since 2019 at least eleven fiscal investigations since 2019.



²²The framework agreement was signed in 2003. It includes several commitments, such as the creation of a fund made up of the mining company's contribution of 3% of its annual profits, to be used to finance development works and projects in the eight districts of the Cusco province. It is administered by the Management Committee of the Framework Agreement, which is made up of the provincial mayor, representatives of district mayors, the Espinar Interest Defense Front, the Unified Federation of Farmers, the Association of Popular Urbanizations and Young Towns of Espinar, a representative of the Salado and Cañipá river basins, as well as a representative of the mining company.

On May 12, 2022, a report of the General Intelligence Directorate of the Ministry of the Interior (DIGIMIN) of October 2021 was made public, in which it reported on the monitoring of the communicator V. M. M. M., described as an “agitator” (azuzador)²³.

b. Request for protective measures:

On August 29, 2020, eight leaders of civil society organizations in Espinar, including journalist V. M. M. M., went to the Minjus to request protection actions for defenders in accordance with the “Protocol for the Protection of Human Rights Defenders”. According to information on the Minjus website, on May 21, 2021, the General Directorate of Human Rights closed the case on this request.

The screenshot shows the SGD Sistema de Gestión Documental interface. At the top, there is a search bar with the code '026136' and the year '2020MSC'. Below this, a table lists the movements of the document. The table has columns for 'Nro.', 'Recabado', 'Fecha Estado', and 'Estado'.

Nro.	Recabado	Fecha Estado	Estado
1	DESPACHO MINISTERIAL	31/07/2020 05:24	DERIVADO
2	DESPACHO VICEMINISTERIAL DE DERECHOS HUMANOS Y ACCESO A LA JUSTICIA	03/08/2020 04:34	DERIVADO
3	DIRECCION GENERAL DE DERECHOS HUMANOS	04/08/2020 11:19	DERIVADO
4	DIRECCION DE POLITICAS Y GESTION EN DERECHOS HUMANOS	06/08/2020 09:18	DERIVADO
5	DIRECCION GENERAL DE DERECHOS HUMANOS	21/03/2021 03:59	DERIVADO
6	DIRECCION DE POLITICAS Y GESTION EN DERECHOS HUMANOS	24/03/2021 07:57	DERIVADO
7	DIRECCION GENERAL DE DERECHOS HUMANOS	21/05/2021 06:54	ARCHIVADO

Below the table, there is a note: 'Código principal del documento, ejemplo "2017MSC". Secuencia de Búsqueda, ejemplo "121".'

At no time were the defenders informed of the closure of the case.

Request for information: On December 17, 2021, defendant V. M. M. M. requested the Minjus to forward the resolution that motivated the case closure. Due to the lack of response from the Ministry, an appeal was filed before the Court of Transparency and Access to Information. On February 8, 2022, the Court admitted the request for processing²⁴.

Response from Minjus: Inexistence of the closure of the process:

On February 15, 2022, the Directorate of Human Rights Policies and Management of Minjus informed the following:

The referred resolution required to close the case does not exist, since the application is still being processed, and no such document has been issued... it should be noted that, although the Documentary Management System of the Ministry of Justice and Human Rights shows that the application is “Closed” (“Archived”), this is due to a typing error, which does not correspond to the actual status of the procedure that declares admission and requires an investigation to determine the level of risk, since as indicated above, the study of risk assessment and protection actions and urgent protection actions is pending²⁵.

²³ La Encerrona program aired on May 12, 2022, available at: <https://www.youtube.com/watch?v=okAJzaoYb5Y>

²⁴ By Resolution 000307-2022-JUS/TTAIP-PRIMERA SALA

²⁵ Letter N.º 003-2022-JUS/DGDH

Additionally, they informed that “the request for activation of the Early Warning Procedure formulated by the leaders of the social organizations of Espinar, department of Cusco, complies with the admission requirements established in numeral 7.2.3 of the aforementioned Protocol”²⁶

On March 9, 2022, the Ministry of Justice issued Directorial Resolution No. 002-2022-JUS/DGDH granting protection measures to only two of the petitioning defenders:

- To the president of the Espinar Struggle Committee: an urgent measure of protection through the granting of personal guarantees and legal assistance through the Public Defender's Office.
- To journalist V.M.M.: legal assistance through the Public Defender's Office, when required.

