
PERU

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS
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Political context

The trial and conviction of former President Alberto Fujimori made not only Peruvian history, but world history as well. After a 16-month trial, on April 7, 2009, Mr. Fujimori was sentenced to 25 years in prison, the maximum sentence allowed by the Peruvian Criminal Code for “voluntary manslaughter” and “serious injuries” in the Barrios Altos and La Cantuta cases, and “aggravated kidnapping” in the cases of Mr. Gustavo Gorriti and Mr. Samuel Dyer¹. This was the first time that a democratically elected Latin American Head of State was declared guilty of committing crimes against humanity. It was also the first time that a former President was extradited to his country to face charges for such crimes. The sentence was ratified by the Supreme Court of Justice on December 30, 2009. Mr. Fujimori was also convicted of “corruption” and there are ongoing trials against him and his collaborators for human rights violations².

Peru continued to experience severe social conflicts in 2009³. The most dramatic case was the Bagua conflict⁴. In March 2008, the legislative power granted the executive power the authority to adopt measures related to its development policy and the implementation of the Free Trade Agreement with the United States. The Government approved 101 decrees. Indigenous and peasant communities opposed several of these decrees because they feared that they would violate their right to be consulted on the use of their lands and/or infringe on human rights because of their impact on the environment, which would be in breach

1/ See Association for Human Rights in Peru (APRODEH).

2/ On July 20, 2009, Mr. Alberto Fujimori was sentenced to seven and a half years in prison for serious crimes of corruption committed to the detriment of the country. In October 2009, Mr. Fujimori, Mr. Vladimiro Montesinos Torres and other members of the military were tried for the attack that killed journalist Melissa Alfaro on October 10, 1991. It should be noted that in order to try Mr. Fujimori, the Peruvian State had to make a request to the Chilean Supreme Court since these charges were not included in the Chilean Court's decision on September 21, 2007 to extradite Mr. Fujimori.

3/ See Ombudsman's Office, Division for the Prevention of Social Conflicts and Governance, *71° Reporte de Conflictos sociales, Conflictos sociales conocidos por la Defensoría del Pueblo*, January 31, 2010.

4/ See FIDH Report, *Perú: Bagua. Derramamiento de Sangre en el Contexto del Paro Amazónico. Urge abrir diálogo de buena fe*, October 2009 and APRODEH - FIDH, *Nota de Actualización*, February 22, 2010.

of Peru's international obligations⁵. As such, since April 9, 2009, several indigenous groups, led by the Interethnic Association for the Development of the Peruvian Rainforest (*Asociación Interétnica de Desarrollo de la Selva Peruana* – AIDESEP)⁶ reignited protests that first began in 2008 with peaceful demonstrations, roadblocks, and sieges on the facilities of oil companies⁷. On May 10, 2009, the Peruvian Government declared a State of emergency in the areas where there were protests. Beginning on May 14, on three separate occasions, the Peruvian Congress postponed meetings to discuss the proposals put forward by the indigenous communities. On June 4, the ruling party postponed the debate once again. On June 5 and 6, 2009, there were confrontations between the national police and the Awajun and Wampis indigenous groups at the Petroperú ("Station N 6") facilities in the cities of Bagua Grande and Bagua Chica in the so-called "Devil's Bend" (*Curva del Diablo*) area, after the police tried to unblock the Fernando Belaúnde Terry highway. Although the indigenous groups were lifting the roadblock, the national police fired at them from helicopters. That day, ten civilians, including indigenous leaders, and 23 policemen died⁸, and the Head of the National Police, Mr. Felipe Bazán Soles, disappeared. Some 200 people, mostly civilians, were injured. The investigations that followed the confrontation were cause for concern since the guarantees of due process were not always respected, and on certain occasions, the investigations were used to incriminate indigenous leaders. Furthermore, although the judicial proceedings concerning the deaths of the policemen began immediately after the incident, at the end of 2009, the reports on civilian deaths and injuries had still not been formalised⁹, and the Parliamentary and Government commissions had not indicated either the legal or political responsibilities of the helicopter operation. On June 8, 2009, the Bagua Grande radio station *La Voz*, which had reported live on the events in Bagua, was closed. Its closure would silence the other radio stations in the region, according to the Rapporteur from the Organisation

