



**A RECIPE FOR**

**CRIMINALIZATION**

DEFENDERS OF THE ENVIRONMENT, TERRITORY AND LAND IN PERU AND PARAGUAY

**BRAVE**

AMNESTY  
INTERNATIONAL



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# 1. EXECUTIVE SUMMARY

***“If they send me to prison for 30 or 50 years, I will be proud because I have not cheated or robbed my people.”***

Woman human rights defender in the context of the Las Bambas mine, Apurímac - Peru

This report is being published as part of Amnesty International's regional campaign for the rights of people who defend and promote the rights related to the environment, territory and access to land. It contains information obtained by monitoring specific cases in which the authorities have misused the criminal justice system in various countries in the region. These cases can be found at [www.speakout4defenders.com](http://www.speakout4defenders.com) -- where Amnesty International has documented incidents endangering the security of people and communities defending these rights 2015.

For years, Amnesty International has documented the situation faced by human rights defenders around the world. Every day, such people are attacked for activities aimed at promoting and defending these rights, including: demonstrating peacefully; for documenting and publicly denouncing human rights abuses and violations; for seeking justice, truth, reparation and non-repetition for the victims of human rights violations; for imparting human rights education; or for being linked to groups associated with the defence of human rights. In the most extreme cases, and such cases are on the increase, human rights defenders have been killed for the work they do.

In the Americas, Amnesty International has documented in particular the rights of people who defend and promote the rights to territory, the environment and rights related to access to land -- a group of defenders who are at greatest risk because of their work.<sup>1</sup> In recent years, the majority of attacks and threats documented by Amnesty International in the region have been on individuals and organizations working to defend rights related to these issues.<sup>2</sup>



## HUMAN RIGHTS DEFENDERS

Human rights defenders are all those who, individually or collectively, whether or not they are linked to an organization or a movement, in both cities and rural areas, act to defend or promote human rights at the local, national, regional or international levels, through non-violent means.

1. Report of the Special Rapporteur on the situation of human rights defenders (A/HRC/19/55), 21 December 2011, paras 60–92, available at: [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/HRC/19/55&referer=http://www.ohchr.org/SP/Issues/SRHRDefenders/Pages/AnnualReports.aspx&Lang=E](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/19/55&referer=http://www.ohchr.org/SP/Issues/SRHRDefenders/Pages/AnnualReports.aspx&Lang=E); Statement by the Committee on Economic Social and Cultural Rights on Human rights defenders and economic, social and cultural rights (E/C.12/2016/2, 29), March 2017, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E/C.12/2016/2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E/C.12/2016/2&Lang=en); Inter-American Commission on Human Rights, IACHR issues call for OAS States to Protect Defenders of the Land and Environment, 5 June 2017, available at: [http://www.oas.org/en/iachr/media\\_center/PReleases/2017/072.asp](http://www.oas.org/en/iachr/media_center/PReleases/2017/072.asp)

2. Amnesty International, Defending human rights in the Americas: Necessary, legitimate and dangerous (AMR 01/003/2014), December 2014, available at: <https://www.amnesty.org/es/documents/amr01/0003/2014/es>

In this report, A recipe for criminalization: defenders of the environment, territory and land in Peru and Paraguay, Amnesty International highlights cases of criminalization through the misuse of the justice system to harass and silence human rights defenders in the region by documenting a series of emblematic cases in these two countries. Criminalization as a way of harassing and intimidating human rights defenders can take a number of different forms. However, the ultimate aim is the same: to hinder their work and try to silence those who speak out against various human rights abuses. The report draws comparisons between defenders in Peru and Paraguay, taking into account that through Amnesty International's constant monitoring similar patterns have been identified in the misuse of the criminal justice systems in these countries. Through research, two missions to Peru and one to Paraguay, and interviews of representatives of 10 human rights organizations in Peru and members of 14 organizations or communities in Paraguay, Amnesty International has been able to identify a 'recipe' for criminalizing defenders of the environment, territory and land in both countries. The research is also based on the analysis of the context of the human rights situation in the countries, including the evaluation of 4 forced evictions in Paraguay and the review of the judicial files of 4 defenders in Peru and 1 in Paraguay. Thus we have concluded that the 'recipe' for criminalization is made up of three 'basic ingredients':

### **FIRST INGREDIENT: STIGMATIZATION OF THE DEFENDERS OF THE ENVIRONMENT, TERRITORY AND HUMAN RIGHTS LINKED TO THE LAND**

The authorities and private companies, both national and multinational, have resorted to public smear campaigns that result in defenders being stigmatized, just as governments use repressive measures against protests to silence the critical voices of human rights defenders. In Paraguay the authorities have used discriminatory language against defenders, calling them "layabouts", "alcoholics", "drug addicts" and "thieves", creating a hostile environment and greater obstacles to the defence of human rights. In an interview with Amnesty International, for example, the Paraguayan Deputy Ombudsman claimed that human rights defenders are only interested in defending criminals and that their sole concern is to get press coverage and make money.<sup>3</sup> In Peru, various protests by communities opposing large-scale projects for the exploration and extraction of natural resources have been severely repressed through the unnecessary and excessive use of force. Defender Máxima Acuña, for example, has been publicly accused of trespass by representatives of a mining company in Peru.

### **SECOND INGREDIENT: NORMATIVE FRAMEWORKS THAT ALLOW FORCED EVICTIONS**

The authorities apply laws and regulations to forcibly evict Indigenous, *campesino* (peasant farmer) and urban communities who claim their rights regarding territory and the environment. In Peru, for example, the concept of extrajudicial protection of property can be used to forcibly evict communities from their lands. In Paraguay, an agreement between the Attorney General's Office, the Ministry of the Interior and the National Police has been used to forcibly evict communities from their territories without the proper safeguards to ensure respect for and protection of the right to decent housing, the right of those facing eviction to be consulted and the right of all those affected to sufficient, reasonable prior notice. For example, in the case of forced evictions from urban settlements in the city of San Lorenzo in Paraguay, Natalia Roda, who was evicted from the settlement of Capilla de Monte, reported that the eviction began at dawn, that she was threatened and insulted by the police and that she and her partner were given 45 minutes to get out with their one-year-old baby.

### **THIRD INGREDIENT: BASELESS JUDICIAL PROSECUTIONS**

Defenders of the environment, territory and human rights linked to land are frequently subjected to unfounded judicial processes which are used to harass and silence them. On many occasions, these

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3. Deputy Ombudsman, interview with Amnesty International, 10 July 2017.

processes arise merely from the performance of their duties as community leaders or the peaceful exercise of their human rights and their right to peaceful protest. The misuse of the criminal justice system in both countries obliges human rights defenders to divert the scarce resources they have, as well as their time and energy, to defending themselves against unfounded criminal proceedings and prevents them from continuing their work defending human rights. This report documents cases of the misuse of criminal law to attack the work of defenders of the environment, territory and human rights linked to the land.

***“It’s also a bit of a psychological blow, because no one is going to want to fight for their rights anymore if they know that they will be condemned like that”***

Miriam Cristaldo, Lawyer – Paraguay

From the testimonies of the human rights defenders interviewed, Amnesty International discovered that this recipe for criminalization has serious implications for the right to defend human rights. It also has a grave impact on the physical, mental and emotional wellbeing of those who courageously speak out against injustice, on their families and their immediate social support networks, as well as on the movements, organizations and communities to which they belong.

## KEY RECOMMENDATIONS

### TO BOTH PARAGUAY AND PERU:

- Authorities at the highest levels, both local and national, must recognize as legitimate the work of human rights defenders working on issues related to land, territory and the environment.
- The Peruvian Ministry of Justice and Human Rights and the Paraguayan Ministry of the Interior must ensure that a comprehensive gender and ethnic perspective regarding the protection of human rights defenders is incorporated into relevant legislation, plans, programmes and policies, so that measures are taken to combat the structural factors that increase the risks and attacks against these groups, such as impunity, stigmatization and discrimination.
- Abstain from misusing the justice system to intimidate, harass and discredit defenders of the environment, territory and land.
- The Public Prosecutor’s Offices of Peru and Paraguay must identify baseless criminal investigations against human rights defenders working on the environment, territory and linked to access to land and close them or ask the relevant judges to dismiss the cases as unfounded.
- Initiate and pursue investigations to identify and bring to justice those responsible for attacks against human rights defenders working on issues related to the environment, territory and linked to access to land.

### TO PERU:

- Amend the legislation on the extrajudicial protection of property, in accordance with relevant international standards, so as to avoid putting the human rights of the defenders of the land, territory and environment at risk.

**TO PARAGUAY:**

- Repeal the Joint Action Plan on Punishable Actions related to Trespass (Plan de Acción Conjunta para Hechos Punibles de Invasión de Inmueble Ajeno), which is incompatible with the rights to due process and adequate housing.

# 2. METHODOLOGY

In this report, Amnesty International considers human rights defenders to be all those who, individually or collectively, whether or not they are linked to an organization or a movement, in both cities and rural areas, act to defend or promote human rights at the local, national, regional or international levels, through non-violent means.<sup>4</sup>



People and groups who defend and promote the rights to territory and the environment and those related to access to land.



**Territory:** Ancestral lands and their natural resources where Indigenous and Afro-descendant peoples have lived and with which they have a close relationship in terms of their way of life and cosmogony.



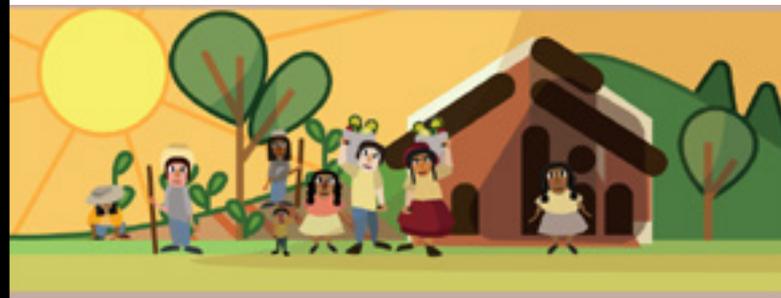
**Access to land:** The land through which people exercise their rights to food, decent housing and work, among others.



**The environment:** Natural resources and biodiversity.



Indigenous and Afro-descendant Peoples defending their ancestral territory and their survival as peoples.



*Campesinos* and *campesino* communities seeking access to the land and respect for their human rights.



People and groups demanding protection of the environment so that people can live in a healthy environment.

4. Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (A/RES/53/144) 8 March 1999, available at: [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/HRC/19/55&referer=http://www.ohchr.org/SP/Issues/SRHRDefenders/Pages/AnnualReports.aspx&Lang=E](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/19/55&referer=http://www.ohchr.org/SP/Issues/SRHRDefenders/Pages/AnnualReports.aspx&Lang=E)

This report focuses on the situation of this group of defenders in Peru and Paraguay; Amnesty International's continuous monitoring has identified similar patterns in the use of the criminal justice system in both countries. Although the organization has identified similar concerns throughout the region, the information gathered in relation to Peru and Paraguay highlights certain particular trends that differ from those described in previous reports.

In preparing this report, Amnesty International reviewed reports on the human rights situation in both countries, as well as information available in the media, audiovisual material and communications from local and international human rights organizations.

Amnesty International also conducted research missions to both countries in order to produce this report. Delegates visited Peru in October 2016 and March 2017 and undertook a mission to Paraguay in July 2017. Delegates interviewed representatives of 10 human rights organizations in Peru and members of 14 organizations or communities in Paraguay in order to identify the patterns that impede the right to defend human rights and also to understand how civil society views the policies, practices and measures of the state authorities that facilitate or hinder the exercise of this right.

In October 2016, during Amnesty International's research in Peru, meetings were held with various national and local authorities involved in the protection of human rights defenders. Delegates also visited the Cajamarca region to document the situation of environmental defender Máxima Acuña and interviews were held in Cajamarca and in Lima with the representatives of the mining company, Yanacocha, with which the defender has a legal dispute over ownership of a piece of land.

