

Alliance for Labor Rights Peru

Labor Standards and Levels of Implementation and Compliance by Peru in the Context of Free Trade Agreements

ENGLISH VERSION

August, 2007



This study was carried out by the sociologist Enrique Fernandez Maldonado, who was commissioned by the Red Peruana por una Globalización con Equidad – RedGE (Peruvian Network for Globalization with Equity), as part of the study of labor standards and levels of compliance by Peru with the support of the Peruvian Alliance for Labor Rights.

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1. Introduction

Several opinion polls have been given to the Peruvian population in the recent past, and, in them, the people have mentioned jobs as one of the major issues facing that country. This perception, found in all corners of the nation, decidedly shows the enormous weight of concern felt by Peruvians in terms of earning decent, stable wages. In one of the latest surveys, 32% of the people polled expressed their fear of being unemployed in the next 12 months.¹ Another 59% categorized themselves as self-employed independent workers, a group that receives no benefits. The International Labor Organization (ILO) likewise estimates that 75% of Peruvians are not part of the social security health system, and 85% do not pay into the social security retirement fund.

The backdrop of precarious work and low pay is in direct contrast to the optimism generated in the government and some business groups by the sustained growth Peruvian economy has been experiencing. Recent statements of an 8% increase in job growth and a 4 point reduction in poverty hold no real weight in the face of the charged mood of social protest the country has been experiencing since March and the rising level of the population's disapproval of the government.²

With similar optimism, the Peruvian government is waiting for the U.S. Congress to ratify the FTA. This expectation is founded on a campaign of intense lobbying of Representatives in Washington by a permanent team charged with the "negotiations," bringing Peruvian ministers and even President Garcia himself to the U.S. capital to meet with officials there. Nothing less was expected than to influence the vote of U.S. lawmakers who have the last say on whether or not to ratify the FTA.

After a radical change in its position on the FTA, the current administration took over the promotional campaign started by former president Toledo, in which were stressed the "pros" associated with the bilateral trade agreement with the U.S., emphasizing the need to maintain the trade flow with the North and the sense that Peru was being given an historic opportunity for "competitively" placing itself within the globalized economy. If the FTA were not put into effect – something repeated to death – then Peru would lose the advantages gotten from the Andean Trade Promotion and Drug Eradication Act (ATPDEA) and the thousands of jobs created under that system.³

The intense media campaign centered on three fundamental ideas which highlighted the potential benefits Peruvians would receive from the FTA:

- The FTA will generate more business opportunities for Peruvian export companies, which will create more jobs.
- The FTA will generate more opportunities for U.S. companies to invest in Peru, which will create more jobs.
- Foreign investment promotion, mainly directed at the U.S., and importation of U.S. goods will prompt Peruvian businesses to modernize their operations, making them more competitive internationally.

¹ Institute of Public Opinion of the Pontifical University of Peru (PUCP): State of Public Opinion: Work. April 2007.

² In President Garcia's address to the congress of Peru during the Independence Day celebration (July 28th, 2007), he reiterated his option for keeping the existing development model in place, defined as primary-export with the start up of non-traditional export niches. "An 8% growth rate is going to be maintained, yet this is no longer due to the price of metals but to the growth of construction, agroexports, trade, and manufacturing." La Republica, 29/01/2007.

http://www.larepublica.com.pe/component/option,com_contentant/task,view/id,169367/Itemid,0/

³ This unilateral (granted by the U.S. to the Andean countries) agreement began in 2000 and was scheduled to expire in December 2006.

Of all the aspects of the FTA, those most questioned have to do with labor standards and the environment.⁴ The debate over these raged in the U.S., fed by union officials and politicians there who feared the impact the free market would have on American labor markets. Quite the reverse, in Peru, the debate has neither been widespread nor have there been reflections upon the type of development model Peruvians want for the country. This situation is mainly due to the lack of effort put forth by the recent administrations to promote a serious and informed policy debate on the FTA. Also important to note is that the Peruvian press has taken a stand in favor of the FTA without allowing other voices to be heard.

In terms of the data we will present in this paper, it has been gathered from official sources, and their statistics are available on the Internet. We have furthermore added analyses from academic articles and newspaper columns on the topic as well as opinions from former and current MTPE (Ministry of Labor) officials, who were interviewed for the objectives of this report.

This report concludes that recent Peruvian administrations have lacked the political will to guarantee enforcement of labor standards included in the FTA and that the Peruvian State is technically and institutionally incapable – in terms of resources and mechanisms of public administration – of doing so.

⁴ Other aspects of controversy, due to their social and economic risks, are: a) importing subsidized agricultural products, b) intellectual property rights and their impact on the defense of genetic and cultural heritage of the country, c) national treatment of private U.S. investment, government procurement, and patent domain, and d) natural resource use.

2. Analysis of Chapter 17 of the FTA

There are 23 chapters plus annexes in the complete draft of the U.S.–Peru FTA, yet chapter 17 is the one in which labor policy guidelines are laid down that will become the framework for trade relations between both countries.

This chapter has recently undergone changes as part of the incorporation to the FTA of the Amendment that both countries agreed to. The broadening of and modification to the FTA is fundamentally a response to pressure felt from U.S. labor unions and politicians that want a more detailed definition of labor standards this bilateral trade agreement will demand.