5/ For example, International Labour Organisation (ILO) Convention No. 169 concerning Indigenous and Tribal Peoples, which was ratified by Peru and the United Nations Declaration on Indigenous Peoples, which was supported by Peru when it was adopted. The Government established a Multi-Party Committee "to study and recommend solutions to the problems faced by indigenous peoples with the help of their representatives". The Ombudsman's Office and various members of the Multi-Party Committee questioned whether some of the decrees were in conformity with the Constitution. Some decrees were withdrawn, while others are still in effect.

6/ The AIDESEP has existed for more than 30 years and represents approximately 350,000 indigenous Peruvians who live in eight regions of Peru.

7/ Indigenous protests had begun in August 2008 with the first Amazonian strike and ended with the commitment of the then Minister Jorge del Castillo to review the decrees.

8/ See Ombudsman's Office, *Informe de Adjuntía No. 006-2009-DP/ADHPD*, 2009 and APRODEH.

9/ See APRODEH.

of American States (OAS)¹⁰. The severity of the events that took place in Bagua prompted the United Nations Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People to make a special visit¹¹.

Threats against and harassment of human rights defenders involved in the fight against impunity, particularly for the crimes committed under Mr. Fujimori's orders

The defenders who fight against impunity for the crimes committed during Peru's armed conflict between 1980 and 2000 were harassed and discredited through a Government's national campaign. One tactic the conservative press used to confuse the population and polarise society was to compare those who oppose impunity for the crimes committed during the fight against terrorist organisations of the "Shining Path" (*Sendero Luminoso*) to the terrorists themselves. For example, on September 26, 2009, the newspaper *La Razón* published an article that likened Ms. **Gisela Ortiz Perea**, a well-known human rights activist and family member in the La Cantuta case, to a terrorist. The articles published in *La Razón*, which discredit both the legal process and the victims, led the Association for Human Rights in Peru (*Asociación Pro Derechos Humanos – APRODEH*) and the relatives of the Barrios Altos and La Cantuta victims to lodge a complaint before the Ethics Tribunal of the Peruvian Press Council (*Consejo de la Prensa Peruana – CPP*). On August 19, 2009, the Tribunal announced its decision, stating that the complaint was well founded and ordering that "this decision be published within eight days of notification". As of the end of 2009, the decision still had not been published.

Defenders, relatives of victims and some members of the judicial power also suffered threats and judicial harassment. For example, on April 6, 2009, the day before the sentencing of former President Fujimori, APRODEH received a call threatening to kill Mr. **Francisco Soberón**, Executive Director of APRODEH, Mr. **Carlos Rivera**, a lawyer from the

10 / See Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights (IACHR) Press Release No. R41/09, June 26, 2009. The repression in Bagua as well as the situation of human rights and fundamental freedoms of the indigenous people concerned the international community. See IACHR Press Release No. 35/09, June 8, 2009. It should also be noted that the Committee on the Elimination of Racial Discrimination (CERD) concluded that "the Committee is concerned at the racial discrimination directed against indigenous peoples and Afro-Peruvian communities in the media [...]". See CERD, *Concluding Observations of the Committee on the Elimination of Racial Discrimination, Peru*, United Nations Document CERD/C/PER/CO/14-17, August 31, 2009.

11 / See Human Rights Council, *Informe del Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas*, S. James Anaya - Adición - Observaciones sobre la Situación de los Pueblos Indígenas de la Amazonía y los Sucesos del 5 de junio y Días Posteriores en las Provincias de Bagua y Utcubamba, Perú, United Nations Document A/HRC/12/34/Add.8, August 31, 2009.