In March 2017, an Amnesty International team again conducted research in Peru. On this occasion, delegates interviewed representatives of various communities defending the rights to territory and the environment and those related to access to land in the context of the Conga mining project in the Cajamarca region and the Rio Grande I and II hydroelectric plants on the Marañón River. They also interviewed defenders of the Madre de Dios area who are claiming the right to a healthy environment in the face of the illegal exploitation of wildlife in the region. Finally, delegates met representatives taking action in the context of the Las Bambas mining extraction project in the Apurímac region and the Antapaccay expansion of the Tintaya mining operation in the Cusco region.

In July 2017, Amnesty International representatives visited Paraguay. During this visit they met national authorities whose responsibilities included the protection of human rights defenders. They also interviewed human rights defenders from the Avá Guaraní Tekoha Sauce Indigenous community in the district of Minga Porá and from the Indigenous Avá Guaraní Ysaty 3 de Julio community in the district of Itakyry, both in the department of Alto Paraná. The delegation also met representatives of *campesino* communities settled in Guahory, district of Tembiaporã, department of Caaguazú; of the Sawhoyamaya Indigenous People in El Chaco, Paraguay; and of urban settlements in the city of San Lorenzo.

The organization also had the opportunity to review the judicial files of all the cases contained in this report in which it is alleged that the justice system has been misused in order to harass and intimidate human rights defenders or, where the complete case file was not available, relevant procedural elements regarding the evidence gathered, admitted in court and acted on throughout the judicial process. Amnesty International was also able to interview some witnesses who were present during the events leading to the charges against the defenders and the representatives of the local organizations that provide support in proceedings in the specific contexts covered by this report to defend and promote human rights. In addition, other judicial rulings issued in cases not included in this report, but which confirm the patterns identified by Amnesty International, were reviewed.

Finally, this report also draws on contextual and case information on both countries obtained through interviews conducted during the Regional Meeting of Defenders of Land, Territory and the Environment held in Mexico City between 30 May and 1 June 2017.

This meeting was co-convened by Amnesty International together with other international human rights

organizations and with the support of various local organizations from a number of countries in the region. Some 85 human rights defenders involved in work related to the environment, territory and land from different countries in the Americas took part in the meeting.

# 3. A RECIPE FOR CRIMINALIZATION

**PERU AND PARAGUAY HAVE THE PERFECT RECIPE FOR CRIMINALIZING DEFENDERS OF THE LAND AND OUR ENVIRONMENT AND PREVENTING THEM FROM CARRYING OUT THEIR WORK:**



In Paraguay and Peru, Amnesty International found there was a pattern of misuse of the judicial system to criminalize the work of defenders of human rights linked to land, territory and the environment. The recipe identified by Amnesty International contains three basic ingredients: stigmatization, forced evictions of communities and judicial proceedings against this group of defenders.

## **INGREDIENT 1: STIGMATIZE DEFENDERS OF HUMAN RIGHTS RELATED TO LAND, TERRITORY AND THE ENVIRONMENT**

The stigmatization of human rights defenders working on issues linked to land, territory and the environment consists of statements, articles, publicity and rumours aimed at discrediting their work. These can come from state officials, editorials in the media or influential individuals.<sup>5</sup> In both countries, Amnesty International was told that defenders were classified as the "enemies" of development, terrorists, criminals, mobs, layabouts, and so on, because of their work. The use of language intended to vilify is highly relevant because it puts defenders and those who provide them with legal assistance or support at risk by creating an environment that encourages attacks against them. In addition, their work is undermined whenever it appears to lack the support of the general population.

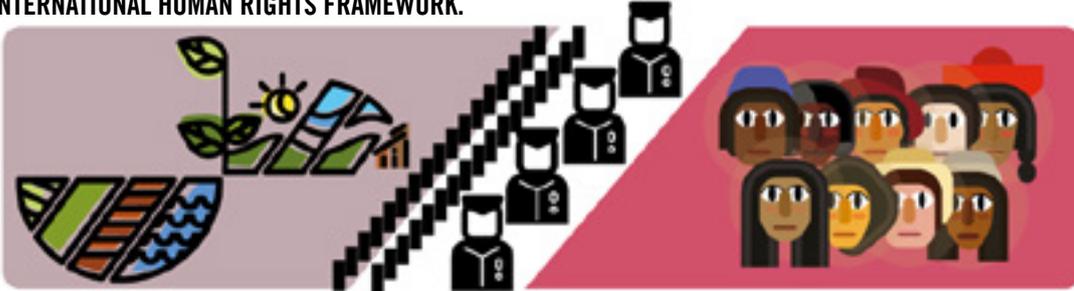
## **INGREDIENT 2: FORCIBLY EVICT COMMUNITIES FROM THEIR LANDS**

Amnesty International has identified the arbitrary application of different norms to forcibly evict Indigenous Peoples and rural or urban communities who oppose natural resource exploration and extraction projects and claim their territorial and environmental rights as well as rights linked to access to land. In both Peru and Paraguay, Amnesty International has been able to identify norms that, while they may appear neutral, stigmatize human rights defenders by promoting a number of prejudices and

5. <https://speakout4defenders.com/en>

negative stereotypes about them. In particular, the organization found problematic provisions on the protection of property in the Peruvian Civil Code, as well as the Joint Action Plan on Punishable Actions related to Trespass (Plan de Acción Conjunta para Hechos Punibles de Invasión de Inmueble Ajeno) in Paraguay, which set out extrajudicial procedures that, although not specifically related to evictions, could lead to forced evictions.

**FORCED EVICTION: PEOPLE, FAMILIES AND/OR COMMUNITIES FORCED TO LEAVE THEIR HOMES AND/OR THE LANDS THEY OCCUPY IN CIRCUMSTANCES WHERE THE AUTHORITIES FAIL TO RESPECT THE INTERNATIONAL HUMAN RIGHTS FRAMEWORK.**



**AN EVICTION IS COMPATIBLE WITH THE INTERNATIONAL HUMAN RIGHTS FRAMEWORK WHEN THE STATE FULFILS THE FOLLOWING CONDITIONS, OR HAS ENSURED THAT THEY ARE MET:**

- 1.** 

All other possible alternatives to eviction have been explored in consultation with the people affected.
- 2.** 

Those affected are notified in advance, in a culturally appropriate way and with adequate and reasonable prior notice. The authorities provide information, with reasonable notice, about the proposed eviction and the alternative purpose for which the land or housing is to be used.
- 3.** 

State officials, in particular judicial officials, are present during the eviction. All the people who carry out the eviction are properly identified.
- 4.** 

The eviction is not carried out in bad weather or at night, unless those affected consent to this in advance.
- 5.** 

The use of force is a last resort and must be necessary and not excessive.
- 6.** 

Effective legal remedies or administrative remedies are available to people who are evicted and they are provided with legal assistance in order to seek redress through the courts
- 7.** 

Those affected are offered decent alternative housing, resettlement or access to productive land and reparations.

### INGREDIENT 3: INITIATE UNFOUNDED JUDICIAL PROCEEDINGS

Amnesty International found that in Peru and Paraguay there is a pattern of harassment using baseless legal proceedings against human rights defenders working on issues related to land, territory and the environment. This involves the misuse of the justice system to initiate investigations against them, keep them subject to ongoing proceedings and try them for crimes related solely to the exercise of their human rights. Amnesty International has learned of criminal proceedings against human rights defenders related to their role as leaders, their participation in demonstrations, the legal exercise of the defence of communities, the occupation of ancestral territories, and so on. In addition to the legal proceedings against defenders of the environment and territory initiated in various parts of the country, sometimes far from their area of residence or activism, Amnesty International has also identified several additional obstacles that hamper their ability to exercise their right to defence in criminal proceedings.

The Inter-American Court of Human Rights has established, with regard to human rights defenders, that states have an obligation:

- to prevent violations of the rights of human rights defenders and that "Regarding the rights to life and personal integrity, these obligations not only imply that the State must respect them (negative obligation), but they also require the State to adopt all appropriate measures to guarantee them (positive obligation)."
- to prevent violations which encompasses "all measures of a legal, political, administrative and cultural nature that promote the protection of human rights and ensure that any potential violation of these rights is effectively considered and treated as an unlawful act which, as such, may result in the punishment of the person who commits it, as well as the obligation to compensate the victims for the harmful consequences."
- to guarantee rights, pursuant to Article 1(1) of the Inter-American Convention on Human Rights, and special obligations that may be derived from these, which are determined according to the particular needs for protection either owing to an individual's personal situation or to the specific situation in which they find themselves.
- to adopt all necessary and reasonable measures to guarantee the right to life and personal integrity of individuals who find themselves in situations of special vulnerability, particularly as a consequence of their work. Whenever the state is, or should be, aware of a situation of real and immediate danger, it must adopt measures that could reasonably be expected to be implemented to prevent that danger from materializing.

Inter-American Court of Human Rights Case of Human Rights Defender et al vs Guatemala, Preliminary objections, merits, reparations and costs, Judgment of 28 August 2014.

# 4. PARAGUAY: EVICTED AND CRIMINALIZED

According to information received by Amnesty International, criminalization in Paraguay occurs in a context of discrimination against Indigenous Peoples and in a historical context related to overlapping property titles. Amnesty International is concerned at the daily reality for Indigenous Peoples resulting from exclusion, poverty, inequality and systemic discrimination.<sup>6</sup> The Special Rapporteur on the rights of Indigenous Peoples, Victoria Tauli-Corpuz, expressed concern at repeated reports of settlers, *campesinos* and logging companies taking over occupations of indigenous lands for the extensive cultivation of soybeans or livestock. This has led to a large number of conflicts. Many of these cases are resolved in favour of third parties as a result of, among other things, the racism and discrimination against Indigenous Peoples that prevail in provincial political structures, sometimes linked to the interests of those who occupy the land.<sup>7</sup>

Human rights defenders and civil society organizations, as well as the authorities themselves,<sup>8</sup> agree that there are serious problems in determining land titles, including state ownership of land, because of overlapping titles and fraudulent practices associated with title registration, and that this has resulted in forced evictions and the misuse of the criminal law against defenders of human rights related to the environment and territory and access to land. Moreover, the National Institute for Rural and Land Development (Instituto Nacional de Desarrollo Rural y de la Tierra, INDERT), the authority in charge of managing land for agrarian reform in Paraguay, says that it does not know what land it owns and that in at least a third of cases it has not recorded its land in the registry.<sup>9</sup>

Amnesty International has identified the following ingredients in the recipe for criminalization in Paraguay: the use of language by authorities intended to stigmatize human rights defenders; the use of a joint protocol agreed between the Ministry of the Interior and the National Police; and the misuse of the justice system against defenders, exemplified in the case of a lawyer who defends communities without access to housing in urban contexts.

6. Amnesty International Annual Report 2016/2017.

7. UN. Report: The situation of indigenous peoples in Paraguay Human Rights Council, Thirtieth session, Agenda item 3, A/HRC/30/41/Add.1, 13 August 2015, available at: <http://unsr.vtaulicorpuz.org/site/index.php/en/documents/country-reports/84-report-paraguay>

8. Interview with representatives of the Paraguayan Institute for Indigenous Affairs (Instituto Paraguayo de Indígena, INDI), the National Institute for Rural and Land Development (Instituto Nacional de Desarrollo Rural y de la Tierra, INDERT) and the Ministry of Justice, July 2017.

9. Catastro: unos pocos profesionales generan los lios de superposición, (Catastro: a few professionals are responsible for the arguments over overlapping claims) available in Spanish only at: <http://www.abc.com.py/edicion-impresa/economia/catastro-unos-pocos-profesionales-generan-los-lios-de-superposicion-1556269.html>

## 4.1. INGREDIENT 1: DELEGITIMIZED

***“The Indians are layabouts, alcoholics, drug addicts and they steal. Human rights defenders defend criminals and they only do it to get press coverage and make money.”***

Deputy Ombudsman, interview with Amnesty International, 10 July 2017

Amnesty International has identified with concern the way in which the authorities at various levels of government in Paraguay have hindered the work of defending the human rights of Indigenous Peoples through restrictive and inappropriate interpretations on issues related to ancestral territory. This is demonstrated by a case documented by the organization. The Paraguayan authorities have refused to recognize an Indigenous People as such for allegedly not complying with requirements established in law and, therefore, prevented them from accessing their ancestral territory. Furthermore, the authorities have undermined the legitimacy of human rights defenders and communities, including through the use of language that stigmatizes their work.