FTA chapter 17 includes affirmative statements (Art. 17.1 refers to the commitment of the parties to fulfill their obligations as ILO members), regulations (Art. 17.2 are the principles that govern the framework), procedural and public information guarantees (Art. 17.3), institutional arrangements (Art. 17.4), technical cooperation and capacity building mechanisms (Art. 17.5), cooperative labor consultations (Art. 17.6), and definitions (Art. 17.7) of labor standards that will govern monitoring and cooperation between the parties.

Taken together, the most important aspects of the chapter are the affirmative statements and the regulations, since they lay out the scope to which the commitments made can be enforced once the agreement has been ratified.⁵

The first draft of chapter 17 had Peru committing to “strive” to make its internal regulations consistent with those found in the 1998 ILO Declaration on Fundamental Principles and Rights at Work.⁶ Changes introduced by the Amendment place more emphasis on the parties’ obligation to guarantee enforcement not only of their domestic labor law, but especially the fundamental rights included in Article 17.2, as well.

Table #1
Fundamental Labor Rights included in the U.S. – Peru FTA

Original draft of chapter 17	Amendment modifying chapter 17
The right of association	The freedom of association
The right to organize and bargain collectively	The effective recognition of the right to collective bargaining
A prohibition on the use of any form of forced or compulsory labor	The <i>elimination</i> of all forms of forced or compulsory labor
Labor protections for children and minors, including a minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor	The effective abolition of child labor
Acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health	The <i>elimination of discrimination</i> in respect of employment and occupation

Source: Alan Fairlie and Sandra Quejia. 2007

⁵ One controversial aspect of chapter 17 but that is incumbent on the entirety of the agreement is dispute settlement process. This mechanism erodes the legitimacy of the State’s institutionality and administration of justice and at the same time undermines already established means for resolving labor disputes between countries, like ILO supervisory bodies and the Inter-American Court of Human Rights of the OAS.

⁶ You can read the declaration at the following website:
http://www.oitandina.org.pe/documentos/subregional_la_declaracion_de_los_principios_y_derechos_fundamentales_en_el_tra_bajo.pdf

In the same way, the Amendment added the rights of equality at work and the elimination of discrimination in employment, as well as the commitment for the effective abolition of child labor, as fundamental rights to be guaranteed in the FTA.

Inclusion of article 17.2 sets forth the *obligation* to adopt, maintain, and enforce the fundamental rights included in the ILO declaration in *all domestic laws and regulations*, a repercussion forcing the parties to adapt their laws to international standards on human rights in the workplace.

On the other hand, changes introduced by the Amendment eliminated the reservation each party had for being able to adopt or modify their labor laws and standards as long as they were consistent with those fundamental labor rights found in the FTA. Furthermore the changes specify the scope of the right to reasonable discretion that national authorities have for enforcing labor law. The updated draft allows the parties to use this discretion only if it is “not inconsistent with the obligations of this Chapter” and can only be applied to issues that do not affect the exercise of the fundamental labor rights enumerated in previous articles.

These changes were introduced because of pressure exerted by U.S. union leaders who wanted to protect their labor market from unfair competition (social dumping) that is implied in free trade with less developed economies like Peru. Yet, at the same time, the FTA aims to establish protection measures for U.S. investment in Peru with provisions that grant national treatment as well as most-favored-nation treatment to U.S. investment, ensuring that U.S. investors receive no less favorable treatment than other foreign or Peruvian investors.

Specifically, the Amendment stipulates that neither party “shall waive or otherwise derogate from” its labor law in a manner affecting trade or investment between them and where the waiver or derogation would be inconsistent with the established fundamental rights. In the first draft, the parties only undertook not to effectively waive or derogate from their labor law in a manner that affected trade between them both. The introduced changes now require the parties to adopt the obligation of enforcing not only their national law but also the fundamental labor rights as provided for in article 17.2.

Article 17.3 has laid out that the Parties cannot fail to enforce their labor laws, “including those adopted or maintained in accordance with Article 17.2.1 [referring to labor rights],” so as to affect trade or “investment”.⁷ This is particularly relevant because it adds the fact that non-compliance would include actions that affect investment between the Parties (and not just trade, as was written in the original text). Non-compliance of this nature could be seen as a violation of the FTA and would carry with it the complaining party’s right to move through the dispute settlement process and lead to possible trade sanctions, as provided for in the modified text’s article 17.7.

Concerning cooperative labor consultations, the original FTA had stipulated that dispute settlement could only take place when issues regarding article 17.2.1(a) arose. The new text has now allowed for this procedure for any chapter 17 issue (including fundamental labor rights violations). The only requirement is an attempt at settling the matter through a series of consultations.

⁷ The concept of investment found in the chapter on investment includes clauses that restrict States and their capacity to apply performance requirements on investors as a way of linking investment to local development (...). This interpretation places investments and potential profits into the same category as effective investments. FTA’s define investment as “every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the expectation of gain or profit or the assumption of risk.” Putting it into practice, this clause includes government measures that – without affecting or taking possession of the investment – influence profits and the reasonable expectations of profit from foreign enterprises (...) Alayza, Alejandra. *Blindar la economía de la política: a un año de la aprobación del TLC Perú-Estados Unidos. En Un año sin rumbo. (Armoring the economics of politics: one year into the approved U.S. – Peru FTA, a year with no bearing.)* Peru Hoy Series. DESCO, Lima, June 2007.