Legal Defence Institute (*Instituto de Defensa Legal* – IDL), Mr. **Ronald Gamarra**, Executive Secretary of the National Coordinating Committee of Human Rights (*Coordinadora Nacional de Derechos Humanos*), and Ms. **Gloria Cano**, a lawyer from APRODEH, all of whom were lawyers representing the civil party in the trial against Mr. Fujimori. The former President of the Truth and Reconciliation Commission (*Comisión de la Verdad y Reconciliación*), Mr. **Salomón Lerner Febres**, also received death threats on September 23, 2009. He reported the threats to the police and then was visited by agents from the Ministry of the Interior in order to jointly assess the facts and coordinate security measures. Furthermore, the fight against impunity for the crimes committed under Mr. Fujimori's Government also encountered obstacles from the State itself. For instance, Ms. **Cristina del Pilar Olazábal Ochoa**, the Supraprovincial Criminal Prosecutor for Ayacucho, was tried for investigating and reporting cases of serious human rights violations that occurred between 1980 and 2000. On January 5, 2010, the decision of the National Public Prosecutor's Office was published in the official newspaper *El Peruano*, stating that the complaint filed by Mr. Alan García Pérez, President of Peru, for the alleged crime of "prevarication", was founded. In December 2003, Ms. Olazábal Ochoa had been designated Provisional Prosecutor of the Provincial Public Prosecutor's Office Specialising in Human Rights, Forced Disappearances, Extrajudicial Executions and Exhumation of Clandestine Graves for the department of Ayacucho¹². On January 31, 2005, she had lodged a criminal complaint against Mr. García Pérez for "genocide" and "undue omission of the crime of murder", as well as against 29 soldiers from the army, who were directly involved in the incidents at Accomarca, for "voluntary manslaughter". The decision of the National Public Prosecutor's Office will be sent to the corresponding Prosecutor who will proceed to formalise the complaint. Then it will be up to the Criminal Judge to decide whether or not to open the trial against Ms. Olazábal Ochoa. It should also be noted that, besides potentially being tried, Ms. Olazábal Ochoa might also be relieved of her post as punishment.

In addition, the legislative framework allows impunity for State police groups that are responsible for human rights violations¹³. In this context, the lawyers of five women who were sexually abused in Cusco's "Quenqoro"

12/ Public Prosecutor's Office created as part of the Peruvian State's commitment to the IACHR when the investigations into the Accomarca case ended.

13/ For example, Decree-Law 982 modified Article 20 of the Peruvian Criminal Code and established new grounds for not being held criminally liable: "... is exempt from criminal responsibility: The members of the armed forces and national police who cause injury or death while doing their duty and using their weapons in accordance with regulations".

penitentiary were subjected to intimidation acts. On April 24, 2009, Ms. **Evelyn Ceballos Enríquez**, lawyer and Head of the Legal Division of the Association for Life and Human Dignity (*Asociación por la Vida y la Dignidad Humana* – APORVIDHA), and Mr. **Freddy Rodríguez Olivera**, a lawyer from the same division, were the victims of hostile, verbal attacks from a group of protesters, who appeared to be relatives of the tried penitentiary officials. They reported the incident to the Ombudsman's Office and police authorities but, as of the end of 2009, no investigations had been carried out and the reports were filed away.

Assault, assassination attempts and judicial harassment of environmental activists and defenders of indigenous communities that are affected by the exploitation of large companies

Environmental activists continued to be assaulted for reporting cases of corruption and mismanagement of lands and natural resources by private companies that have Government authorisation. For instance, the President of the Front for the Defence of the Interests of the People of Moquegua (*Frente de Defensa de los Intereses del Pueblo de Moquegua*), Mr. **Zenón Cueva**, was shot in the leg by a stranger who rang the doorbell of his house early in the morning on May 7, 2009. In August 2008, Mr. Cueva had led a protest urging the Government to deliver its promise for better distribution of the “Oil Canon” (“*Canon Minero*”), which was in an agreement that had been signed the previous year¹⁴, and was being tried for coercion, extortion and disturbances, along with 23 other leaders and inhabitants¹⁵. A few days prior to the attack, Mr. Cueva had reported corruption in various Government institutions – including the Regional Government and Provincial Council – in the implementation of the Oil Canon. The person allegedly responsible for shooting Mr. Cueva was identified and, in late 2009, was being held in the Samegua – Moquegua penitentiary, while the trial continued. Moreover, the Prosecutor asked for a 35-year sentence for Mr. Cueva and two of the leaders, and for between

