

## PUBLIC COMMENT SUBMISSION – CONTENT TARGETING HUMAN RIGHTS DEFENDER IN PERU

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The International Center for Not-For-Profit Law (ICNL) is a non-governmental organization with a mission to promote a legal and digital environment that strengthens civil society and enables public participation around the world. ICNL works to promote and protect the freedoms of association, assembly, expression and the right to privacy, online and offline. ICNL thanks the Oversight Board for accepting public comments and hopes that our intervention will contribute valuable perspectives that can help the Board reach a decision on the case under consideration. Our submission will focus on these issues:

- The sociopolitical context in Peru, in particular risks to the safety and freedom of expression of human rights defenders, journalists and civil society organizations.
- Recent laws and bills in Peru and elsewhere in the region that limit or undermine spaces for expression, assembly and political participation of civil society organizations.
- The use of social media to spread narratives accusing NGOs of wrongdoing and if this type of content has been associated with explicit or implicit (coded) calls for offline violence.

### Civic Space context in Peru

In Peru, the work of human rights defenders (HRDs), civil society organizations (CSOs), and journalists are stigmatized through both online and offline threats, in some cases leading to direct physical violence. “Terruqueo” is the word most often used to discredit independent journalists and civil society. While “terruequeo” derives from the word terrorist, it has deeper contextual meaning in Peru and has historically been used to baselessly attribute terrorism to one or more individuals. The use of this term originated during the country’s period of insurgency in the 1980s and 1990s and was based on the broadly defined anti-terrorism provisions in [Decree No. 46 of 1981](#). The Decree criminalized “apology for terrorism,” which came to be “understood as any form of glorification or defense of the political discourse of subversive organizations.” Although the Decree and the label of “terruequeo” were directed at members of irregular armed groups, [the State also used it](#) to target the political left as a means to stigmatize and dehumanize opposition to the authority of President Alberto Fujimori. Although the Decree has since been repealed, [the term “terruequeo” has continued to be used](#) by certain right-wing groups to [discredit, stigmatize, threaten and attack](#) individuals with real or perceived progressive or left-wing political positions, as well as indigenous peoples, CSOs, HRDs, journalists, and people who participate in protests.

The Inter-American Commission on Human Rights (IACHR) has closely monitored threats against HRDs and journalists in Peru, particularly threats from the [right-wing group known as “La Resistencia.”](#) In 2023, the [IACHR granted precautionary measures](#) to a prominent Peruvian journalist, after the group doxed him, releasing his home address and other personal information publicly, and violently entered the offices of his non-government organization (NGO) and assaulted his colleague. The IACHR classified these threats as serious and imminent, with the potential to cause irreparable harm to the journalist’s rights to life and personal integrity. Similarly, justice operators working on high profile corruption cases have been subject to threats, intimidation, harassment and attacks attributed to “La Resistencia.” In 2023 the [IACHR issued a resolution on precautionary measures](#) granted to two prosecutors. Both were investigating corruption cases involving high-ranking authorities and former Peruvian officials. The IACHR noted that La Resistencia “have gone from discrediting

campaigns on social media to concrete acts of harassment or intimidation against [him] in personal spaces such as his personal home,” such as “plantones,” or sit-ins, outside his home.

Peruvian and international civil society have [documented](#) “plantones” [convened by “la Resistencia”](#) and other groups against HRDs, and human rights NGOs like APRODEH and Coordinadora Nacional de Derechos Humanos, amongst others. The “plantones” were accompanied [announced in social media posts](#) days before. In both the offline and online harassment, the leaders of human rights NGOs were explicitly referred to as “defenders of terrorists and criminals,” and were accused of being a “scourge” on the country. Further, the IACHR has noted that this adverse context intensifies when social protests are taking place in the country. According to a 2023 [IACHR report on the right to protest in Peru](#), “la Resistencia” was allegedly responsible for acts of vandalism and/or physical assaults against NGOs and journalists during the protests at the end of 2022.

Regarding whether acts of harassment by “la Resistencia” are being investigated by Peruvian law enforcement, the [IACHR received information on the lack of accountability](#) for these practice in the case of one of the prosecutors mentioned above. There was also no information on concrete actions being taken by law enforcement to respond to doxing practices against carried out by “la Resistencia”. Not only is there a lack of protection, but former President Fujimori’s supporters in Congress, as well as some top government officials, have aggressively sought to discredit NGOs that advocate for human rights accountability.

In addition, [according to Human Rights Watch](#) in 2022, “threats to freedom of expression continue to be a concern in Perú.” The Government of Pedro Castillo has also had a very tense relationship with the media. The Press and Society Institute (IPYS) and the Peruvian Press Council (CPP) have issued [alerts](#) about attacks against journalists.