Lastly, with respect to labor rights, there are provisions in the chapter on government procurement (chapter 9) stating that public entities may demand that suppliers issue guarantees that they will uphold the ILO fundamental principles and rights at work.

Table #2
Modifications to the original U.S. – Peru FTA and their implications

Modified articles	Implications
Article 17.1 Statement of Shared Commitments	Eliminates the right to adopt or modify labor laws and standards
Article 17.2 Fundamental Labor Rights	Incorporates a new article that defines what fundamental rights are to be included in the law (even new rights). This obligation did not exist in the original text.
Article 17.3 Enforcement of Labor Laws	The original text just obligated the parties to effectively enforce national law. The modified text has broadened this to include fundamental labor rights. It has also eliminated a party's right to its own discretion when enforcing the law.
Article 17.7 Cooperative Labor Consultations	It has included more clauses that may be included in the dispute settlement process.
Article 17.8 Definitions	It has added the labor rights of elimination of discrimination and right to equality at work.

Source: Alan Fairlie and Sandra Quejia. Adendas del TLC: ¿benefician al Perú? (FTA Amendments: do they benefit Peru?). July 2007.

2.1 Positions on Chapter 17 and modifications made by the Amendment

When the contents and scope of the FTA chapter 17 are being discussed, people cite arguments that either stress or minimize its potential for bettering labor quality in this country.

Optimists argue that the Agreement's requirement to enforce fundamental labor rights will prompt the State to take more proactive stances in labor law oversight to avoid being slapped with fines and sanctions laid out in the Agreement for noncompliance. In reality, if the State does not guarantee enforcement of agreed-upon chapter 17 labor standards, whether by omission or action, then it would be opening itself up to having charges brought against it in international arbitration tribunals for violating FTA provisions. This would imply a high economic and political cost for the entire country, and, for the government to avoid this potential situation, it must implement a comprehensive policy for promoting decent work with particular emphasis on improving the quality of jobs and living standards for Peruvians in a reasonable amount of time.⁸

However, this optimism has been deflated by analyses of the limited impact the FTA would have on the labor situation. One of these analyses was performed by the economist Hernando de Soto,⁹ who estimated that, since chapter 17 stipulations only apply to

⁸ TOYAMA, Jorge. Integración, desempleo y relaciones laborales. El TLC y la generación de empleo. (Integration, unemployment, and labor relations: FTA and job creation). Caretas, 21/10/2004.

⁹ At the beginning of the current administration, Hernando de Soto was appointed by Alan Garcia as FTA negotiation representative in the U.S. He was later replaced by David Lemor, former Minister of Production during Alejandro Toledo's administration.

companies involved in bilateral trade between both countries, only 2% of all enterprises in Peru would fall within that category.¹⁰

Relatively speaking, this means no more than 50,000 enterprises – 7% of the economically active population (EAP) – would be covered by the FTA umbrella.¹¹ Basically, we are talking about modern sectors of the economy that have been given tariff advantages through the ATPDEA (like agroindustry, textile/clothing manufacturers, and mining), yet that, in spite of demonstrated production rates above the national average, harbor export enterprises that ignore or violate in a systematic fashion fundamental labor rights.

With the only exception being the report written by the economist Bruno Seminario at the request of the Ministry of Work and Job Promotion (MTPE), the Peruvian State has not carried out any other prospective evaluation study on the potential benefits and risks that the FTA might imply on labor. The aforementioned study centers on the quantitative impact of the FTA, referring to the number of net jobs (jobs created less jobs lost) generated in one year of the Agreement being in force.

Seminario concludes that the FTA would have a small impact, insignificant when considering the implications of an agreement that encompasses issues that are central to the country's development, like health, food security, and natural resource use.¹²

An 'intermediate' position on the FTA sees the possibility of the Peruvian government benefiting more from the Agreement's technical and financial cooperation mechanisms that will assist it in maximizing its role as promoter and supervisor of decent work in the country than from the fines and sanctions incurred for noncompliance of its provisions.¹³ Along the same lines, Javier Neves, former Labor Minister, believes that in this type of scenario, the U.S. government typically takes a hard, inflexible line in the negotiation process, and then later, during the actual implementation of the Agreement, it relaxes its stance.

Other, more critical perspectives begin by defining this type of agreement as a strategy to perpetuate the neoliberal economic model in the region. These critics analyze the nature and structure of free trade agreements the U.S. has signed with other countries in the region and state that these are made in order to consolidate the Washington Consensus policies, in other words, privatization and market openings, transnationalization of domestic markets and reforms to the structure of pension systems, and even entrenching the model of labor flexibilization applied in the region for the past decade.¹⁴

This reading – starting from the legal principle of *pacta sunt servanda* ("pacts must be respected"), which sets forth that obligations and commitments cannot be unilaterally modified by the Parties – considers the FTA as a mechanism for shutting down the

¹⁰ This also includes State companies and institutions, yet, because of their nature, are excluded from the FTA scope of application.

¹¹ If we assume that enterprises with export possibilities are those that demonstrate elevated production levels and organizational development, then the 2% alluded to by Hernando de Soto would be found in the SME's and large enterprises. Using figures from the 2006 fourth quarter National Household Surveys, we could estimate a total of 2,216,000 workers in these enterprises and this only if the enterprises are competitive in foreign markets, especially the U.S.