14/ The mining companies pay the State a “tax”, the so-called “canon”, for mining. This money is given to the regions for their own use, in accordance with “equitable” distribution. The inhabitants of the Moquegua region had been asking for a greater share of the canon for years and, in 2007, the Government promised to meet this demand within 60 days. In June 2008, a year after the empty promise was made, the first demonstration took place. Once again, the Government promised that there would be an increase in 30 days. However, when this commitment was not honoured, on October 28, 2008, there were more protests, which ended when Congress approved a new distribution of the canon that favoured Moquegua even more.

15/ The First Provincial Public Prosecutor's Office of Mariscal Nieto asked for a 35-year sentence for Mr. Cueva, as well as for the former regional President, Ms. Cristala Constantinides Rosado, the leader of the Front for the Defence of the Interests of the People (*Frente de Defensa de los Intereses del Pueblo - FEDIP*) of Moquegua, Ms. Katherine Maldonado, and 25 years in prison for lawyer Julio Araoz Anchaize, a FEDIP consultant and Mr. Cueva's lawyer.

10 and 25 years for the others. In 2009, Mr. **Andrés Luna Vargas**, a peasant landowner from Miramar and Vichayal-Paita-Piura, President of the National Convention of Peruvian Agriculture (*Convención Nacional del Agro Peruano* – CONVEAGRO)¹⁶ and President of the Front for the Defence of Water and Natural Resources (*Frente de Defensa del Agua y de los Recursos Naturales*) in the Piura region, continued to be threatened for stating that he was against the Puerto de Paita agreement, because the contract did not meet the requirements for local development. On July 27, 2009, at the Bellavista Government in the province of Piura, Mr. Luna Vargas reported that he had received several death threats on his mobile phone, but at the end of 2009, there had still been no investigations into these phone calls. Mr. **Santiago Manuín Valera**, an Awajun indigenous leader, founder of the SAIPE Jesuit Social Centre and former President of the Aguaruna-Humabista Council (*Consejo Aguaruna-Huambista* – CAH) and the Struggle Committee for the Respect of the Indigenous Peoples of the Province of Condorcanqui, Amazonas (*Comité de Lucha por el Respeto de los Pueblos Indígenas de la Provincia de Condorcanqui – Amazonas*), was seriously injured after being shot by the National Division of Special Operations (*División Nacional de Operaciones Especiales* – DINOES)¹⁷. He was shot as he tried to break up the confrontation between law enforcement officials and indigenous people that occurred in the “Devil’s Bend” on June 5, 2009. In spite of this, on June 13, 2009, the Judge of the First Criminal Court of Utcubamba, Mr. Francisco Miranda Caramutti, ordered a search for Mr. Manuín Valera and asked that he be found, captured and transported because of his involvement in the conflict in Bagua. At the end of 2009, Mr. Valera was being tried, but was released on bail as long as he appeared at his hearings. However, the trial concerning Mr. Valera’s injuries had not begun.

Besides being physically assaulted and threatened, environmental activist and defenders of indigenous communities were also subjected to prosecution. Thirty-five environmental activists were tried for “terrorism” after they opposed the Río Blanco mining project (previously known as the Majaz project) in the town of Piura. Indeed, despite the opposition of local inhabitants, the Peruvian Government insisted on supporting the mineral

16 / CONVEAGRO is a pluralist forum for inspection, technical assessment and democratic agreement, which does not act as an union and is not affiliated with any political party. CONVEAGRO fosters the growth of rural institutions, agricultural unions and associations for farm producers, since these bodies are essential to developing agriculture.