On May 4, 2022, defender V. M. M. M. requested that the public defender, who was assigned as part of his protection measures, file a complaint and that they advance a judicial process to investigate the criminalization he has been suffering. Likewise, he requested protection measures that would allow him to continue with his work of defending his rights, such as internet access at his home, a video camera, a cell phone with an active line, security cameras, a motorcycle, and life insurance.

Recommendation to Ministry of Justice:

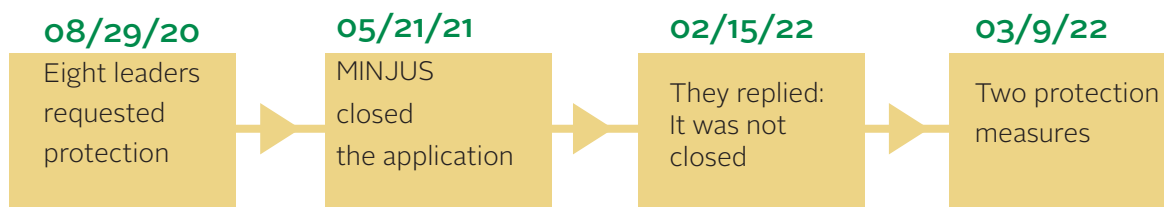
To provide, as a protection measure, comprehensive support in public defense that supports the defenders in the investigations corresponding to the criminalization suffered. This defense should not be mutually exclusive with any additional legal defense that they may have.

²⁶ Report N.º 23-2021-JUS/DGDH-DPGDH de 22 de marzo de 2021.

On May 10, 2022, the Protection Mechanism informed, via email, that the legal defense was for cases in which V. M. M. M. was being investigated by the Prosecutor's Office. On May 11 the defender V. M. M. M. responded that the legal defense protection measure granted should be for the investigation of the criminalization he has been suffering. At the close of this report, he has not received any further communication from the Mechanism.

APPLICATION FOR REGISTRATION AND PROTECTION MEASURES

August 29, 2020	Protection measures were requested from the Mechanism.
May 21, 2021	The General Directorate of Human Rights filed this application.
December 17, 2021	VMM requested the protection measures, and asked the Ministry of Justice to send the resolution that led to the shelving or closure of the case.
February 8, 2022	Resolution 000307-2022-JUS/TTAIP-PRIMERA SALA the Court admitted the request and required the Ministry of Justice and Human Rights to submit the administrative file generated for the defender's attention.
February 15, 2022	The Directorate of Human Rights Policy and Management sent Letter No. 003-2022-JUS/DGDH: "the referred resolution required to close the case does not exist, since the request is still being processed, and no such document has been issued... it should be noted that, although the Documentary Management System of the Ministry of Justice and Human Rights shows that the request is "Closed", this is due to a typing error"....



3.3. Defenders of Llusco: E.A.P. and V.Q.C., both located in the district of Santo Tomás, province of Chumbivilcas, department of Cusco

- ❑ Criminalization begins due to the actions of a formal extractive company: Yes, a mining company.
- ❑ Type of criminalization: Delay in the judicial process (more than ten years in process): They were acquitted in the first and second instance; despite this, the State has filed an appeal to a court of cassation.
- ❑ Date of request for protection measure: December 15, 2022.
- ❑ The requested protection measure was granted: No.
- ❑ Date protection measure granted: Not applicable.
- ❑ Protection measure has been implemented: Not applicable.

a. Aggression faced

The aforementioned defenders, among others, in the exercise of their right to protest against the pollution generated by the mining company ANABI S.A.C., carried out between December 2011 and February 2012, were accused by this mining company and third-party companies - among them MAYA S.A.C, a company that provides security to ANABI S.A.C - as well as by the State, represented by the Specialized Prosecutor for crimes against Public Order and the representative of the Public Prosecutor's Office, of numerous crimes. These included the crimes of kidnapping, violation of a home, aggravated robbery, aggravated damage, hindering the operation of public services, and violating the public peace and order²⁷.

On January 6, 2020, the Judiciary issued a first instance judgment of acquittal²⁸. The companies appealed this ruling, together with the prosecutor of the Ministry of the Interior and the representative of the Public Prosecutor's Office. In the second instance, this appeal was declared unfounded²⁹. The Public Prosecutor's Office filed a cassation appeal against this second instance sentence. To date, the Judiciary has not issued a final judgment.