Meanwhile, legislative efforts are seeking to further restrict civil society’s legal and operating environment, through a proposed bill amending the law creating the Peruvian Agency for International Cooperation (The APCI Amendment Bill). If approved, the bill would subject civil society to burdensome registration requirements, excessive oversight of funding sources, and disproportionate sanctions. Further, in 2023, [the UN Human Rights Committee](#), expressed its deep concern over the imprecise definition of “terrorism” set forth in the Peruvian Counter-Terrorism Act (Decree-Law No. 25475). The Committee noted that the ambiguity in the legislation encourages the branding of persons who exercise their rights to protest, freedom of expression, thought, assembly, and political participation as terrorists to discredit their discourse. Further, the Committee noted its increased application in the context of social protests since 7 December 2022.

## Legal Analysis

The right to freedom of expression recognizes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. It promotes pluralism and tolerance, making it a cornerstone of democratic societies. Further, [international human rights law recognizes that](#) “the same rights people have offline must also be protected online”, including the right to freedom of expression. Social media companies play a crucial role in enabling the right to freedom of expression online, by providing a platform to disseminate information and opinions. However, social media companies are urged to adhere to human rights guidelines and standards. According to the United Nations Guiding Principles on Business and Human Rights, as well as the Inter-American and universal standards developed to date, businesses and corporations have specific responsibilities, including in relation to freedom of expression and the protection of human rights defenders. These responsibilities are informed by international human rights law.

## ANALYSIS OF SPEECH THAT THREATENS THE SAFETY OF HRDS IN PERU

International law provides broad protection to freedom of expression, but it is not absolute. Any limitations to this right must be exceptional and strictly adhere to applicable human rights standards. A restriction to the right to freedom of expression cannot be based solely on the grounds that the content is uncomfortable or offensive.

In this case, the content under review was made against the leader of a human rights organization in Peru. Therefore, it is worth examining international standards on HRDs. [International law recognizes the fundamental role of human rights defenders](#) in upholding human rights and fundamental values such as peace, democracy, the rule of law, among others. [According to the Inter-American Court of Human Rights \(I-A Court\)](#), the work of HRDs is essential for strengthening democracy and the rule of law, which justifies a special standard of protection towards them. Moreover, the [I-A Court has emphasized](#) that the respect for human rights in a democratic society largely depends on effective and adequate guarantees for HRDs that enable them to carry out their activities freely. Therefore, it is crucial to carefully consider the appropriateness of actions that limit or obstruct their work and take immediate action to prevent and protect against harm directed at them, including acts of intimidation and harassment online.

Moreover, when analyzing whether a potential restriction on the right to freedom of expression is necessary to ensure a legitimate aim – particularly whether such restriction is admissible in order to respect the rights of others – it's worth examining the rights at risk. In this case, the content under review was argued to constitute a death threat.

It is worth noting that there is no legal definition under international law on what constitutes a threat. [International experts have acknowledged](#) that a threat “refers to an intentional conduct that indicates future harm or that intimidates an HRD, their family or community. This [...] includes individual and collective, direct and indirect, explicit and symbolic threats, whether they take place in offline or online spaces.” Additionally, the [UN's special rapporteur on human rights defenders has found](#) that threats have been made against HRDs “their colleagues and their organizations through symbolic actions or gestures.” Under this international guidance, speech is a threat when it has a chilling effect on and significantly hinders the ability of HRDs to defend rights. As the IACHR has previously stated, practices such as “plantones” and doxing puts HRDs at further risk of being victims of physical attacks that could seriously affect their rights to life and personal integrity. [According to the I-A Court](#) “creating a threatening situation or threatening an individual with taking his or her life could even be considered, in at least some circumstances, inhuman treatment.”

Given that “La Resistencia” [has used social media to incite offline violence against HRDs](#), posts and messages online that implicitly or symbolically call for violence against HRDs significantly impact their right to personal integrity, potentially leaving them in a state of moral anguish due to the imminence and possibility of this online violence manifesting offline. For example, the NGO CNDDHH [was the target of intimidation and attacks](#) perpetrated by around 40 members of “La Resistencia” who arrived at their headquarters in a bus and yelled insults at them and called them “terrorists”, “get out of Peru” and “criminal left-wingers”. [Media outlets have also highlighted attacks](#) against HRDs and NGOs that were convened online days before they took place.

As the IACHR noted of Peru, the risks of “threats, persecution, and disinformation campaigns [...] are not being countered by a public discourse that supports their work and condemns the attacks against them.” In fact, the Peruvian state, not only fails to comply with its international obligation to protect HRDs and journalists at risk, it is proposing [legislation](#) to limit and undermine their rights to expression, assembly and political participation. And it continues to enforce a vague definition of “terrorist” under the Peruvian Counter-Terrorism Act,

particularly in the context of social protests. This significantly hinders the right to protest, freedom of expression, thought, assembly, and political participation.