17 / A police contingent that belongs to the elite unit of the Peruvian national police.

exploitation and even went as far as to prosecute environmental activists¹⁸. In northern Peru, environmental activists were arrested after a conflict with a private prawn company called Virazon S.A., which had lodged a complaint against Mr. **Julio Bustamante Soto**, Mr. **Jorge Luís Zapata Ato** and Mr. **José Antonio Torres Carranza**, respectively the President and leaders of “El Bendito” Town Centre Association (*Asociación Centro Poblado “El Bendito”*), Tumbes. All of the activists were released and their trials were filed away. On January 10, 2010, the Prosecutor formalised the criminal report on the alleged crimes that affected the means of transportation, and disturbed or impeded the public services of the Virazon S.A. company and the State. Mr. **Gabino Ángel Dioses Franco**, Mr. **José Miguel Duran Jiménez**, Mr. **José Filomeno Gálvez Sotillo**, Mr. **Jaime Jiménez Páucar** and Ms. **Betty Fernández Naval**, all members of the “El Bendito” Town Centre Association, were accused of crimes against the administration of justice, violence and resistance of authority. The “El Bendito” Town Centre Association is located in the National Tumbes Mangroves Sanctuary, on about 5,000 hectares, more than half of which were declared protected areas by the State. However, the prawn company Virazon S.A. operates in this area and its extractive activities pose a risk to the environment and the way of life of the local inhabitants. The “El Bendito” Town Centre Association had initiated a legal dispute against the prawn company, which, by changing the boundaries of its property, affected the inhabitants of “El Bendito”.

The leaders of AIDESEP also suffered judicial harassment. In May 2009, Mr. **Alberto Pizango Chota**, President of AIDESEP, was accused of “rebellion, sedition and conspiracy for rebellion, sedition or mutiny” against tranquillity and public peace, and of making a speech that insulted the Peruvian State¹⁹. Mr. Pizango sought refuge in Nicaragua and at the

18 / Supreme Decree 024, published by the Peruvian Government on December 27, 2008, states that there is a “public need” for the concession of 35 mining claims to the Chinese merger Zijin, owner of the Río Blanco Cooper S.A. mining project. Its presence in Piura is illegal according to the Ombudsman’s Office and the Congress of the Republic, based on the fact that the Constitution prohibits foreigners from having properties or concessions within 50 kilometres of the border.

19 / Five other leaders of Amazonian indigenous communities were also accused of the same crimes: Mr. **Saúl Puerta Peña**, Précis Writer for the AIDESEP, Mr. **Marcial Mudarra Taki**, Coordinator of the Regional Coordinating Committee of the Indigenous Peoples of San Lorenzo (*Coordinadora Regional de los Pueblos Indígenas de San Lorenzo - COREPI-SL*), Mr. **Cervando Puerta Peña**, President of the Regional Organisation of Amazonian Indigenous Peoples of Northern Peru (*Organización Regional de Pueblos Indígenas Amazónicos del Norte del Perú - ORPIAN-P*), Mr. **Daniel Marzano Campos**, President of the Regional Organisation of Indigenous People of Atlaya (*Organización Regional Indígenas de Atlaya - OIRA*), and Ms. **Teresita Antazú López**, President of the National Unity of Ashaninkas and Yaneshas Communities (*Unidad Nacional de Pueblos Ashaninkas y Yaneshas - UNAY*). The crimes that these

end of 2009, remained in exile. Furthermore, following the events in Bagua, on June 11, 2009, the Ministry of Justice requested the dissolution of AIDESEP due to its alleged role in these events that were “contrary to public order”. The legal representative for AIDESEP was summoned to testify on November 5 in the Tenth Civil Provincial Public Prosecutor’s Office in Lima. On November 12, the Government withdrew its attempt to dissolve AIDESEP. But the case of AIDESEP was not the only example of judicial retaliation after the events in Bagua. Moreover, in addition to the need and obligation to find the guilty parties in the events, the judicial harassment of indigenous leaders put dialogue that began on June 22, 2009 at risk, as the Special Rapporteur, Mr. James Anaya, warned in his report on his special visit to Peru²⁰.