In other words, a decade later criminalized human rights defenders continue to suffer persecution for demanding their rights in the face of pollution, as recognized by another State entity³⁰.



b. Solicitud de medidas de protección:

On October 27, 2021³¹, the defender V. Q. C., together with other human rights defenders from different parts of the country, organized a mobilization before the Ministry of Justice to request the implementation of the "Intersectoral Mechanism for the protection of human rights defenders". They requested that this mechanism be provided with a budget to receive effective protection measures.

²⁷ Against freedom, in its modality of violation of personal freedom, subtype kidnapping; Against freedom, in its modality and subtype violation of home or domicile; Against property, in its modality of robbery subtype aggravated robbery; Against property, in its modality of damages subtype aggravated damage; Against public safety, in its modality of crimes against means of transportation, communication and other public services, subtype hindering the operation of public services; Against public peace and order.

²⁸ Resolution No. 35 of the Supraprovincial Collegiate Court B of Cusco of January 6, 2020.

²⁹ On February 4, 2021, by means of Resolution No. 94, the second instance sentence was issued, with which the Criminal Court of Appeals of Canchis of the Superior Court of Cusco declared the appeal filed by the representative of the companies ANABI S.A.C., MUR WY S.A.C., and MAYA S.A.C. UNFOUNDED,

³⁰ Environmental Control and Evaluation Agency (OEFA)

³¹ <https://rpp.pe/peru/actualidad/defensores-ambientales-urgen-alto-a-la-violencia-y-exigen-al-estado-proteccion-ante-diversas-amenazas-noticia-1365856?ref=rpp>

On December 15, 2021, defender V. Q. C. and defender E. A. P. requested effective protection measures from the Inter-Sectoral Mechanism. Two months later, on February 16, 2022, the Mechanism answered that, given that “it does not have more information on the defense work of the potential beneficiaries³²” the protection measures could not be activated. In response, V. Q. C. and E. A. P. provided this information. On March 2, 2022, they responded to the Mechanism about the human rights defense actions (protection of the land and territory against environmental contamination generated by Anabi S.A.C.) that they had developed to determine their status as defenders, and emphasized the need for individual and collective protection measures. To date, we have not received a response to this request.

APPLICATION FOR REGISTRATION AND PROTECTION

October 27, 2021	Mobilization to the Minjus, where defender V. Q. C. was able to present her case and the serious and prolonged situation of criminalization she still faces, and requested protection measures.
December 15, 2021	Protection measures were requested from the Protection Mechanism virtually.
February 16, 2022	The Mechanism replied that it needed information that accredits the status of the petitioner as a defender.
March 2, 2022	The information requested by the Mechanism was sent via e-mail.

PROTECTION MEASURES REQUESTED

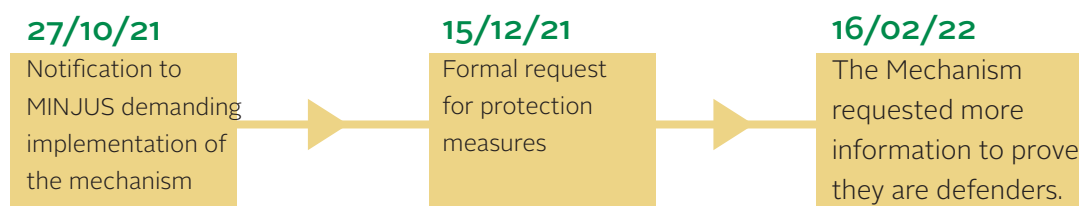
Ministry of Justice and Human Rights: to appear in the process as an observer or as *amicus curiae*.

Ministry of Justice and Human Rights: provide training to the Public Prosecutor's Office and the Attorney General's Office on the importance of the role of human rights defenders.

Ministry of Justice and Human Rights: issue a report on the situation of criminalization and stigmatization of Indigenous defenders.

Ministry of the Environment: issue a report on the environmental impact caused by Minera ANABI S.A.C. during all the years of operations in Espinar.

Ministry of Culture: issue a report on the situation of the Indigenous peasant communities of the districts of Llusco, Quiñota and Santo Tomás, of the Province of Chumbivilcas and how they have been impacted by the criminalization of their leaders.