Amnesty International has also documented the use of language that delegitimizes and stigmatizes the work of human rights defenders in urban contexts. In December 2016, the Paraguayan Minister of the Interior denounced the occupation of a building in the city of San Lorenzo and stated that: "there is information, that children above all are being used as 'human shields' to resist the intervention of the security services, repeating a 'technique' already used in similar situations in the past...preliminary intelligence information suggests that a politician from the area of San Pedro nicknamed 'Paková' may have offered to transport a group of about 150 people from this area to 'support' the resistance to an possible eviction and provoke a confrontation in order to create a crisis of sufficient magnitude to destabilize the current government."

This complaint, made by a high-ranking official, not only uses stigmatizing language against the people who were in the building, but also contravenes the principle of the presumption of innocence by calling the people "squatters" suggesting that they were committing a crime without there having been an investigation to determine whether this was the case.

Similarly, in the case of the Avá Guaraní Tekoha Sauce, who were forcibly evicted from their territory as described below, at different stages of the civil process, representatives of the company made use of extremely pejorative language against the community and those who exercise leadership roles in defence of human rights, including referring to Indigenous communities as a "handful of unscrupulous people" and a "gang of criminals".<sup>10</sup>

## 4.2. INGREDIENT 2: FORCIBLY EVICTED

Amnesty International found that in Paraguay there are two different procedures that can lead to the forced eviction of people from the land where they live. On the one hand, there are civil proceedings aimed at obtaining a judicial eviction order, which is carried out by a judicial official accompanied by the police. When the courts order the eviction of a large number of people, the National Police Protocol of Procedures for Large-Scale Evictions (Protocolo de Procedimientos para Desalojos de Gran Envergadura) of 11 September 2009 is applied.

In addition, there is the Joint Action Plan on Punishable Actions related to Trespass (Joint Action

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10. Writ of restraining order (interdicto de retener la posesión), 16 March 2016.

Plan). An agreement between the Attorney General's Office, the Ministry of the Interior and the National Police on 28 March 2012, updated on 20 March 2017, sets out the actions these three bodies will take to stop the potential trespass on property. Although this document does not mention the word "evictions", Amnesty International has identified that this procedure leads to what are in effect veiled forced evictions. This has even been recognized by some of the officials interviewed by the organization.<sup>11</sup> However, in a discussion with the organization, the Attorney General denied that the Public Prosecutor's Office carries out forced evictions using this procedure and indicated that they are restricted solely to carrying out actions to apprehend people within the framework of a criminal complaint.<sup>12</sup>

Amnesty International's analysis indicates, however, that the implementation of the Joint Action Plan in the context of these investigations leads to forced evictions that are carried out without due safeguards to respect and protect the right to decent housing. The Joint Action Plan states that the prosecutor in charge of investigating the alleged trespass must verify the ownership of the property. However, the Public Prosecutor's Office, the body in charge of the criminal investigation, was not designed to define property ownership; this is the preserve of the judicial authorities, who define it using civil and agrarian procedures. As a result, there is a risk that forced evictions may be carried out in relation to properties whose ownership is still to be established. It also increases the possibility of the criminal justice system being misused against communities that are forcibly evicted. Since it was developed, the Joint Action Plan has also had an impact on due process. Once the Prosecutor has enough evidence of the clandestine or violent occupation of a property, the procedure set out in the Plan should be implemented. Amnesty International was able to determine that the Plan is applied once there is evidence of an occupation by a group of people, even when in almost no case did the Prosecutor's Office have evidence that the occupation was violent or clandestine. As a result, not only were people detained without credible evidence that an unlawful occupation had taken place, but the Prosecutor's Office almost always sought their preventive detention for several days or even months.

According to the Joint Action Plan, at the beginning of the procedure there is a non-extendable period of 24 hours for the occupants to leave. In other words, it establishes a general rule for notification of the procedure that does not afford reasonable and proportionate time for people to make decisions and organize their departure, as required by international standards. In addition, only if the occupants agree to leave within this 24-hour period is the state required to provide alternative solutions and relocation, through the intervention of authorities such as the Paraguayan Institute for Indigenous Affairs (Instituto Paraguayo del Indígena, INDI), the National Institute for Rural and Land Development (Instituto Nacional de Desarrollo Rural y de la Tierra, INDERT), so that they can propose alternative solutions and relocation for those affected. If the occupants decide not to leave, the Plan authorizes the police to exercise their authority, including through the use of force.<sup>13</sup> If people stay on site, even if they do not use violence to defend themselves but merely resist eviction, the authorities interpret this as aggression that must be countered by force, which is contrary to the principles on the use of force by the state security forces.<sup>14</sup>

Amnesty International has documented cases where the use of the Joint Action Plan and the civil procedure have led to other violations of the human rights of communities and families claiming access to land, such as the right to personal integrity, to personal freedom, to judicial protection, to family life and to adequate housing, among others. Furthermore, Amnesty International has documented instances where the pressure of criminal proceedings has resulted in the eviction of Indigenous communities in Paraguay.

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11. Interview with representatives of the Ministry of the Interior and the Ombudsman's Office, July 2017.

12. Agencia de Información Paraguaya, "El Ministerio Público no realiza desalojos en casos de invasiones afirma fiscal Verón" ("The Attorney General's Office does not carry out evictions in cases of trespass, says Verón"), available at: <https://www.ip.gov.py/ip/el-ministerio-publico-no-realiza-desalojos-en-casos-de-invasiones-afirmafiscal-veron/> (in Spanish only).

13. Joint Action Plan on Punishable Actions related to Trespass, Article 2(e).

14. Basic Principles on the Use of Force and firearms by Law Enforcement Officials, Article 4.

# JOINT ACTION PLAN FOR CASES OF TRESPASS IN PARAGUAY

## WHAT THE PLAN ENTAILS

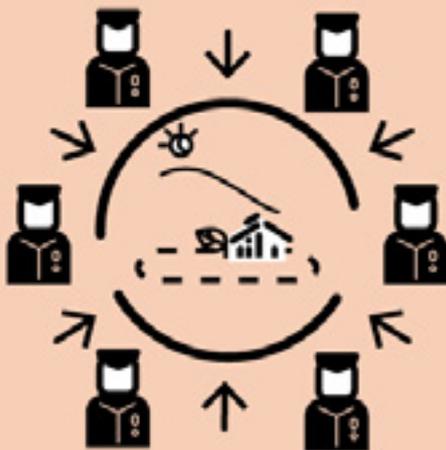


Criminal prosecutors investigate crimes of trespass, verify if the property was occupied using violent or clandestine means and check who owns the land. Criminal proceedings are initiated against members of the communities who are forcibly evicted.

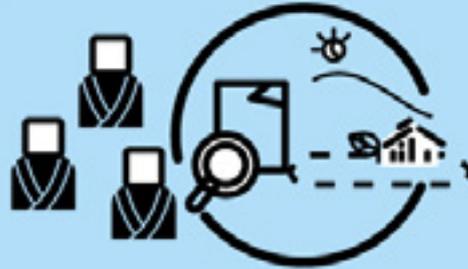


The authorities give occupants 24 hours to leave the property; no extension is permitted. Alternative solutions and relocation will be offered by the state only if people accept the deadline.

**IF THE OCCUPANTS DECIDE NOT TO LEAVE, THE POLICE CAN USE FORCE.**



## IRREGULARITIES OBSERVED

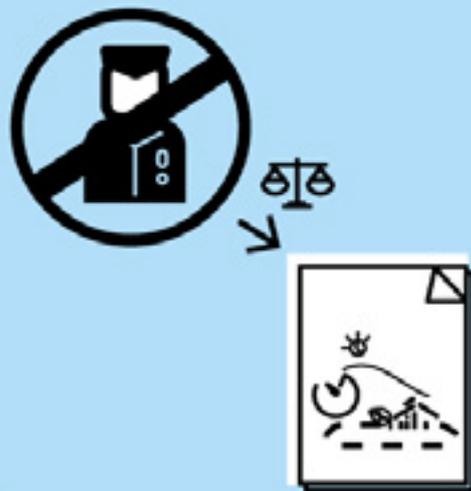


Ownership should be determined only by judicial authorities using civil and agrarian, not criminal, procedures. The criminal justice system should not be misused against members of forcibly evicted communities.



The deadline should be reasonable and proportional. The authorities should explore, in consultation with the communities, alternative solutions and options for relocation.

**STATE SECURITY FORCES SHOULD NOT USE UNNECESSARY OR EXCESSIVE FORCE.**



# GUAHORY

## FORCED EVICTIONS OF *CAMPESINOS*

### BACKGROUND

The community is made up of around 200 *campesino* families.

The community is asserting its right to food and decent housing in the context of access to land and agrarian reform in Paraguay.

The lands, which according to INDERT belong to the *campesino* families, passed into the hands of private individuals after their sale by the beneficiaries of the agrarian reform. The representatives of the communities informed Amnesty International that these transfers were fraudulent and that in many cases the fees for the land were not paid.

According to the Paraguay Human Rights Coordinating Group (Coordinadora de Derechos Humanos del Paraguay, CODEHUPY) and *campesinos*, other evictions occurred in February and October 2015 and in December 2016.

***"We are a group of around 200 families living here.***

***Our struggle is for the sovereignty of the land. We have suffered forced evictions, repression by the police and criminal proceedings".***

Andrés Brizuela, *campesino* leader, 04/07/2017

### FIRST EVICTION: 15 SEPTEMBER 2016

The forcible eviction of the community started at 8am and lasted for seven hours; it was carried out by a prosecutor accompanied by about 1,200 policemen using tractors.

According to *campesino* families, their houses and crops were destroyed. There was no discussion and no eviction order was handed over.

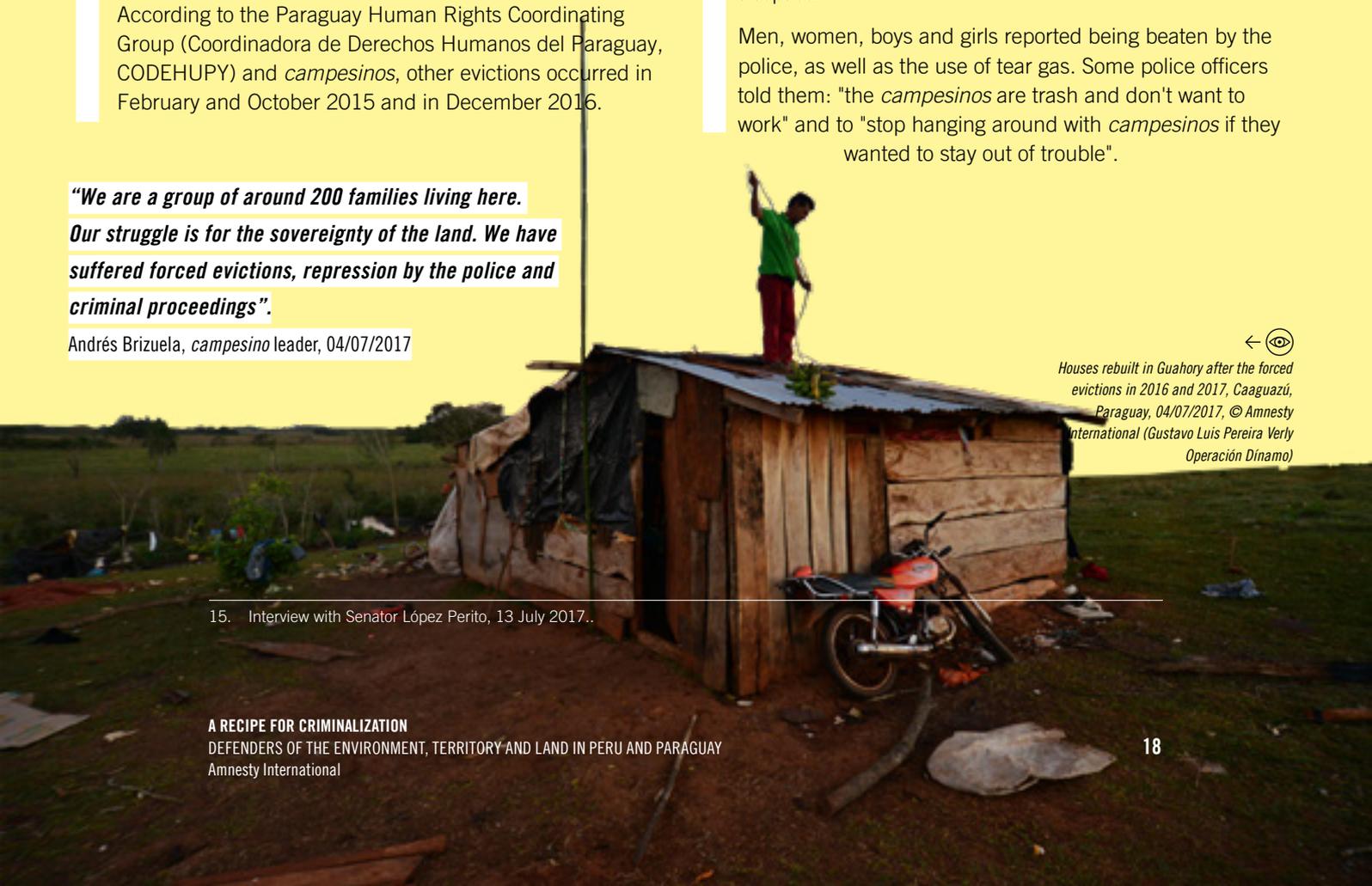
Officials and community representatives reported that private individuals took part.<sup>15</sup>

### SECOND EVICTION: 3 JANUARY 2017

The houses and crops were again destroyed.