¹² As cited in the study, the FTA would have the following impact on labor: a) the direct effect on jobs: as exports rise, 32,552 new jobs might be created, provided that primary sectors perform as expected and become domestic supply chains and b) if we consider the secondary effects of exports, 85,467 new jobs may be created. However, there is a third; c) This number might be reduced if we bear in mind the direct and indirect import effects on local industry, which could translate into 67,319 fewer jobs. Therefore, an initial estimate of the potential impact of the FTA could be d) 18,148 new jobs created. SEMINARIO, Bruno y OSWALDO MOLINA. Efectos del TLC con los Estados Unidos sobre el empleo (Effect of the FTA on jobs). UNDP, MTPE. Lima, 2004.

¹³ Alan Farlie and Sandra Quejja. Adendas del TLC: ¿benefician al Perú? (FTA Amendments: do they benefit Peru?). July 2007.

¹⁴ To find out more on the impact the free trade model would have on economic, social, and cultural rights in Peru, read the 2004 Annual ESCR in Peru Report: "Lo que se debe conocer antes de decidir. El impacto del TLC en los derechos humanos en el Perú" (What you should be aware of before making a decision. The impact of the FTA on human rights in Peru.) CEDAL, APRODEH, Lima, published in 2005. http://www.aprodeh.org.pe/desc/informes_ant.htm

possibility of implementing an alternative model that places priority on the State's obligations to guarantee economic, social, and cultural rights.¹⁵

Similarly, by referring to the 1998 ILO Declaration on Fundamental Principles and Rights at Work – and not its fundamental conventions – chapter 17 weakens the international labor standards creation and oversight system by setting up oversight mechanisms that are parallel to the ILO's normal institutions and channels for settling labor disputes between nations.¹⁶

Even though it is true that the Parties reiterated their commitment to act according to the ILO principles, labor standards adopted under the umbrella of the 1998 Declaration are by nature declarative and therefore have no power of enforcement. The appropriate action in this case would have been for the Parties to undertake to ratify the ILO's fundamental or priority conventions that they have not already endorsed, specifically the Fundamental Labor Conventions, all of which Peru, in contrast to its partner, has ratified.

Since there is no outright mention of the Fundamental Conventions, the FTA lies outside the *regular, general, and special* oversight of the ILO for settling disputes. One aspect to keep in mind is the granting of authority to the justice systems in each Party so they may invoke international labor standards found in the ILO's Conventions and Recommendations when dealing with labor disputes. Also, as a way of strengthening the ILO regulatory measures, Parties may agree to some type of fine provided that this is referred to non-enforcement of the observations made by any ILO oversight body, even international courts of justice.¹⁷

There does exist one point of consensus and it is repeated in almost every opinion concerning the impact of the FTA on the labor situation: the FTA will be less of a determining factor for improving labor conditions in the sectors that do (or do not) participate in international trade; rather, such improvement will depend more on the political will and development of government capacity to exercise its role to guarantee enforcement of labor law and the fundamental labor standards it has sovereignly assumed. This is the only way the FTA can be seen as a window of opportunity, together with other factors, for contributing to achieving this goal.

One aspect that has not been incorporated into the FTA text and that is extremely important in terms of providing the adequate human rights protection of Peruvians living abroad is the incorporation of the right to liberty of movement and freedom to choose residence of migrant workers and their families, as provided for in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, ratified by Peru in September 2004.¹⁸

¹⁵ BEDOYA, Carlos Alonso. Memorias alternativas ante la OIT: fortaleciendo los espacios de derechos humanos frente a la ofensiva de los TLC. (Alternative reports to the ILO: Strengthening human rights in the face of the FTA offensive. Report given at the international seminar "Foreign investment, the FTA, and its effects on the right to work". Managua, Nicaragua. May 19 and 20, 2005.

¹⁶ The fundamental principles and rights included in the 1998 ILO declaration and of a binding nature (which the States can enforce) are the freedom of association (ILO Convention #87), the right to collective bargaining (ILO Convention #98), elimination of all forms of forced or compulsory labor (ILO Conventions #29 and #105), effective abolition of child labor (ILO Conventions #138 and #182), and the elimination of discrimination in respect of employment and occupation (ILO Conventions #100 and #111).

¹⁷ Bedoya, Ibid.

¹⁸ MUJICA, Javier and Johan Otoya. Open letter detailing arguments and suggestions to the draft of the FTA. Sent to Liliana Honorio, chair of the FTA Negotiation Committee on Labor Matters during Alejandro Toledo's administration. 14/10/2004.

3. Enforcement and compliance levels of fundamental labor rights contained in the U.S. – Peru FTA

In spite of the enormous gap that exists between the labor situation of most Peruvians and international standards of decent work, the past two administrations have issued statements to different audiences and in different arenas that government labor policy would guarantee the enforcement of labor standards contained in chapter 17 of the FTA.¹⁹

Different Peruvian and U.S. civil society sectors and organizations have criticized the lack of consistency in such statements, providing support for their argument by pointing out the obvious weak policy and the institutional incapacity of the Peruvian State to guarantee enforcement of fundamental rights included in the Agreement. The small number of resources that have been allocated to that end²⁰ and the lack of political reflections to orient the behavior of stakeholders in society, among other economic and structural factors, represent the main barriers for effectively enforcing the agreed-upon standards.

The roots of this incapacity can be found in the distant past, though analyses performed by different groups cite the 1990's as a milestone. This was the decade of labor reform, in which labor market flexibilization was taken to the extreme and greater discretionary powers were given to employers to establish working conditions. The "official" goal of these measures was to generate new jobs (lowering labor costs). However, the actual result weakened the union movement by attacking the foundations of its social power: job stability.