³² Letter N.º 004-2022-JUS/DGDH-DPGDH



Protest in front of the Superior Court of Justice of Loreto against the criminalization of Indigenous defenders (March 2022)
Photo: Puinamudt

3.4. Defensores de Organización de los Pueblos Indígenas Kichwas Amazónicos de la Frontera Perú Ecuador – OPIKAFPE (*Defenders of the Organization of the Amazonian Kichwa Indigenous Peoples of the Peru-Ecuador Border*) and the Federación Indígena Quechua del Pastaza – FEDIQUEP³³ (*Quechua Indigenous Federation of the Pastaza*)

- ❑ Criminalization begins due to the actions of a formal extractive company: Yes, a hydrocarbon company.
- ❑ Criminalization modality: Delay of the judicial process: more than 15 years later and an oral trial has just begun, without due notice and in violation of all the rules of due process.
- ❑ Date of request for protection measure: April 5, 2022.
- ❑ The requested protection measure was granted: No.
- ❑ Date protection measure granted: Not applicable.
- ❑ Protection measure has been implemented: Not applicable.

a. Aggression suffered:

In March 2008 members of the Indigenous Kichwa community of Doce de Octubre were protesting pollution caused by Pluspetrol. However, both Pluspetrol and the Peruvian National Police (PNP) linked the protest in Doce de Octubre to other protests taking place in the Indigenous Quechua community of Nuevo Andoas.

This false link between the Doce de Octubre community and the events that took place in Nuevo Andoas was no coincidence. In a surprise move, nine leaders of the Doce de Octubre community were intervened, detained by the police, taken by helicopter to the Pluspetrol base in Andoas, and finally locked in containers and tortured so that they would incriminate themselves.

³³ Criminalized Indigenous defenders belonging to the organizations OPIKAFPE and FEDIQUEP, 18 criminalized defenders from OPIKAFPE and one from FEDIQUEP, organizations that have suffered pollution from oil activity in their territory for 50 years and have denounced it in various forums of the Inter-American Commission on Human Rights <https://www.youtube.com/watch?v=12IVKROWOoU&list=PL5QlapyOGhXuSrrN5AMHWWf36AsMzrqo&index=11> <https://www.youtube.com/watch?v=3ydNNN-NR-4s> and before the UN Rapporteurs on Indigenous Peoples and Toxic Substances <https://www.ohchr.org/en/2021/06/peru-clean-oil-pollution-indigenous-communities-allowing-more-drilling-an-experts-urge>

Additionally, in the case of the Kichwa Indigenous community, San Juan de Bartra, there was no protest measure, and they were unaware of the events that had been occurring in Nuevo Andoas and Doce de Octubre. This community was tricked by agents from the Special Operations Directorate (Diroes) of the police into approaching the company's base with the argument that they were going to give them food. A police helicopter arrived at the territory of the San Juan de Bartra community while the community members were waiting for the delivery of supplies; in reality, an operation was being deployed to detain them. As in the case of the Doce de Octubre community members, they were taken by helicopter to the Pluspetrol base in Nuevo Andoas, locked in containers, and tortured to force them to incriminate themselves.

Subsequently, they were taken into preventive detention and transferred to the city of Nauta. At no time was their right to testify in their mother tongue or to have an interpreter respected. Finally, of the total number of people implicated, four of them were detained for more than eight months in the Huayabamba prison in Iquitos.

On August 2, 2017, the Public Prosecutor's Office issued an opinion stating that the case should go to oral trial, based on a complaint filed by the company Pluspetrol³⁴. It was not until 2022 - more than 14 years after the complaint was filed - that the oral trial began.

b. Protective measures requested:

On April 5, 2022, the presidents of both federations requested protection measures for the criminalized defenders. To date, there has been no response. The contact details were those of EarthRights International. The measures requested were as follows:

To the Ministry of Justice and Human Rights:

- ❑ Appear in the process as an observer or as *amicus curiae*;
- ❑ Provide training to the Superior Court of Loreto, as well as to the Public Prosecutor's Office on the importance of the work of human rights defenders and the obligations of the Peruvian State towards human rights defenders;
- ❑ Issue a report on the situation of criminalization and stigmatization of Indigenous defenders. This report should contain a study on how criminal offenses normally used to combat citizen insecurity are being weaponized against human rights defenders;
- ❑ Incorporate within the Mechanism for the Protection of Defenders specific measures to prevent criminalization and protect criminalized defenders, beyond that of support from a public defender;
- ❑ Provide the necessary technical assistance to the Judiciary for the development of a protocol for action by the Judiciary in cases of criminalization of human rights defenders.

To the Ministry of Culture:

- ❑ Be accredited in the judicial process as an observer or as *amicus curiae*.
- ❑ Issue a report on the impact and violation of human and collective rights of Indigenous peoples in the Amazon region as a result of 50 years of oil exploitation.