Twelve people were arrested, including three adolescents, who were released at midnight and accused of the trespass.

Men, women, boys and girls reported being beaten by the police, as well as the use of tear gas. Some police officers told them: "the *campesinos* are trash and don't want to work" and to "stop hanging around with *campesinos* if they wanted to stay out of trouble".



←   
Houses rebuilt in Guahory after the forced evictions in 2016 and 2017, Caaguazú, Paraguay, 04/07/2017, © Amnesty International (Gustavo Luis Pereira Verly Operación Dinamo)

15. Interview with Senator López Perito, 13 July 2017..

The Paraguayan cases represent a violation under international standards of the right to adequate housing as the forced evictions were carried out without consultation with the people affected or reasonable prior notice. There is no effective remedy available to the people affected, nor have they been given effective legal assistance to seek redress before the courts.

# CITY OF SAN LORENZO

## EVICCTIONS FROM URBAN SETTLEMENTS

The urban settlements of Capilla del Monte, Paraíso, Triunfo and Boca de King Kong in the city of San Lorenzo are home to thousands of families seeking access to land to exercise their rights to decent housing and food.

## EVICCTIONS 13 JANUARY AND 1 JUNE 2016

### CAPILLA DEL MONTE:

The eviction was carried out following a complaint by the Ministry of the Interior in December 2015, which indicated that there were a number of people who entered a property clandestinely and violently, despite the fact that the same Minister indicated that the occupation had occurred two months earlier, which made it a public event.

A defender informed Amnesty International that the 13 January 2016 eviction in Capilla del Monte began at dawn, without prior notification, as required by the Plan.

People in the community were given only between 30 and 45 minutes to evacuate their homes and collect their belongings.

Lawyer Raúl Marín was arbitrarily detained by police on 13 January 2016 when he went to

provide legal assistance to the people who were being evicted. The arrest record prepared by the police claims that he was detained for obstruction of justice, but the records do not describe what conduct was considered an obstacle.<sup>16</sup>

### EL PARAÍSO:

At around 7.30am, an eviction from El Paraíso was carried out in the same way as that in Capilla del Monte. Natalia Roda, who was evicted from Capilla del Monte, said that it was approximately 4.30am when police officers banged on her door and gave her 45 minutes to get out with her partner and her one-year-old baby.

Both witnesses stated that the houses were dismantled and that police insulted and threatened them.

### BOCA DE KING KONG AND TRIUNFO:

A woman evicted from Boca de King Kong indicated that they were not notified of the process, there were no opportunities to discuss what was happening and they were given 20 minutes to vacate their homes.



Amnesty International delegates visiting urban settlements in San Lorenzo, Paraguay, 08/07/2017 © Amnesty International

***"We want to have a home of our own, decent housing"***

Defender from San Lorenzo, 08/07/2017

16. Note 40/16 and National Police Procedure Act of 13 January 2016.



# THE TEKOKHA SAUCE COMMUNITY

## THE INDIGENOUS AVÁ GUARANÍ PEOPLE

In the 1970s, at least 36 communities of the Avá Guaraní Indigenous People were displaced from their ancestral territory by the construction of the Itaipú hydroelectric plant in Paraguay and Brazil.

The Tekoha Sauce community of the Avá Guaraní People has claimed the right to have access to ancestral territory that was not flooded by the hydroelectric dam. To date, members of the community have faced various legal proceedings in the context of the dispute with German Hutz, a local businessman, over land ownership.

During the years that the Tekoha community was not living on their territory it was used by the Indigenous Arroyo Guazu community.

Amnesty International is aware of at least two legal proceedings against the community in the context of the land ownership dispute. One is a criminal case for trespass and coercion of unnamed people by groups allegedly encouraged, directed and led by Marcial Portillo and Cristóbal Martínez. The other is a civil case that resulted in the judicial eviction order of 30 September 2016.

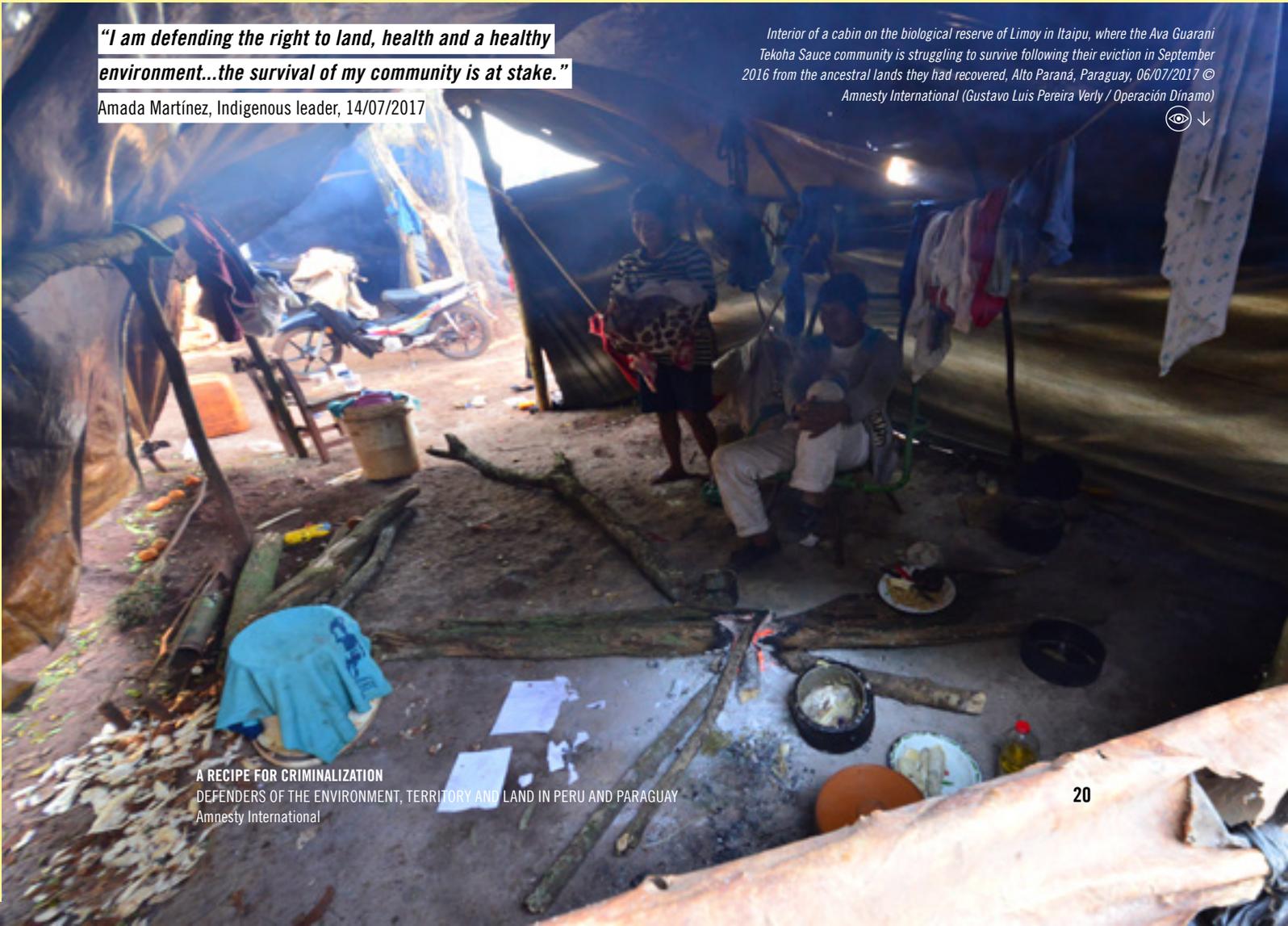
The community filed an action to set aside the decision favourable to the businessman, which subsequently gave rise to the eviction order.

Currently the Indigenous community is living on the Itaipú reserve, where their survival is in danger because there are restrictions on hunting and fishing on the reserve.

**"I am defending the right to land, health and a healthy environment...the survival of my community is at stake."**

Amada Martínez, Indigenous leader, 14/07/2017

*Interior of a cabin on the biological reserve of Limoy in Itaipu, where the Avá Guaraní Tekoha Sauce community is struggling to survive following their eviction in September 2016 from the ancestral lands they had recovered, Alto Paraná, Paraguay, 06/07/2017 © Amnesty International (Gustavo Luis Pereira Verly / Operación Dínamo)*



# COMMUNITIES IN ITAKIRY

## THE AVÁ GUARANÍ INDIGENOUS PEOPLE

The Indigenous community of Ysaty 3 de Julio is one of the communities of the Indigenous Avá Guaraní People living in the district of Itakiry in the department of Alto Paraná. In this area there are overlapping land titles on INDI lands and those of individual owners and of the company Industria Paraguaya de Alcoholes SA (INPASA).<sup>17</sup>

On 19 September 2016, seven leaders of that community signed a notarial agreement with three individuals who claim to be the owners of the land occupied by the communities. The witnesses to the agreement were the President of INDI and the Municipal Mayor of the district of Itakiry.

Under the agreement, the complainants undertook to request the suspension and termination of all criminal proceedings they currently have against the members of the aforementioned communities, while the members of the communities pledged to definitively and peacefully withdraw from the agricultural property described, following the signing of this agreement, and undertake and oblige all community members to abide by this agreement which they voluntarily entered into.

On 7 May, when one of the community leaders left the area along with several families in compliance with the agreement, the families that decided to stay in the Ysaty 3 de Julio community were attacked by about a dozen armed civilians accompanied by a lawyer. The men burned houses, dismantled the community school and fired at people in the

community. Many members of the community were

forced to flee.

On 11 May, the Ombudsman filed a complaint with the Prosecutor's Office.<sup>18</sup> For its part, the Prosecutor's Office charged four people with the crimes of serious coercion and creating a public danger. According to civil society organizations, one of the accused appeared as a lawyer for INPASA prior to the attack, but the Prosecutor's Office determined that it had not been possible to prove such a link. Another of the accused has been identified as an INPASA employee.<sup>19</sup>

Both parties undertook to submit to the necessary jurisdictional and/or administrative procedures for the purpose of resolving differences or conflicts over boundaries between the properties of the aforementioned owners and the lands of the Indigenous parties that also hold title to property, pending a total settlement, when the competent body shall define to which party or parties each property or part of the property in question belongs... The proceedings entitled NATIVE ROCHA DA LAPA S / DESLINDE S / FINCA: 658 (which is the neighbouring property to the INDI farm - FINCA 865 - PADRÓN: 1050/1051, Fracción 8 y 9 de Itakiry) would continue in the Itakiry Civil Court, as well as all other civil proceedings currently in process.