#### ANALYSIS OF SPEECH THAT CONSTITUTES INCITEMENT

Although there is no definition for hate speech under international human rights law, the [Rabat Plan of Action](#) provides useful guidance that Meta reviewers should consider as they are deciding whether to take down or keep content on its platforms. While speech attacking HRDs does not fall under one of the protected categories the Rabat Plan provides guidance on (race, national and religious hatred), the criteria are potentially useful to identify if speech targeting HRDs in Peru could be considered incitement to violence. The plan consists of a six-part test that considers the following criteria:

1. Context: whether the social and political context is likely to incite violence.
2. Speaker: the speaker's position and their ability to influence others.
3. Intent: the motive and purpose of the speaker to incite and influence the actions of others.
4. Content of the expression: whether the content includes direct or indirect calls to violence.
5. Extent and magnitude of the expression: the reach of the speech, its magnitude, and size of its audience.
6. Likelihood and imminence: the probability that the speech would succeed in inciting actual violence.

The case under consideration was posted within the context of a violent environment against HRDs, characterized by a systematic practice of baselessly labeling civil society as terrorists. According to the [UN Human Rights Committee](#), the “terruqueo” phenomenon not only stigmatizes people, it has the potential to put them in a situation of greater vulnerability and risk of attack. Additionally, it was posted in the context of protests in the country where threats and violence against the sector have been widely documented. These threats are mostly [perpetrated online](#) and have been known to lead to physical violence against HRDs. The [IACHR stated](#) in the precautionary measures mentioned above, that “the conjunction of recurrent negative mentions on social networks and harassment, threatening calls and harangues in public speeches should be understood as direct threats to the personal integrity of the person.”

Further, the content was published by “la Resistencia,” a group that has been known to orchestrate attacks against HRDs. Members of “la Resistencia” have a significant audience and members that post in their own social media accounts, amplifying their reach. [As the IACHR noted](#), this group has the ability to organize online and act swiftly to convene offline attacks.

Finally, the content of the expression shows the face of the HRD covered in blood, which is a symbolic expression of future and exemplary harm that directly targets the individual and her organization. Given the context of violence in Peru against human rights defenders, CSOs, and journalists, there is a high probability that the content could lead to physical violence, as indicated by the events described above which happened prior to the Facebook post. Given that the content under review meets the high threshold established by the Rabat Action Plan, it should be considered an incitement to violence towards the HRD and threat to the HRD's safety, as prohibited by Meta's Community Standards.

#### ANALYSIS OF THE LEGAL CONTEXT FOR CSOS IN PERU

The most significant legal threat that CSOs in Peru face is imminent approval draft amendments to [Law 27692](#) that would further restrict the right to association in Peru. Although the government's stated interest is to increase the transparency and oversight of entities that manage international aid, Peruvian civil society actors are concerned the amendments will further restrict the ability to register, receive foreign funding, and conduct work without the fear of arbitrary penalties.

ICNL has analyzed the law and shared its analysis with Peruvian CSOs and government actors. ICNL's key concerns include:

1. Required registration for all organizations that engage in *political activism* with direct or indirect funding from abroad. An organization engages in "political activism" whenever it uses international cooperation funding to seek changes to national public policies or electoral results that favor the interests of private foreign entities. Registration for political activism could result in the stigmatization of such organizations, enabling the authorities to portray these organizations as serving foreign interests.
2. The criminalization of using international funding or resources to conduct "acts that adversely affect the *public order*, public or private property, *citizen security*, the *national defense*, and *domestic order*." The amendments do not define the italicized terms, preventing CSOs from clearly identifying prohibited conduct.
3. The proposed amendments impose disproportionate penalties for violations. Registered CSOs would be subject to penalties as high as USD 683,000, the suspension of registration benefits, and the complete cancellation of registration.
4. CSOs' registration application must include their plans, programs, projects, activities, and grants involving technical cooperation funding, and they must update it every 6 months. Additionally, they must submit supporting documents or risk serious sanctions. This information is submitted through an online portal.

**Right to Association:** Article 22 of the International Covenant on Civil and Political Rights, ratified by Peru in 1978, provides that "everyone has the right to associate freely with others". The exercise of this right may only be subject to restrictions when provided by law and are necessary in a democratic society in the interests of national security, public safety or public order, or for the protection of public health or morals, or the rights and freedoms of others. The UN Special Rapporteur on the rights to peaceful assembly and association has repeatedly [stated](#) "that the ability to seek, obtain and utilize resources – from national, foreign and international sources – is essential to the existence and effectiveness of the activities of any association." The proposed amendments do not meet these standards because the vague restrictions on their activities do not meet the "provided by law" standard, the penalties and registration requirements are disproportionate and unnecessary to ensure public safety. These requirements could unduly hinder CSOs from registering or receiving much needed resources from abroad.

**Privacy Rights:** If enacted, the proposed amendments would undermine the right to privacy of CSOs, their donors, and their staff. CSOs' plans, programs, projects, activities, expenditures, and the amounts of ITC financing or grants received would be easily accessible online. The proposed amendments fail to set forth criteria to protect the confidential information of donors, beneficiaries, and staff, and could put their security at risk.

More information about the legal context in Peru can be found [here](#).