As a response to complaints lodged by the main Peruvian unions, the ILO stated – in numerous recommendations and observations issued by its supervisory bodies – the need to update labor law so it conforms to fundamental labor conventions. Essentially, these ILO declarations indicated that legislation had to give back some of the labor rights the reform movement had taken away from the workers, primarily those involving collective labor relations.

As part of the promises he made during his presidential election campaign, Alejandro Toledo, after taking office, signed a convention with the ILO Sub-regional Office for the Andean Countries (headquartered in Lima) to design and implement the 2004–2006 National Program for the Promotion of Decent Work in Peru.²¹ A central focus of this project was the specific promotion of the fundamental principles and rights laid out in the ILO Declaration on Fundamental Principles and Rights at Work (1998). Included in the program was ILO Sub-regional Office technical and institutional support for implementing a series of short and mid-term legislative reforms and sectoral policies. However, none of them were carried out.

¹⁹ During the second week of July, the Labor Minister, Susana Pinilla, traveled to Washington to meet with members of the US Administration and Congress in order to influence their decision to ratify the FTA with Peru. Upon her return, she stated to the media that in the meetings she held with Congressional Democrats, "we have shown that our strategic plan with regard to labor already takes into account the revision of several laws, the improvement of a legislative framework, and thus we do not need pressure from U.S. Congress to carry out the domestic agenda that we ourselves have set." She also added that in conversations with Reps. Levin and Rangel, she stressed the government's commitment to carry out labor reforms, not just due to the FTA but by its own conviction, in order to achieve a balance in the relations between employers and workers. "This has given a new perspective (to the Congressmen) that things were not as they thought that all rights were being violated and that Peruvian laws were entirely anti-labor," she added. http://www.agenciaperu.com/economia/2007/jul/pinilla_tic.html

²⁰ According to the 2007 – 2008 Strategic Plan to Promote Decent Work, the MTPE [Labor Ministry] receives just 0.40% of the country's overall budget that is allocated to the public sector. Of that amount, 80% goes to the employment sector, while the rest goes to the Vice Minister of Work Relations. www.mintra.gob.pe

²¹ ILO http://www.oit.org.pe/osra/documentos/programa_nacional_de_trabajo_decente_pntd_peru.pdf

Moreover, instead of implementing the program's sectoral policy strategies, the last two administrations have, on several different occasions, been rather lukewarm to – if not outright against – the spirit of and logic behind the ILO's fundamental regulations, principles, and rights.

The next few sections briefly summarize what measures the last two administrations have taken (or not) to enforce the fundamental rights contained in the U.S.–Peru FTA.

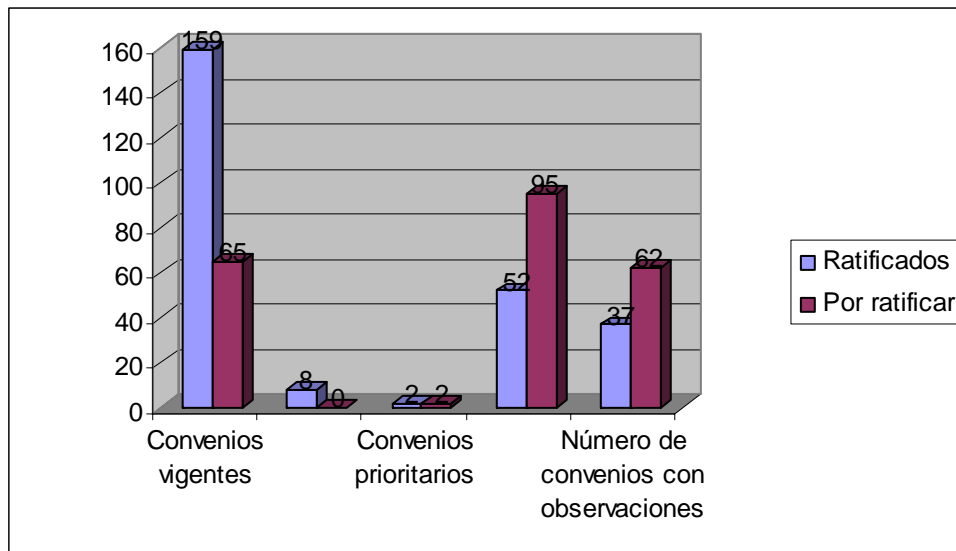
3.1 **Enforcement and compliance levels of fundamental conventions by the Peruvian State**

We will analyze enforcement and compliance levels of labor standards included in the FTA's chapter 17 on the basis of three indicators, the first of which is:

- **The degree to which international labor conventions have been ratified**

As stated in the 2004–2006 National Program for the Promotion of Decent Work in Peru, the country has ratified all eight of the fundamental conventions in effect, 50% of the priority conventions, and 35.4% of the general conventions. If all labor conventions are considered, then Peru has ratified 65 (64 are in force) of the current 159, a grand total of 39% (see table).

Table # 3
Peru: International Labor Conventions ratified and Conventions with Comments



Source: ILO. 2004 – 2006 National Program for the Promotion of Decent Work in Peru.