Urgent Interventions issued by The Observatory in 2009

Names	Violations / Follow-up	Reference	Date of Issuance
35 environmental activists	Judicial harassment	Press Release	January 9, 2009
Mr. Julio Bustamante Soto, Mr. Jorge Luís Zapata Ato, Mr. José Antonio Torres Carranza, Mr. Gabino Ángel Dioses Franco, Mr. José Miguel Duran Jiménez, Mr. José Filomeno Gálvez Sotillo, Mr. Jaime Jiménez Páucar and Ms. Betty Fernández Naval	Arbitrary detention / Judicial harassment	Urgent Appeal PER 001/0109/OBS 017	January 29, 2009
Association for Human Rights in Peru (APRODEH) / Mr. Francisco Soberón, Mr. Carlos Rivera, Mr. Ronald Gamarra and Ms. Gloria Cano	Death threats	Press Release	April 7, 2009
Ms. Evelyn Ceballos Enríquez and Mr. Freddy Rodríguez Olivera	Harassment / Assault	Urgent Appeal PER 002/0509/OBS 072	May 12, 2009
Mr. Zenón Cueva	Assault	Urgent Appeal PER 003/0509/OBS 078	May 15, 2009
Mr. Alberto Pizango Chota, Mr. Saúl Puerta Peña, Mr. Marcial Mudarra Taki, Mr. Cervando Puerta Peña, Mr. Daniel Marzano Campos and Ms. Teresita Antazú López	Judicial harassment	Press Release	June 2, 2009
Mr. Santiago Manuin Valera	Assault / Judicial harassment	Urgent Appeal PER 004/0709/OBS 108	July 21, 2009

20 / See Human Rights Council, *Informe del Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas*, S. James Anaya - Adición - Observaciones sobre la Situación de los Pueblos Indígenas de la Amazonía y los Sucesos del 5 de junio y Días Posteriores en las Provincias de Bagua y Utcubamba, Perú, United Nations Document A/HRC/12/34/Add.8, July 20, 2009.

Names	Violations / Follow-up	Reference	Date of Issuance
Mr. Andrés Luna Vargas	Death threats / Fear for life and physical integrity	Urgent Appeal PER 005/0809/OBS 120	August 21, 2009
Ms. Teresita Antazú López	Judicial harassment	Urgent Appeal PER 006/0809/OBS 127	August 26, 2009
Ms. Daysi Zapata Fasabi	Judicial harassment	Urgent Appeal PER 007/0909/OBS 133	September 3, 2009
Pr. Segundo Jara Montejo	Assassination attempt / Fear for safety and physical and psychological integrity	Urgent Appeal PER 008/0909/OBS 134	September 11, 2009
Dr. Santos Octavio Esparza Villalobos	Judicial harassment	Urgent Appeal PER 009/0909/OBS 135	September 17, 2009
Mr. Salomón Lerner Febres	Threats	Urgent Appeal PER 010/0909/OBS 140	September 29, 2009
Ms. Gisela Ortiz Perea	Slander campaign	Urgent Appeal PER 011/0909/OBS 141	September 29, 2009
Interethnic Association for the Development of the Peruvian Rainforest (AIDESEP)	Obstacles to freedom of association	Press Release	October 29, 2009
AIDESEP and 69 of its members, including Mr. Alberto Pizango Chota and Mr. Bladimiro Tapayuri	Withdrawal of request for dissolution / Judicial harassment	Press Release	November 17, 2009
Mr. Pedro Condori Laurente and Mr. Claudio Boza Huanhuayo	Arbitrary detention / Judicial harassment	Urgent Appeal PER 012/1109/OBS 173	November 27, 2009