**"20 families signed an agreement and left the land hoping that the criminal cases against them would be dropped. They lost their lands and the cases are continuing."**

Simón Benítez, Indigenous leader, 05/07/2017



A member of the Ysaty-3 de julio Indigenous community points to the remains of a house allegedly burned during the attack on the community by armed civilians in May 2017, Itakiry, Alto Paraná, Paraguay, 05/07/2017 © Amnesty International (Gustavo Luis Pereira Verly / Operación Dínamo)

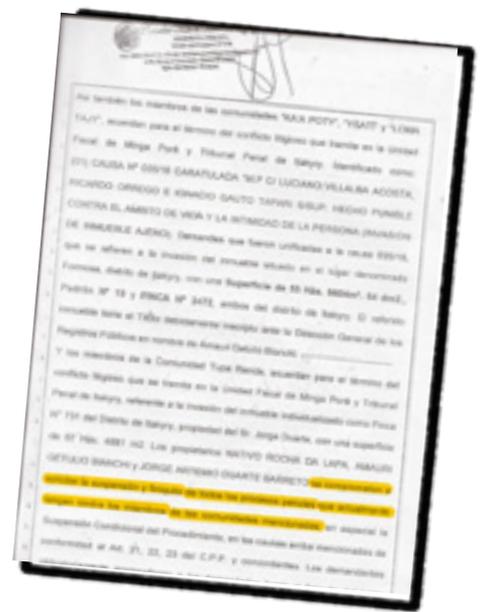
17. The Vice President of the Industria Paraguaya de Alcoholes SA (Inpasa), Enzo Olmedo, "mencionó que entre los años 2011 y 2012 se adquirieron unas 800 hectáreas en la zona de la colonia Itakiry. Desde entonces existe una superposición de títulos con el Instituto Paraguayo del Indígena (INDI)". ("between 2011 and 2012, some 800 hectares were acquired in the area of the Itakiry colony. Since then, there has been an overlap of titles with the Instituto Paraguayo del Indígena (INDI)", Última Hora. "Vicepresidente de Inpasa explica conflicto con indígenas en Itakiry" ("Vice President of Inpasa explains conflict with Indigenous people in Itakiry"), available at: <http://www.ultimohora.com/vicepresidente-inpasa-explica-conflicto-indigenas-itakiry-n1084718.html> (in Spanish only). Interview with the President of the INDI, 10 July 2017.

18. Attorney General of Paraguay, "Itakiry: Defensor del Pueblo formula denuncia contra persona innominada por coacción y otros ilícitos" ("Itakiry: Ombudsman makes a complaint against an unnamed person through coercion and other illicit acts") <http://www.ministeriopublico.gov.py/itakiry-defensor-del-pueblo-formuladenuncia-contra-persona-innominada-por-coaccion-y-otros-ilicitos-n4166> (in Spanish only).

19. Interview with Minga Porá Prosecutor, July 2017, La Nación. El atropello a los indígenas de Itakiry ("The trampling of Indigenous People in Itakiry"), 16 May 2017: [http://www.lanacion.com.py/destacado\\_edicion\\_impresa/2017/05/16/el-atropello-a-los-indigenas-de-itakiry/](http://www.lanacion.com.py/destacado_edicion_impresa/2017/05/16/el-atropello-a-los-indigenas-de-itakiry/) (available in Spanish only); ABC Color. Indígenas fueron echados de una reserva en Itakiry ("Indigenous People evicted from reservation in Itakiry"), 10 May 2017; (available in Spanish only).

Amnesty International found that often the conflicts arising from the lack of land ownership titles are brought before criminal courts and that certain civil proceedings, which are less onerous for those accused are not considered, particularly when companies have recourse to them against Indigenous Peoples claiming their right to territory. Frequently, criminal proceedings are used to harass or intimidate human rights defenders or as a tactic to divert their claims from the defence of human rights and to impact negatively on their scarce resources. Amnesty International has urged companies to oppose and refrain from instigating or pursuing criminal proceedings that may affect the work of human rights defenders and to seek instead less onerous forms of dispute resolution as part of their due diligence responsibilities in human rights matters, always seeking to understand the point of view of those who oppose their projects and investments. Amnesty International notes with concern that officials from the Prosecutor's Office have stated that in conflicts involving overlapping property titles, criminal proceedings are a legitimate way to put pressure on people to renounce claiming their rights.<sup>20</sup>

In the case of the Ysaty 3 de Julio community in Itakry, the INDI authorities and the Itakry Municipal Administration endorsed an agreement in which criminal proceedings initiated against community leaders were closed on condition that the property whose status had yet to be determined through administrative processes was vacated. This would have resulted in consent to an eviction under pressure in order to end criminal cases related to trespass, which could result in prison sentences of up to two years or fines.<sup>21</sup> The President of the INDI told Amnesty International that he was not in present at the signing of this agreement and that the INDI does not recognize the existence of the agreement. However, as of February 2018, ownership of the territory had not been resolved and members of the community remained at risk because they could not return to their lands



Extract from the agreement signed before a notary on 19 September 2016 by various representatives of the Isaty-3 de julio community and individuals in which the community's departure from the territory where they live is negotiated in exchange for an end to the criminal proceedings against them for trespass.

### 4.3. INGREDIENT 3: PROSECUTED

Criminal proceedings against them often take Indigenous leaders and *campesinos* in Paraguay by surprise, to the extent that they only find out when they are apprehended to appear in proceedings or that they only find out the precise charges against them months after they have been detained. The number of criminal proceedings against members of Indigenous and *campesino* communities, and the multiple proceedings faced by each of them, means that they frequently do not have legal advice during the process. Amnesty International observed that the leaders of evicted communities face several criminal proceedings for charges of land invasion or trespass, although it was physically impossible to access all the judicial files.

In case of the Avá Guaraní Tekoha Sauce community, which is claiming its right to ancestral territory after the construction of the Itaipú hydroelectric dam and whose leaders are subject to criminal proceedings for trespass, both the INDI<sup>22</sup> and the Indigenous Rights Unit of the Prosecutor's Office<sup>23</sup>

20. Interview with Minga Porá Prosecutor, 5 July 2017.  
 21. Paraguayan Criminal Code, Article 142.  
 22. Interview with president of Paraguayan Institute for Indigenous Affairs (Instituto Paraguayo del Indígena, INDI), 10 July 2017.  
 23. Interview with Minga Porá Prosecutor, 12 July 2017. Entrevista al Presidente del INDI. 10 de julio de 2017.

acknowledged that the issue should not be resolved using criminal law; the case revolved around a claim over ancestral territory by an Indigenous community and so should be brought before the civil courts. Indeed, the Indigenous Rights Unit of the Prosecutor's Office explicitly recommended waiting for the resolution of the land adjudication process before moving forward with the criminal case against the Indigenous leaders. However, the criminal process is continuing.

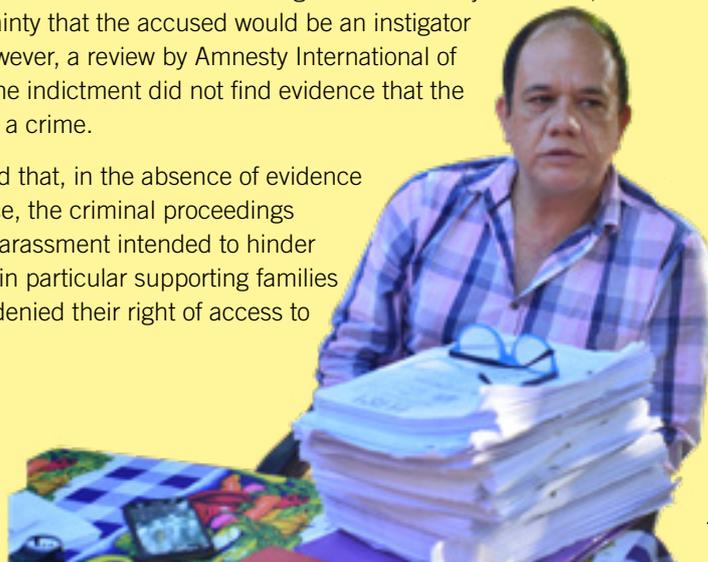
## RAÚL MARÍN: PROSECUTED FOR DEFENDING LANDLESS FAMILIES

Raúl Marín, a lawyer, Paraguay's former Deputy Ombudsman and a human rights defender, has provided legal advice to communities and families claiming their right to decent housing, as part of the struggle for access to land. Raúl Marín has been the target of a campaign of vilification by the authorities and certain sectors of society because of his work defending the rights of the Marquetalia settlement community.

Raúl Marín is facing two criminal cases, both for trespass. In the first, (Case No. 11214 of 2015) he is alleged along with others to have been apprehended in flagrante while in the vicinity of the occupied property collecting money, been detained by members of Central Police Station 54 and placed at the disposal of the Public Prosecutor. The arrest warrant of 13 January 2016 indicates that the lawyer was arrested for obstruction of justice during a forced eviction of the urban community of San Lorenzo, without explaining what actions allegedly constituted obstruction. As a result of these charges, Raúl Marín was held in pre-trial detention for a month and then placed under house arrest; he remained under house arrest at the time of writing. Raúl Marín has complained about several obstacles that are hampering his ability to adequately exercise his right to defence, including being denied access to his judicial file for several months.

The second criminal process initiated against Raúl Marín (Case No. 11789 of 2015) for trespass was based on a complaint from the Minister of the Interior in December 2015. The indictment issued by the Prosecutor's Office states that according to the preliminary investigations undertaken, as well as data in the fact-finding report prepared by the National Police and the statements of the head and deputy head of the police station and intervening officers of that jurisdiction, there is a reasonable and objective certainty that the accused would be an instigator of the criminal act of trespass. However, a review by Amnesty International of the procedural elements cited in the indictment did not find evidence that the lawyer instigated or participated in a crime.

Amnesty International is concerned that, in the absence of evidence presented by the Prosecutor's Office, the criminal proceedings against Raúl Marín are a form of harassment intended to hinder his work defending human rights, in particular supporting families and communities that have been denied their right of access to land.



Raúl Marín, lawyer for the urban settlements of San Lorenzo, Asunción, Paraguay, 08/07/2017 © Amnesty International (Gustavo Luis Pereira Verly / Operación Dynamo)



# 5. PERU: PROSECUTING PROTESTERS

According to the UN Working Group on Business and Human Rights "social conflicts and protests were generally caused by legitimate grievances related to inadequate prior consultation, corruption of local officials and a lack of implementation of promised measures to mitigate adverse human rights impacts. At the same time, protests have repeatedly been responded to by heavy-handed policing and criminalization" in Peru.<sup>24</sup>

Amnesty International noted the high level of distrust among defenders in Peru regarding the security forces. In particular, civil society organizations have highlighted agreements for the provision of services between mining companies and the national police through which the police force provides security services to private entities as source of this mistrust. One of the main sources of concern in civil society is the perception of a lack of impartiality since the authorities provide services to companies, in particular in the context of public demonstrations and social protests. Providing these services has resulted in a number of human rights violations, including violations of the rights to freedom of expression and peaceful assembly.

The testimonies collected by Amnesty International from human rights defenders who have participated in demonstrations to defend and promote the rights to territory and the environment in Cajamarca in the context of the Conga mining project in Apurímac and Cusco – the Las Bambas SA mine and the Antapaccay expansion of the Tintaya mine – point out that the implementation of this type of agreement has a negative impact on the perception of impartiality that police authorities must show in order to guarantee the exercise of human rights. They identify a tendency by the police to protect company facilities rather than to guarantee that peaceful protest can take place. Indeed, on many occasions police have used unnecessary and excessive force to suppress diverse social protests.

According to the Ministry of the Interior, the National Police force has signed 31 agreements for the security of strategic facilities, among them are zones where extractive projects, energy plants and infrastructure are being developed. The Ministry of the Interior announced that it was going to publish all the agreements and that the state intends to adhere to the Voluntary Principles of Security and Human Rights, but to date it has not done so. Within the framework of a thematic hearing before the Inter- American Commission on Human Rights in May 2017 on extractive industries in Peru, held during the 162nd session, Peruvian representatives affirmed that there were at least 10 agreements in force, but did not specify what they were.