³⁴ Superior Criminal Judgment No. 172-2017-MP-2°FSP-Loreto

³⁵ By Report No. 043-2022-JUS/DGDH-DPGDH dated April 8, 2022.

On April 25, 2022, the Minjus responded stating that, although there is a possible risk against the personal freedom and freedom of expression of the potential beneficiaries, there is no serious or imminent danger to their lives. In addition, it requested that each of the potential beneficiaries provide their consent to this request, as well as their contact number(s) or e-mail address(es), in order to establish the relevant communications.

On May 2, 2022, a response to this report was received indicating that the human rights of the criminalized defenders had already been affected, such as the right to defend rights, due process, and the right to protest. In addition, it was requested that the right to Indigenous institutions be respected, and that the request for protection measures made by the presidents of the federations be considered valid. Subsequently, a meeting was held with the members of the Mechanism on May 17. To date, we are still waiting for a response.

05/04/22

The federations' apus and their advisors requested protection measures



25/04/22

They responded that each of the processed should ask for protection measures

4

Findings



Protest in Espinar against Antapaccay mining
Photo: Derechos Humanos Sin Fronteras - DHSF

The Minjus does not recognize the existence of criminalization against Indigenous human rights defenders; therefore, it does not consider the damage that this action generates in Indigenous peoples whose rights are being violated by extractive companies.

Along the same lines, the Protection Mechanism does not contemplate measures to effectively protect Indigenous peoples from this criminalization.

The Mechanism and other policy tools for the protection of human rights defenders have adopted an approach to protection that is only based on the risk of death or physical aggression generated by illegal economies. However, aggressions by formal extractive companies and/or cases when the aggression is generated by the State itself (as in the case of criminalization) are not taken into account.

In the only case in which a protection measure has been obtained, it does not meet the needs of the criminalized defender, given that he is offered legal defense only for cases in which he is intimidated (cases for which he already has legal sponsorship). However, no legal defense is offered to denounce criminalization.

Although in the cases reviewed here, the granting of personal guarantees has not been identified, these are attributed as protection measures by the Mechanism. However, the nature of these guarantees is not to protect human rights defenders or their work in the defense of rights.

The mechanism also does not provide for redress for attacks against threatened, assaulted, or criminalized defenders.

It is worth mentioning that in the four cases, protection measures have been requested through the Minjus website, which is not easily accessible. In this sense, there is no adequate dissemination on how this Mechanism can be accessed directly by the defenders in the territories that are being affected. There is no direct and user-friendly access to the Minjus website to submit requests for protection measures. This is in addition to the unfriendly nature of the State Digital Platform: gob.pe.

There is a pattern of non-compliance on the part of the Ministry of Justice with the deadlines stipulated in the Mechanism. In some cases, the response has taken almost two years or the request has been shelved; only in response to a request for information on the reasons for this shelving were protection measures granted (although they were ineffective).

The Mechanism and the instruments for the protection of human rights defenders lack an adequate intercultural approach that considers Indigenous defenders as collective defenders in a situation of special vulnerability and, therefore, in need of reinforced protection by the State, especially in cases of criminalization.

There is no knowledge of collective protection measures for Indigenous organizations or communities; only three actions are reported. However, these do not have a comprehensive protection component.

Public policy implementation instruments, such as the National Action Plan for Business and Human Rights and the National Human Rights Plan, contain actions that are too narrowly focused relative to the importance of individuals and collectives of defenders.

The omission of internal regulations of six ministries and Devida in their obligation to provide protection to defenders is worrisome. This omission is even more serious in the case of the Ministry of Culture since it is responsible for the protection of the rights of Indigenous peoples.

To date, it is not known whether other entities such as the Judiciary, or regional or local governments have assumed, as part of the state apparatus, their role as guarantors of the work of human rights defenders.

The Mechanism lacks its own budget; the Ministry of Justice and Human Rights, as the governing body for the comprehensive protection of defenders, should be responsible for providing sufficient resources for the adequate implementation of protection measures.