The next indicator used for this analysis is:

- **Compliance level with international conventions, according to the ILO**

According to the same report, the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has made a series of comments (observations) regarding the enforcement of 10 of Peru's ratified conventions (15% of the agreements now in force). Of the total number of Conventions ratified by Peru, 24 are part of the ILO's 57 updated Conventions in force.

From the time of the previous government, Peru carried out a series of legislative reforms that allowed the removal of 14 of the 16 observations made by the ILO Committee on Freedom of Association (CFA) on the Collective Labor Relations Law (Legislative Decree 25593) in relation to the degree to which conventions 87 and 98 have been enforced (p.20).²²

Table # 4
Summary of labor laws included in the FTA
and their expression in current Peruvian law

ILO Fundamental Rights and Conventions	Fundamental rights in Peruvian labor law
Freedom of Association and Protection of the Right to Organize (# 87) and Right to Organize and Collective Bargaining (# 98)	Law # 25593 (Collective Labor Relations Law – LCLR) Supreme Decree # 011-92-TR, Regulations of the LCLR.
Abolition of forced labor (# 29 and # 105)	Law # 27178, Military Service Law Law # 26859, Civic Obligations during Elections and Penitentiary Work Law.
Elimination of the worst forms of child labor (# 138 and # 182)	Child and Adolescent Code Ministerial Resolution # 128-94-TR on adolescent work authorization
Equal Treatment and Non-Discrimination in the Workplace (N° 100 y N° 111)	Law # 26772, Job Offer and Access to Education Law Law # 27270, Law Against Acts of Discrimination. Law # 27050, General Law on Disabled Persons. Law # 26626, Law on the Struggle Against AIDS/HIV/STI. Law # 27942, Law Against Sexual Harassment in the workplace.

Source: Neves, Javier (2004).

The last indicator for this analysis is:

- ***Existing institutional capacities allocated to guaranteeing effective compliance with the adopted conventions.***

In this section, we will broach the current status of the fundamental rights included in the FTA. We will point out the legislative reform proposals that are likely to adapt national law to ILO international standards and the implemented sectoral policies that facilitate their compliance.

²² The ILO supervisory bodies have pointed out on several different occasions that the labor reforms of the 1990's are contradictory to the spirit of the fundamental conventions on matters of freedom of association and collective bargaining. The Peruvian state passed a law in January 2003, Law #27912, in order to right the indicated observations. However, the CEACR has not made any statements concerning whether or not the issues were truly resolved (p. 20).

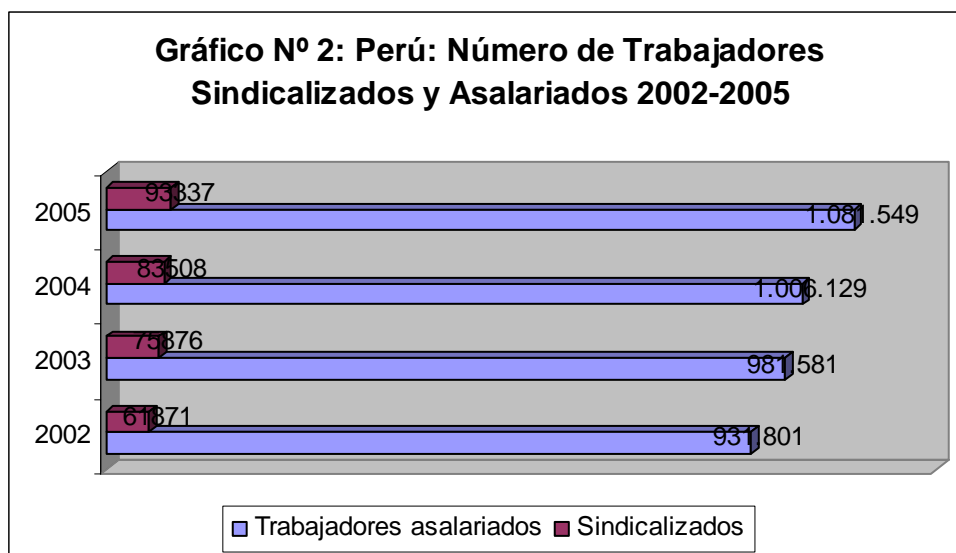
▪ Freedom of Association and Collective Bargaining

Freedom of association, the right to organize, the right to collective bargaining, and the right to strike are fundamental rights protected in the 1993 Peruvian Constitution. As a result, the State is responsible for defending their democratic exercise by the population.

There are, moreover, two laws that govern these rights for the public and private sector: Supreme Decree 25593, Collective Labor Relations Law (1992), and its regulations (Supreme Decree 010-2003-TR). These were the object of 16 ILO observations, yet, when Law #27912 was passed in 2002, 12 of the 16 observations made to the law by the ILO Committee on Freedom of Association were addressed.

Even though there are still two observations pending, dealing with the right to strike,²³ the changes – which took place within the context of economic growth and the recovery of constitutional rights that began with the Toledo administration and the return to a democracy – have not had any significant impact on union affiliation levels, especially in view of the statistics from previous decades. In fact, they have barely had any influence on the rate of unionization in the last five years (8.6% of the economically active population, EAP).

Graph #1



Number of workers affiliated in a union

This lukewarm progress in unionization (see graph #1) is being neutralized by provisions laid out in the so-called Job Promotion Law (Legislative Decree # 728, Productivity and Competitive Labor Law), which is now in force; these provisions are found in article 34 and allow companies to freely and indiscriminately dismiss workers.