On 21 February 2017, through Supreme Decree 003/2017-IN, the Ministry of the Interior approved the guidelines for carrying out police services in compliance with their functions, which include the possibility that the National Police provide extraordinary police services such as signing agreements between companies and the police. In particular, the decree establishes that the provision of extraordinary police services does not prevent or hinder police officers from complying with their

24. Statement at the end of visit to Peru by the United Nations Working Group on Business and Human Rights, available at: <http://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=21888&LangID=E>

institutional tasks, in accordance with their mandate, functions and duties, as stipulated in the Constitution and laws, in order to guarantee, maintain and restore internal order, public order or public security.

Some police officials interviewed by Amnesty International indicated that during marches and demonstrations the police give guarantees to both parties and, in the case of damage to property, initiate the relevant process to present cases to the Prosecutor's Office. However, these same officials expressed perceptions about the demonstrations that put in question their impartiality, and reflect, on the contrary, prejudices against those who exercise their right to peaceful protest.

The police have an obligation to facilitate the exercise of the right to demonstrate peacefully and play a fundamental role when these protests take place in the context of conflicts over territory. However, the presence, as a result of cooperation agreements of the National Police at marches aimed at expressing dissatisfaction with mining activities has brought into question their impartiality and generates distrust among the demonstrators, who perceive the situation to be one where the police have taken the side of the company.



### **POLICE STATIONS IN MINING CAMPS**

According to information provided by local human rights NGOs, Óscar Mollohuanca Cruz, the Ombudsman and then Mayor of Espinar, was detained on 30 May 2012 at the town hall by at least 30 police officers. The officers, who did not produce an arrest warrant, held him for several hours at a police station in the mining camp of Tintaya Marquiri. He was subsequently transferred by helicopter to the provincial capital, Cusco.

From there he was taken, at dusk the following day, to the region of Ica, in the north of the country. It was in Ica that a criminal complaint was brought against him for the crimes of assaulting a law enforcement official, obstruction of public services and causing a disturbance, even though the events that gave rise to this process took place in Espinar.

On the other hand, civil society organizations have expressed concern at the fact that the authorities repeatedly declare states of emergency when protests are launched against projects for the exploration and extraction of natural resources; this could represent an attempt by the authorities to stigmatize these communities and provide the authorities with more means to suppress and restrict the peaceful exercise of the rights to freedom of expression and peaceful protest. In Peru, in the last four years, at least 78 people have lost their lives in situations in which security forces have indiscriminately used force to suppress protests, including through the use of firearms. In most cases, there is no information of any progress made in the investigation of these deaths, nor of the suspension of any police officials during the investigation.<sup>25</sup>

Despite the fact that international human rights law allows for restrictions on the exercise of certain rights under states of emergency, states have the obligation to ensure that such measures do not become the new normal. In fact, both the International Covenant on Civil and Political Rights and the American Convention on Human Rights, both of which have been ratified by Peru, provide specific safeguards that states must adhere to when a state of emergency is imposed. The Human Rights Committee has stated that the measures of derogation from the provisions of the International Covenant on Civil and political rights under a state of emergency must be exceptional and temporary in nature.<sup>26</sup> Also, such measures are limited to the extent strictly required by the exigencies of the situation. This requirement relates to the duration, geographical coverage and material scope of the

25. Peru: Nothing to celebrate. Amnesty International submission for the UN Universal Periodic Review, 28 th session of the UPR Working Group. November 2017. Available at: Disponible en: <https://www.amnesty.org/en/documents/amr46/6624/2017/en/>

26. General Comment No. 29, paras 1-2.

state of emergency and any measures of derogation resorted to because of the emergency. States have an obligation to narrow down all derogations to those strictly required by the exigencies of the situation, which imposes a duty to conduct a careful analysis under each article of the Covenant based on an objective assessment of the actual situation.<sup>27</sup>

As will be seen below, Amnesty International has identified a recipe for criminalizing defenders of human rights related to the environment, territory and access to land, through the use of language intended to stigmatize them; of legislation that can lead to forced evictions; and of judicial proceedings targeting defenders for their work.

## 5.1. INGREDIENT 1: STIGMATIZED

***“They say we are an obstacle to progress.”***

Community leader from the Marañon River - Peru

Amnesty International's research has found a number of cases where stigmatizing language has been used against defenders in Peru. For example, representatives of the Yanacocha mining company have accused defender Máxima Acuña of being a squatter,<sup>28</sup> although the issue of property ownership is still awaiting a judicial decision. This has not only damaged Máxima Acuña's image and reputation, but also undermined the legitimacy of her struggle at the national and community levels. Representatives of Yanacocha have also questioned the legitimacy and credibility of Grufides, the NGO that has provided legal support to Máxima Acuña and her family. On 20 September 2016, a representative of the company stated in a television interview: "The family systematically trespasses on other Yanacocha land and we see that the Grufides NGO council is behind that, continuously seeking to trespass on Yanacocha property". In the same interview, the television host also said: "Of course, Grufides has claimed that they have been attacked, and so on. This is a strategy, don't you think?" The representative of Yanacocha responded: "Obviously, it's a strategy of lies and fabrication about the situation". This language was used despite the fact that neither the criminal nor civil complaints had finally been concluded at that time. In this context, the use of such language is tantamount to calling Máxima Acuña, her family and lawyers "criminals". Prolonged legal battles and the public use of denigrating language against Máxima Acuña and her family have increasingly alienated the parties. Yanacocha representatives told Amnesty International that they had tried to approach the family to resolve the dispute in the past. However, Máxima Acuña did not consider these genuine attempts at dialogue, since, according to her, the company repeatedly sent the very people who had harassed them and used offensive language to undermine the legitimacy of their claims. Máxima Acuña has said publicly that she is not engaged in a process of negotiations with Yanacocha.

In a case initiated against 16 community leaders in Cajamarca, in relation to a demonstration that took place on 26 April 2013 in the District of Sorochuco, the Prosecutor's Office, speaking about the demonstrators, stated that they "use force and violence against the Conga mining project and against all those who do not share their methods of protest, before finally dispersing."<sup>29</sup> During trial hearings in this case, the Prosecutor's Office asked one of the accused about how long the "mob" ("turba") had lasted. At the request of the judge, he had to amend his question, to ask how long the meeting lasted, because of the stigmatizing nature of that term.<sup>30</sup> Among the evidence presented by the Prosecutor's Office was a gathering where some of the accused allegedly called for relief groups to be organized to support a group that was taking part in an occupation in Laguna El Perol. The point of presenting

27. General Comment No. 29, para. 6.

28. Media and press releases of 29 April, 22 May, 22 July and 12 August 2015, and 2 February and 12 March 2016.

29. "Second Prosecutor's Office - Second Corporate Criminal Prosecutor's Office of Celendín, Case 1706014502-2013-284-0. File No.: 201-2013-0-0601-JR-PE- 03.Request for Prosecution Case No. 01-2014.

30. Case 1706014502-2013-284-0. File No.: 201-2013-0-0601-JR-PE-03. Hearing of 6 January 2016.

this evidence was, according to the Prosecutor's Office, to demonstrate the defendants' methods, which shows a presumption that simply by participating in a demonstration, and even the very act of organizing a demonstration, may be viewed as a crime.

## 5.2. INGREDIENT 2: PROTECTION OF PROPERTY ACTIONS LEADING TO FORCED EVICTION

The Peruvian Civil Code provides for the extrajudicial protection of property (Article 920).<sup>31</sup> Under this provision, anyone who considers that they have a right to real estate property (house or land) can, without the intervention of any state authority or court order, counteract the force used to take possession of the property from them or use their own means to recover possession of the property. In practice, according to Peruvian lawyers consulted by Amnesty International, anyone who has a property title can exercise extrajudicial protection of property, even if they did not have possession of the property, and therefore, it had not previously been taken from them.

According to the legal professionals consulted, the authorities have justified the use of this provision in a large number of cases of alleged trespass. In 2014, Congress approved a reform to this article of the Civil Code (modified by Article 67° of Law No. 30230) which establishes tax measures, simplified procedures and permits for the promotion and invigoration of investment in the country. Amnesty International has previously expressed its concern about this law, which it believes facilitates the expropriation of Indigenous Peoples' land and weakens the requirement to carry out a free, prior and informed consultation with the affected Indigenous Peoples as part of the realization of environmental impact studies on projects for the exploration and extraction of natural resources that affect them.<sup>32</sup> In addition, according to the lawyers consulted, the existence of a judgment regarding the ownership or possession of the property does not prevent the exercise of protection of property.

Although the Civil Code places some limits to the exercise of protection of property, these are so vague that they facilitate its arbitrary and disproportionate application against those who defend human rights. In the first place, protection of property can be applied within 15 days from the time the person exercising it says that they know someone has taken possession of the property. Thus, the definition of whether one is within the permitted timeframe is left to the discretion of person applying the provision. Secondly, whoever exercises it must refrain from methods of implementation not justified by the circumstances. The article, therefore, does not set out an absolute prohibition on the use of violent methods and so legitimizes the use of such methods by any individual, without any oversight by the authorities. Similarly, the article does not define what is meant by methods not justified by the circumstances and, therefore, leaves it to those applying it to decide what is justified and what is not. Finally, the law does not provide for mandatory participation or observation by any authority during the exercise of protection of property and limits itself to establishing that the intervention of the police and local authorities should aim to ensure compliance with the law. Likewise, protection of property has been used mainly against those who do not have formal property titles or at least cannot prove ownership, since the law itself establishes that in no case can the protection of property be applied against the owner of the property.<sup>33</sup>

31. Article 920° - The possessor can repel the force used against him or the property and recover the property, if dispossessed. The action must be carried out within fifteen (15) days after he becomes aware of the dispossession. In all cases, he must refrain using methods that are not justified by the circumstances. The owner of a property on which no building has been erected, or is in the process of being erected, can also invoke the defence indicated in the previous paragraph if the property was occupied by a casual occupier. In no case shall the protection of property defence proceed if the casual owner has made use of the property as owner for at least ten (10) years. The National Police of Peru as well as the respective municipalities, within the framework of their powers as provided for in the Organic Law on Municipalities, must provide the necessary support in order to guarantee strict compliance of this article, in areas under their responsibility. In no case shall the protection of property be used against the owner of a property, unless the provisions set out in Article 950 of this Code have been applied.

32. Peru: Nothing to celebrate – Amnesty International submission for the UN Universal Periodic Review, 28th session of the UPR Working Group, November 2017, available at: <https://www.amnesty.org/en/documents/amr46/6624/2017/en/>

33. Peruvian Civil Code, Article 920: The owner of a property on which no building has been erected, or is in the process of being erected, can also invoke the defence indicated in the previous paragraph if the property was occupied by a casual occupier. In no case shall the protection of property defence proceed if the casual owner has made use of the property as owner for at least ten (10) years.

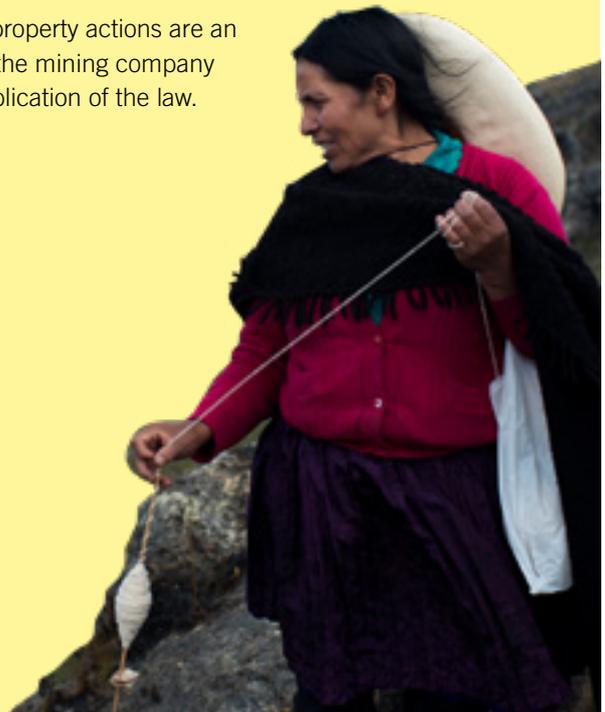
## PROTECTION OF PROPERTY ACTION AGAINST MÁXIMA ACUÑA ATALAYA

Máxima Acuña is a defender of the right to the environment and has promoted this right in the context of the Conga mining project to be developed by the Yanacocha mining company in the Cajamarca region in northern Peru. On 5 May 2014, the Inter-American Commission on Human Rights (IACHR) granted precautionary measures to Máxima Acuña and 46 others from the communities and *campesino* patrols (*rondas*) defending rights to the territory and the environment following threats, harassment and attacks because of their human rights work. In 2016 Máxima Acuña received the Goldman Prize, one of the most prestigious prizes on environmental issues.