5

Recommendations

To the Ministry of Justice and Human Rights

- ❑ **Modify** the law to expressly incorporate the criminalization of defenders as one of the most serious aggressions suffered by defenders and defenders' organizations and collectives in the country, in addition to expressly recognizing that it is an aggravating circumstance when this type of aggression occurs against Indigenous peoples.
- ❑ **Generate** tools that allow access to the Protection Mechanism in the territories, such as the publication of physical information booklets, as well as diverse material that is easy, user-friendly, and written in Indigenous languages.
- ❑ **Modify** the Mechanism to incorporate a working group or commission to follow up, advise and supervise its implementation, with binding participation (with voice and vote) of civil society and Indigenous peoples represented by Indigenous organizations at the national level. This group, working group, or commission should have a work plan, indicators, and established frequency of its meetings.
- ❑ **Generate** agreements with the Ombudsman's Office, and/or with regional or municipal governments so that, throughout the country, citizens can request protection measures in person.
- ❑ **Provide** guidelines and coordinate with the competent entities for the provision of the structural protection measures needed for this type of generalized aggressions against criminalized defenders.
- ❑ **Incorporate** an intercultural approach that, before compliance with the right to prior consultation of Indigenous peoples, identifies organizations, communities, or Indigenous peoples as human rights defenders who suffer systematic aggressions, such as the pollution of their land and territory, and that assumes that protection measures are also necessary for this type of aggression.
- ❑ **Grant** collective protection measures to Indigenous organizations, communities, and peoples threatened by illegal economies, or by the actions of extractive companies that denounce leaders, Indigenous organizations, and communities that defend their right to land and territory.
- ❑ **Provide**, as a measure of protection, a comprehensive public defense that sponsors the defenders in the corresponding investigations for the criminalization suffered. In addition, this public defense should not be mutually exclusive with any additional legal defense that they may have.
- ❑ **Incorporate** a gender perspective in the protection measures to make the various attacks against criminalized Indigenous women defenders visible and to design specific and adequate protection measures for them.
- ❑ **Incorporate** in the follow-up of the National Business and Human Rights Plan clear indicators for dissemination in the effective access to the intersectoral Mechanism.
- ❑ **Promote** the approval of a National Policy for the Protection of Human Rights Defenders that expressly incorporates the problem of criminalization and a budget for the fulfillment of the policy.

To the Ministry of Environment

- ❑ **Provide** information on the implementation of individual and collective protection measures granted to defenders and criminalized organizations and Indigenous peoples.

To the Ministry of Culture

- ❑ **Identify** Indigenous territories where members of Indigenous peoples are criminalized.
- ❑ **Implement** the right to prior consultation with the Indigenous organizations with national representation and with representation in the Indigenous territories, in which the collective and individual protection measures that can be implemented are identified.
- ❑ **Issue** a report on the differentiated impacts generated by the criminalization of Indigenous defenders.

To the Ministry of the Interior

- ❑ **Amend** the Integrated Text of the Regulation of Organization and Functions of the Ministry of the Interior, approved by Ministerial Resolution No. 1520-2019-IN, and incorporate specific guarantees for human rights defenders, and include collective measures.
- ❑ **Approve** a protocol for the implementation of the protection mechanism for defenders

To the Ministry of Women and Vulnerable Populations

- ❑ **Approve** a protocol for the implementation of the protection mechanism for women human rights defenders and incorporate an adequate gender focus throughout the system for the protection of human rights defenders, human rights organizations, and human rights defenders.
- ❑ **Issue** a report on the impact of criminalization on Indigenous women.

To the Ministry of Economy and Finance

- ❑ **Allocate** sufficient and specific budgetary resources to allow for the adequate implementation of the Mechanism for the Protection of Human Rights Defenders to provide comprehensive, efficient, and effective protection measures, both individually and collectively. It should also be sufficient to be able to carry out adequate work to prevent situations of risk, and adequate measures of reparation in case of violation of the rights of human rights defenders.

To the Congress of the Republic

- ❑ **Ratify the Escazú Agreement**, which, being a human rights treaty, would make the articulation between different sectors of the State for the protection of land and territory defenders viable and possible..

To regional governments

- ❑ **Approve** regional ordinances that recognize the important role of human rights defenders, particularly Indigenous defenders, and of Indigenous organizations and communities as defenders of land and territorial rights. These should strengthen the defense of democracy and the rule of law, and assign to the regional general managers (or whatever name they adopt) the function of coordinating, implementing, and directing the relevant protection measures, following the provisions of Law No. 27867, Organic Law of Regional Governments.



Report:
**Performance of the public policy for the protection
of Indigenous defenders criminalized and under threat**

**Case analysis of the organizations FENAMAD, OPIKAFPE, FEDIQUEP,
and of the K'ana and Chumpi Willkas peoples**

Cusco, Iquitos, Lima y Puerto Maldonado, may 2022