This article further empowers employers to dismiss workers “without just cause” and adds to the intensive use of temporary contracts, non employment contracts, and outsourcing.²⁴ It is

²³ Two observations still remain: one dealing with atypical strike situations that current Peruvian law prohibits, but the ILO endorses as long as they are peaceful assemblies, and another dealing with the power granted by the Ministry of Labor for establishing minimum service if the parties are not in agreement.

²⁴ In the Spanish text, the term “services” has been adopted from the English to indicate outsourcing or contracting out labor services through a third party.

furthermore an effective tool in controlling and “disciplining” workers and the chief dissuasion to forming unions in the companies where they work.

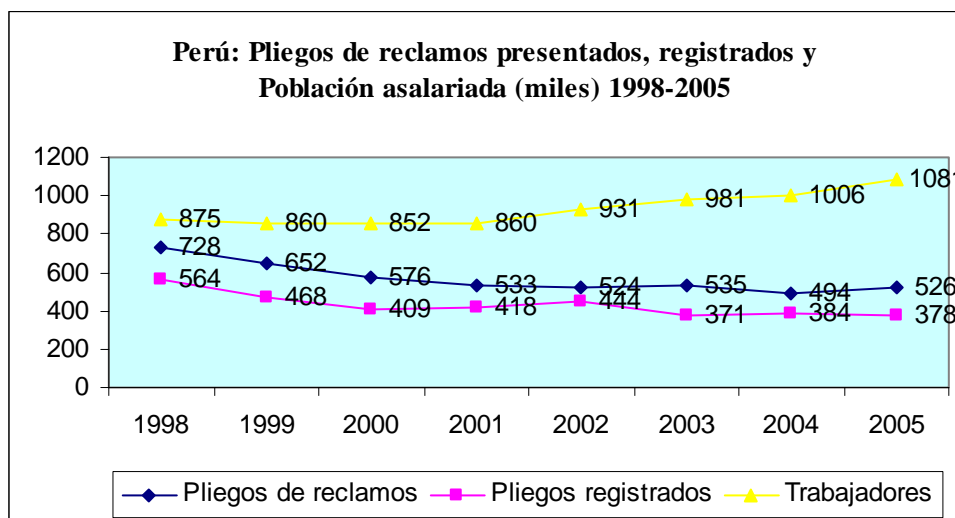
Concerning this specific point, the National Program for the Promotion of Decent Work in Peru cites the following about the close association that exists between the lack of job protection (job security) and the low levels of unionization in the country:

In terms of labor law on the matter of jobs, there is a wide range of temporary and limited-duration contracts that the Productivity and Competitive Labor Law calls “subject to modalities”. The problem lies in the fact that these can be used indiscriminately and under a wide variety of circumstances, and the only reason for their invalidity is “fraud under the law”. This is a reality that no doubt creates legal insecurity for workers and promotes the intensive use of these contracts in detriment to the use of stable, long-term contracts.

Companies choose these types of contracts in order to avoid putting employees on their payrolls indefinitely, out of their concern for economic instability. A result of this instability experienced by the workers is that they do not exercise their fundamental rights to association and to collective bargaining. Moreover, these contracts are used to evade labor rights and payment of benefits (p. 24).

The weakening of the union movement, resulting from the internal conflict that raged in Peru for two decades and from job instability, also had an impact on workers exercising their right to collective bargaining. Statistics are telling: in 1982, 33% of the economically active population (EAP) were union members, whereas in 1990 the figure fell to 15% and then in 1999, to just 3%. In 2005, the percentage of the EAP that was unionized grew to 8.63%. Consequently, the number of complaints lodged by unions fell almost 65% between 1990 and 1998, and, out of all those, only 32% were resolved through collective bargaining. At the beginning of the 1990’s, there were 613 strikes that involved 258,000 workers, yet by 1998, only 58 strikes were recorded with just 17,000 workers participating. In 2005, there were 65 strikes involving 19,022 workers.²⁵

Graph #2
Collective Contracts according to Type of Solution



²⁵ MTPE [Labor Ministry]. Annual Labor Statistics 2005. http://www.mintra.gob.pe/est_publicaciones.php

Source: MTPE [Ministry of Labor] Annual Statistics 2005. Compiled by the author.

The reforms introduced by the Collective Labor Relations Law show important progress in adapting legislation to ILO international labor standards. However, these reforms alone have not been able to reverse the drop in the levels of unionization and collective bargaining that resulted from the structural adjustment program and labor flexibilization beginning in the 1990s.

One fundamental issue has to do with the structure of businesses and the composition of the labor force in our country. According to article 14 of Law No. 25593, a minimum of 20 workers are required in order to form a union at a company, while 50 workers are required to form unions in a sector or federations. This has meant that the majority of Peruvian workers do not enjoy this right. It has serious implications in a country like Peru, in which, according to the National Household Survey IV of 2005, the number of businesses with those characteristics is only 19,292 of a total of 2,151,000 productive entities that employ 83% of the economically active population.

▪ **Abolition of all forms of forced or compulsory labor**

Labor law makes no mention of the freedom to work, but it does make the violation of that freedom a crime. Moreover, it regulates the different exceptions of “forced or compulsory labor” as laid out in international human rights declarations (i.e. military service, prison labor).