Máxima Acuña and her family live on a plot of land in dispute with the Yanacocha mining company. A decision regarding the rights to this land has yet to be made by the civil courts. Yanacocha has exercised extrajudicial protection of property actions on a number of occasions. Since 2015, at least 10 such actions have been carried out within the disputed land, without the presence of police or other state officials.

Representatives of the mining company told Amnesty International that they require the security company in charge of carrying out extrajudicial protection of property to implement the Voluntary Principles on Security and Human Rights and inform the Prosecutor's Office of their actions. They also stated that the security company does not use lethal weapons.

Máxima Acuña's family considers that protection of property actions are an attack on their property and livelihoods. In contrast, the mining company considers that what they are doing is a legitimate application of the law.



Máxima Acuña, Tragadero Grande, Cajamarca, Peru, 28/10/2016 ©Amnesty International  
(Raul Garcia)

## 5.3. INGREDIENT 3: JUDICIAL PROSECUTIONS

An example of the opening of an irregular judicial case is that of a *campesino* patrol leader from Cajamarca who informed Amnesty International that he does not know what happened to a complaint against him for unlawful appropriation. Since 2014, when he was required to attend some hearings, he has not received any notifications from the authorities and he does not know if the proceedings against him are continuing or not. Environmental defender Milton Sánchez told Amnesty International that he estimates that he has about 60 legal proceedings against him. He has been granted precautionary measures by the IACHR to protect his life and personal integrity because of the risks he faces.<sup>34</sup> In the framework of the implementation of these precautionary measures, Milton Sánchez and other beneficiaries have requested that the authorities give them a list of criminal proceedings opened against each one of them, with the aim of exercising their right to information, as well as trying to exercise in the best way possible their right to defence. Human rights defender Milton Sánchez told Amnesty International that approximately 300 people were facing legal proceedings just in relation to opposition to the Conga mining project because of its possible environmental consequences, especially on the lagoons and water sources in Cajamarca. He also indicated that at least 120 people were facing prosecution in relation to activities to defend and promote human rights in the context of the hydroelectric projects planned on the Marañón River.

The Provincial President of the Celendín Patrol, Eduard Rodas Rojas, told Amnesty International that in many cases community leaders have chosen to admit criminal liability in the cases brought against them, even though they have not committed any crime, because they cannot afford to pay for private defence lawyers and the support is not forthcoming from the public defender's office and because by admitting liability they will face lesser penalties than if convicted following a trial.

The local organization of Derechos Humanos sin Fronteras informed Amnesty International that there are about 52 people charged in connection with several demonstrations and strikes connected to the Antaccapay extension of the Tintaya mining project in the Cusco region. The local population were demanding that the Framework Agreement they signed with the company be adhered to, including the environmental and social agreements.

### **CAMPESINO PATROLS**



The *campesino* or community patrols (*rondas*) are a type of autonomous community organization in the *campesino* and Indigenous communities in Peru. They are created by decisions taken by the communities gathered in a general assembly and their role includes contributing to the preservation of the environment, conflict resolution (extrajudicial conciliation) among members of the community, maintaining security in the territory and participating, monitoring and supervising development programmes and projects in their community's jurisdiction. They are recognized by the Peruvian State in Law No. 27908, and regulated according to the Supreme Decree No. 025-2003-JUS. According to this legislation, they have a legal personality and have a right to organize themselves according to their traditions and customs. The patrols must act in accordance with the Constitution, laws, the Universal Declaration of Human Rights and ILO Convention No. 169.

Several community leaders working to defend human rights in the context of the Las Bambas mines interviewed by Amnesty International also indicated that they were being prosecuted for conspiracy in connection with the protests in September 2015. According to a leader in the Apurímac region, there

34. IACHR, Resolution 9/2014, Leaders of *Campesino* Communities and *Campesino* Patrols in Cajamarca, Peru, available at [www.oas.org/es/cidh/decisiones/pdf/2014/MC452-11-ES.pdf](http://www.oas.org/es/cidh/decisiones/pdf/2014/MC452-11-ES.pdf) (in Spanish only); summary at <http://www.oas.org/en/iachr/decisions/precautionary.asp>

have been around 300 charges since 2010 for crimes such as abduction, coercion or blocking public roads.

Moreover, Amnesty International has found that the courts often do not follow up on community claims related to land ownership, keeping cases open for months or years, while acting very swiftly to order the eviction of the community and without respecting international standards. Although the organization has been aware that certain prosecutors have taken the decision to close criminal investigations where there are disputes over land ownership, there is no institutional practice or policy that requires all prosecutors to do this. In an interview, personnel assigned to the Prosecutor's Office assured Amnesty International that when there are issues of overlapping land titles, this is considered a civil matter and therefore the Attorney General does not intervene.<sup>35</sup> However, the cases documented by Amnesty International show that this guideline is not applied in practice and the fact that it is not written down makes it even less reliable.

## MÁXIMA ACUÑA: UNFOUNDED CHARGES OF LAND INVASION

Environmental defender Máxima Acuña and her family, who promote human rights in the context of the Yanacocha company's Conga mining project in the Cajamarca region, have faced prosecution for almost five years on baseless charges of land invasion.

In August 2011 Maxima Acuña; her spouse, Chaupe Jaime Lozano; her eldest daughter, Isidora Chaupe Acuña; and her son-in-law, Elías Rodríguez Chaupe, were charged with land invasion. The Prosecutor's accusation was based on the fact that Maxima Acuña and her family had allegedly used violence to take possession of the land known as Tragadero Grande in the Cajamarca region, Peru, from the Yanacocha Mining company.

Amnesty International had access to the judicial file of the criminal action against the defender and members of her family for land invasion and concluded that the Prosecutor's Office did not present any evidence to support the accusation that they entered the area known as Tragadero Grande through the use of violence and/or threats. Therefore, the organization considered that this process was being used as a form of harassment and intimidation against the defender, through the misuse of the justice system to obstruct and silence her work in defence of human rights.<sup>36</sup>

In May 2011, before the criminal complaint was filed against her, Máxima Acuña and her husband had already accused Yanacocha mining company personnel of committing this same crime on 24 May when they had to leave the property they occupied. This complaint was closed on 11 August 2011, only a few months after it was filed and in the same month as the Yanacocha company requested that the police and the Prosecutor's Office come to remove the family from Tragadero Grande.

35. Interview with the Office of the Attorney General of Paraguay, 12 July 2017.

36. Amnesty International, Peru: Human rights defender Máxima Acuña criminalized by unsubstantiated criminal prosecution for land invasion, AMR 46/5879/2017, 14 March 2017, available at: <https://www.amnesty.org/en/documents/amr46/5879/2017/en/>

On 20 February 2017, the Prosecutor's Office opened a new investigation against several people who occupy managerial positions in Yanacocha for alleged land invasion and for damages and tort regarding Maxima Acuña and Jaime Chaupe in relation to the protection of property actions exercised by the company on 4 October 2016 on the disputed property. On 8 November 2017 the criminal court judge in Celendın closed the investigation, at the request of the Prosecutor's Office. On 20 November 2017 the subsequent appeal filed by Maxima Acuña and her family was rejected.

The charges of land invasion against Maxima Acuña were finally definitively dismissed on 12 April 2017 by Peru's Supreme Court of Justice.<sup>37</sup>



↑ Maxima Acuña and Jaime Chaupe, Tragadero Grande, Cajamarca, Peru, 28/10/2016 © Amnesty International (Raul Garcia)

## CESAR ESTRADA: BASELESS CHARGES OF EXTORTION

Indigenous social commentator, patrol member and human rights defender Cesar Estrada initially faced criminal charges, along with two other patrol members, for abduction and aggravated robbery, in relation to actions which the *campesino* patrols consider to be part of their mandate. The prosecution based the charges on the testimonies of the people who were arrested by the patrols and on the statements of the accused.

Around noon on 11 December 2013, members of the *Campesino* Patrol of the Blue Lagoon Valley, in the district of Huasmın, province of Celendın, Cajamarca region, Peru, detained four people travelling in a vehicle within the territory of the *campesino* community and asked them for the reason for their presence in the region. When they checked the vehicle, patrol members found Yanacocha company contracts. As the people in the car had not mentioned that they had any kind

37. Amnesty International, Peru: Peruvian authorities put an end to the criminalization of defender Maxima Acuña, 3 May 2017, available at: <https://www.amnesty.org/en/latest/news/2017/05/peru-autoridades-peruanas-ponen-punto-final-a-la-criminalizacion-de-la-defensora-maxima-acuna/>

of link with the company, and that this *campesino* community opposes mining by the company, the four people were taken to the community centre, which was a few hundred meters from where the vehicle stopped, to account for their presence. The patrol members offered the detainees lunch. Around 6pm, members of the *campesino* patrol took the four people to a spot on the road from where they returned to where they had come from.

However, the members of the patrol kept the car, arguing that they needed it to continue the investigation. They did not force the four detainees to leave their car as compensation, as the four claimed. The Blue Lagoon Valley *campesino* patrol invited the Prosecutor's Office to a meeting on 26 December 2013 to discuss coordination issues regarding security in the region and to hand over the car they had in custody.

César Estrada has denied participating in the detention of the four people and told Amnesty International that he and another of the patrol members accused arrived at the patrol house when the four people were already giving their explanations to the Assembly. César Estrada has maintained that he left the Assembly before 4pm because he had to return to work, that he helped write up the record of what happened, and that he returned to the community after the four people had already been released. César Estrada has faced various obstacles in exercising his right of defence. In addition to the shortcomings of the lawyer who was initially assigned to his case and who did not produce documentary evidence proving that he was not in the patrol but at work during the earlier part of incident.

On 11 July 2017, after three and a half years of proceedings, and after the closure of the evidentiary stage, the court stated during the public oral hearing that the actions could constitute extortion rather than abduction and aggravated theft. Faced with this new accusation, the defence lawyer claimed that neither César Estrada nor another of the patrol members that he was representing were present at the time of the arrest and that they only arrived at the patrol house after the people had been arrested. He also insisted that the intervention of the *campesino* patrol took place within the framework of the jurisdictional powers granted to them by the Constitution. In addition, he noted that the crime of extortion was not committed because the *campesino* patrol never sought any advantage or economic retribution for the vehicle and, on the contrary, wanted to return it.

The Prosecutor's Office stated that the accused were responsible for the crime of extortion but did not link this conclusion with the evidence or provide evidence that they could have been committed this offence. Likewise, none of the evidence presented in the proceedings supported the allegation that the patrol or César Estrada in particular had sought any economic advantage. At no time during the proceedings was the Prosecutor's Office able to prove that César Estrada had committed a crime.

On 25 July 2017, the Supraprovincial Collegiate Criminal Court of Cajamarca sentenced César Estrada and another



←  César Estrada, social communicator and member of the *campesino* patrols of Cajamarca, Cajamarca, Peru, 17/03/2017 © Amnesty International (Nataniel Furgang)

of the patrol members to 10 years' imprisonment without the possibility of parole for the crime of extortion and to a fine of 8,000 soles (approximately US\$2,470) for reparation. Their conviction is currently under appeal. Amnesty International considers that this criminal process has been used to harass and intimidate César Estrada for his work defending human rights and to send a message to other members of the community that they should not continue their human rights work.

## SIXTEEN LEADERS: ACCUSED OF ABDUCTION WITH NO EVIDENCE

Representatives of the Celendina Inter-Institutional Platform (Plataforma Interinstitucional Celendin) at a security workshop, Celendin, Cajamarca, Peru, 18/03/2017 © Amnesty International (Mataniel Fungang)

Sixteen community leaders claiming rights to a healthy environment and to territory in the context of the Conga mining project in the Cajamarca region, Peru, were indicted for aggravated abduction and subsidiary charges of coercion. Additionally, one of the leaders was accused of insulting national symbols (*ultraje a símbolos de la patria*). Among the accused leaders were the environmental defenders Milton Sánchez Cubas and Ramón Abanto Bernal, President and Assistant Secretary General, respectively, of the Institutional Platform of Celendín (Plataforma Institucional de Celendín, PIC), founded in 2009 to promote the defence of water and the environment against the possible environmental impacts of the mining operation. Also among the accused defenders was the leader of the Sorochuco community patrol, Emperatriz Bolaños Ayala.

The Public Prosecution's accusation was based on events that occurred on 26 April 2013, when at around 11am, some of the accused presented themselves at the Municipal Auditorium of Sorochuco to participate in a meeting which the then governors of Sorochuco and Celendín were attending. Subsequently, members of the community requested that the meeting be moved to the main square of the district so that the governors could report on how they were dealing with the issues to the general population. At the end of the meeting, one of the defendants picked up a coat



of arms of the Governorate and walked among the public carrying it, for which he was accused of insulting national symbols.

The Prosecutor's Office requested a penalty of 31 years and 8 months' imprisonment without the possibility of parole for the majority of the accused, and for one of them, 33 years and 6 months' imprisonment for the crime of abduction. As regards the charge of coercion, the prosecution called for a sentence of eight months without the possibility of parole for 13 defendants, and 16 months for three other defendants. In addition, the prosecution called for reparation of 4,000 nuevos soles (US\$1,235) as a form of solidarity with the defendants. For the person accused of insulting national symbols, the Prosecutor's Office requested in addition one year and four months imprisonment without the possibility of parole, as well as a 100-day-rate fine and reparation of 2,000 nuevos soles (US\$618).

After attending some of the hearings which formed part of the public oral debate, Amnesty International could not find any evidence submitted by the Prosecutor's Office that would link the human rights defenders with the crimes of abduction or coercion. The sole basis of the prosecution's accusations were the testimonies of the aggrieved parties, of others whose statements contained contradictions, and of a police official who admitted that he did not personally see the events described in the report and even pointed out that his sources of information were people who had "infiltrated" the march.

During the trial hearing of 28 March 2017, the Supraprovincial Court of Cajamarca, hearing the case in the second instance, declared the case to be baseless because in effect the Attorney General's Office had not fulfilled its constitutional function of providing evidence that could support conviction of the accused and that the accusation set out in the charge submitted for deliberation was weak and did not accurately identify the behaviour harmful to the legal rights of each of the accused, so it is impossible for the court to consider this case further at this stage.

## **OSCAR MOLLOHUANCA AND OTHERS: PROSECUTED FOR ORGANIZING SOCIAL PROTESTS**

Oscar Mollohuanca Cruz, former mayor of Espinar, and Herbert Huamán and Sergio Huamaní Hilario, former president and vice president respectively of the United Front for the Defence of the Interests of Espinar (Frente Único de Defensa de los Intereses de Espinar, FUDIE), are currently facing criminal proceedings which could be directly related to their role as human rights defenders and their organization of and participation in the protests of May 2012 to demand amendments to the commitments agreed by the company with the *campesino* communities, relating to operation of the Antapaccay extension of the Tintaya mine.

Oscar Mollohuanca Cruz, Herbert Huamán and Sergio Huamaní Hilario face charges of acts prejudicial to public security, obstruction of public highways and riot. The Prosecutor's Office has called for sentences of eight years' imprisonment without the possibility of parole for the first offence and seven for the second and third, as well as the payment of civil compensation of 100,000 nuevos soles (US\$30,686). Initially, the community leaders had also been accused of incitement to commit a crime. However, this charge was declared inadmissible by Ica Investigation

Court No. 1 in November 2014. The same court dismissed the case against a fourth person accused of illegal possession of ammunition in the context of the same protests, because there was no evidence to support this and what there was "could have been planted.

The actions on which the accusations are based date back to 2012, when many people from Espinar took to the streets and declared a strike between 21 and 29 May in support of their demand for amendments to the conditions set out in the Framework Agreement on issues such as the environment and services for the community in relation to the Antapaccay extension to the Tintaya mine. Derechos sin Fronteras described to Amnesty International how the police used excessive force including slingshots, dogs, horses, and tear gas to disperse people protesting peacefully; two people died, 15 protesters and 30 police officers were injured and 19 people were detained.<sup>38</sup>

According to the sections of the file that Amnesty International has been able to access, the three community leaders are accused of organizing, coordinating and calling the marches, as well as a degree of prior organization. On the basis of people's participation in the protests, the Prosecutor's Office considered that when a crime is committed through mass unrest, all the participants cannot be identified, however, all those who are identified can be considered responsible; consequently, all those involved in the struggle against mining activity are considered to have fomented disorder through serious attacks on another's physical integrity or property, even though they did not themselves personally carry out such acts.

The prosecution's accusations against human rights defenders are based solely on their role as community leaders, automatically considering them to be organizers of the demonstrations and responsible for any damage or crime caused; this is in contravention of international human rights standards. On 17 July 2017, the First Unipersonal Court of Ica found the three community leaders not guilty, on the grounds that the Prosecutor's Office had failed to show probable cause for the offences imputed.

However, on 7 August 2017 the Prosecutor's Office lodged an appeal against the decision, which was granted on 15 August 2017, and the case was referred to the President of the Ica Criminal Appeals Chamber where it remained pending at the time of writing.



*Oscar Mollohuanca, former mayor of Espinar,  
Department of Cusco, Peru, 26/3/2017, ©  
Amnesty International (Nataniel Furgang)*

38. Derechos sin Fronteras, 2017 in Provincias Altas: Entre Conflictos Sociales y estados de emergencia, (High Provinces: Between Social Conflicts and States of Emergency), Año 4, N. 12, March 2017. Interview with Derechos sin Fronteras. 22 March 2017

# 6. RECOMMENDATIONS

Human rights defenders who work on issues related to the environment, territory and access to land in Peru and Paraguay continue to carry out their activities in a hostile environment and face a high level of risk because of their work. The failure of the authorities at a high-level to recognize their work as legitimate remains a challenge in both countries. The persistent impunity with which attacks and threats against them are met exacerbates the situation because it sends a message that these acts will not be punished.

In Paraguay and Peru, defenders of the environment, territory and land are victims of violence, disproportionate use of force and forced evictions. This group of defenders has been the target of statements, including by state officials, that foster stigma, seek to discredit their work and portray them as the enemies of development.

Amnesty International makes the following recommendations to the authorities of Peru and Paraguay to ensure that human rights defenders can carry out their work in a safe and supportive environment, freely and without fear of reprisals.

## **TO THE PERUVIAN AND PARAGUAYAN AUTHORITIES:**

- Publicly recognize the work of human rights defenders working on issues related to land, territory and the environment as legitimate at the highest levels of both local and national authorities.
- Implement public campaigns to recognize the work of human rights defenders throughout the country and ensure their wide dissemination.
- Refrain from using language that stigmatizes, attacks, discredits or discriminates against human rights defenders, such as: "delinquent", "anti-development", "troublemakers", "mobs", etc.
- Refrain from using criminal law against defenders as a way of criminalizing the defence of human rights.
- Promote and widely disseminate the UN Declaration on Human Rights Defenders and adopt national legislation to ensure its effective implementation.
- Maintain a dialogue and ongoing consultation with human rights organizations, social movements and individuals and communities who are defending human rights, including those working on rights related to land, territory and the environment, during the process of adopting legislation, plans, programmes and policies to guarantee the right to defend human rights.
- Recognize and guarantee the human rights of Indigenous Peoples, in particular their right to territory, economic, social and cultural rights (including the right to a healthy environment), and the right to consultation and to free, prior and informed consent. The authorities must ensure the effective participation of affected peoples and communities in relation to the planning and implementation of projects for the exploration and extraction of natural resources.
- Ratify the Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean.

## **TO THE EXECUTIVE AND LEGISLATIVE AUTHORITIES:**

In Peru<:

- Amend the legislation on extrajudicial protection of property, in accordance with relevant international standards, so as to avoid putting the human rights of defenders of the land, territory and environment at risk.
- Review the regulations that allow for agreements to provide services between the National Police of Peru and private companies so as to avoid calling into question the impartiality of state bodies.

In Paraguay:

- Repeal the Joint Action Plan on Punishable Actions related to Trespass (Plan de Acción Conjunta para Hechos Punibles de Invasión de Inmueble Ajeno), which is incompatible with the rights to due process and adequate housing.
- Strengthen property registration systems, including regarding collective property and lands for Indigenous Peoples and agrarian reform plans, to avoid overlapping titles and fraud.

Peru and Paraguay:

- Ensure the provision of ongoing programmes on human rights for the National Police of Peru and Paraguay, including: the definition of human rights defender, the obligations of state security forces towards human rights defenders, the right to peaceful demonstration and the associated obligations of the security forces.
- Ensure that the use of force during peaceful demonstrations conforms to international standards, in particular the UN Basic Principles on the Use of Force and Firearms. Strengthen technically, institutionally and financially, the institutions responsible for ensuring that the rights to territory of Indigenous Peoples are respected, protected and guaranteed and implement awareness and training programmes on the work of human rights defenders.
- Ensure that a comprehensive gender and ethnic perspective regarding the protection of human rights defenders is incorporated into relevant legislation, plans, programmes and policies, so that measures are taken to combat the structural factors that increase the risks and attacks against these groups, such as impunity, stigmatization and discrimination.
- Incorporate into the legislation plans, programmes and policies to protect human rights defenders, as well as a differentiated approach that takes into account the protection needs of defenders of rights related to the environment, territory and access to land, to women human rights defenders and to young human rights defenders.

## **TO INVESTIGATION AND PROSECUTION AUTHORITIES IN THE CRIMINAL JUSTICE SYSTEM:**

- Abstain from misusing the justice system to intimidate, harass and discredit human rights defenders, particularly those working on issues related to the environment, territory or access to land.
- Issue directives or guidelines that make it clear to criminal investigating authorities who is a human rights defender and what their work is.
- Provide continuous ongoing training on the international framework on the right to defend human rights to civil servants, in particular those responsible for enforcing the law and for the administration of justice.
- Initiate administrative, disciplinary or criminal proceedings, as appropriate, in relation to

allegations of the misuse of the justice system to harass and intimidate human rights defenders.

- Identify the criminal proceedings opened against human rights defenders working on rights related to the environment, territory and access to land where there is no basis for continuing them, and close them or request that the respective judges dismiss the cases as unfounded.
- Take urgent measures to end impunity for attacks and threats against human rights defenders of rights linked to the environment, territory and access to land, and initiate prompt, independent and impartial investigations to bring to justice all those responsible.
- Participate actively and consistently in the plans, programmes and policies aimed at the protection of human rights defenders, so that comprehensive protection measures are incorporated into them and effective measures are taken to combat impunity in cases of attacks against them.

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# A RECIPE FOR CRIMINALIZATION

## DEFENDERS OF THE ENVIRONMENT, TERRITORY AND LAND IN PERU AND PARAGUAY

Human rights defenders who work on issues related to the environment, territory and access to land in Peru and Paraguay carry out their activities in a hostile environment.

In both countries, individuals and communities fighting to protect their access to water and land are stigmatized and their work is delegitimized through public statements and rumours. Their communities are forcibly evicted from their homes or face the risk of eviction without due process guarantees. Finally, defenders face unfair and unfounded criminal proceedings. They are prosecuted and tried without evidence for crimes solely related to their work to defend human rights. These are the ingredients of the recipe to undermine their work and prevent them from continuing to defend human rights.

It is the states' obligation to take appropriate measures in order to guarantee a favourable environment for work to defend human rights to be carried out. States must not misuse justice systems to silence the voices of human rights defenders.

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