In its discussion of Peru, the ILO raised four observations concerning enforcement of its Convention 29 on matters of prison labor and the existence of forced labor occurring in certain areas of the country. Two of the observations – which were remedied – involved modification of Legislative Decree # 654, Application of the Penal Code, and establish the voluntary nature of work done by prisoners. The other two have to do with denunciations of labor exploitation involved with illegal logging that occurs in the regions of Madre de Dios, Ucayali and, to a lesser extent, in Loreto.

For this reason, the MTPE (Ministry of Labor), the National Police Force, the Ministry of Agriculture, the Justice System, and indigenous organizations in the department of Madre de Dios are carrying out inspections in order to eradicate situations of forced labor found within illegal logging camps on the banks of the Ucayali and Urubamba Rivers.²⁶

▪ **Abolishing the worst forms of child labor**

Provisions governing child labor in Peru are found in the Child and Adolescent Code, which sets the minimum working age at 14 and, in exceptional circumstances, at 12 when the job does not imply any risk to the person’s health and physical or moral development. This provision is in agreement with ILO Convention 138, and the ILO has not made a single observation in relation to Peruvian law concerning child labor.

The government – represented by the Ministries of Labor, Education, Health, and the Interior – and civil-society groups are currently implementing a program, called the National Action

²⁶ NEVES, Javier. Perú: Principios y Derechos Fundamentales en el Trabajo. Normativa y situación (Peru: Fundamental Labor Principles and Rights: the Law and the Reality). Lima, 28/7/2004. http://www.tlcperu-eeuu.gob.pe/downloads/documento/Normativa_Orig.pdf

Plan for Children and Young People²⁷, whose goal is to define actions, programs, and strategies that will promote human rights among these two populations.

The Labor Ministry, through its National Directorates for the Protection of Young People and for Occupational Health and Safety, is responsible for processing adolescent work authorizations and supervising the enforcement of adolescent worker legislation. The Ministry also has a Steering Committee for the Prevention and Eradication of Child Labor, whose function is to promote legislation that will effectively abolish child labor in Peru.

▪ **Abolition of discrimination in the workplace and in hiring**

The Constitution of Peru clearly establishes the principle of equality and bans all types of discrimination. The laws Congress has passed over the years have likewise added penalties, whether administrative or in terms of jail time, to those people who violate these provisions.²⁸

The ILO has not made any observations on this matter, yet labor experts have pointed to contradictions between some articles in Law # 28015, Micro and Small Enterprise Promotion and Formation Law, as well as Law #27360, the Agricultural Promotion Law, and provisions set forth in conventions that prohibit employment and workplace discrimination.

▪ **Promoting “special” labor “regimes” (regulations)**

Far from promoting agreement among the economic stakeholders and union members in the CNT (National Council on Work),²⁹ the government has opted to enact alternative legislation to reduce the amount of labor rights and the benefits package that current law stipulates. This can be deduced from statements by the Labor Minister, Susana Pinilla, announcing the soon-to-be-incorporated reforms to the Micro and Small Enterprise Promotion Law.³⁰ Their purpose would be to establish the principle of getting labor rights “progressively” through broadening the scope of Law 28015, which has been in force since 2003, to include practically the entire economically active population.

A similar regime [set of regulations] exists under the Law for the Development of Agro-industrial Activity (No. 27360). This law also stipulates fewer labor rights and benefits for workers in businesses oriented to the export of non-traditional (agro-industrial) products.

The following table shows the labor standards in each one of the labor regimes. Compared with the regime for private-sector activity (Legislative Decree No. 728), which regulates individual workplace relations, the other special regimes significantly cut the amount of

²⁷ For more information, go to <http://www.mimdes.gob.pe/dgna/pnaia/>

²⁸ Law # 26772 stipulates that employers and schools cannot hold requirements that are discriminatory, violations, or alterations of equal opportunity or treatment. It furthermore established monetary fines as a penalty for such actions. Law # 27270, Discrimination Law, adds to the existing Penal Code the ban on job discrimination and sets forth community service as the penalty for such actions. Law # 27050, Disabled Persons Law, bans discriminating against people because of their disability in matters of employment benefits and rights guaranteed by law. Moreover, Law # 26626, Fight against AIDS/HIV/STI Law, and Law # 27942, Sexual Harassment Law, directly relate to protecting vulnerable populations and penalizes attacks on freedom and morality. Similarly, Legislative Decree # 728 (Productivity and Competitive Labor Law) stipulates that no one can be dismissed on the basis of discrimination. Neves, Javier. Op. Cit. http://www.tlcperu-eeuu.gob.pe/downloads/documento/Normativa_Orig.pdf

²⁹ The CNT is a tripartite body, bringing together representatives of labor, the private sector and government. It was established in 2001 as a consultative body under the Ministry of Labor.

³⁰ LA REPÚBLICA. “Cuidado con la Ley MYPES”. (02/08/2007). <http://www.larepublica.com.pe/content/view/169980/484/>

severance pay (protection against being fired), vacation time, overtime pay, and the benefits package when employment ends.

Table # 5
Labor Standards: Comparing the Labor Regime for Private-Sector Activity and the Special Labor Regimes for SMEs (Small & Medium Enterprises) and Agriculture

Benefits	Private-Sector Activity Leg. Decree 728	SME law No. 28015	Agrarian sector law No. 27360
Severance pay	1.5 months salary per year worked (maximum 12)	15 days pay per year worked (maximum 180)	15 days pay per year worked (maximum 180)
Annual vacation time	30 days	15 days	15 days
Overtime pay for additional hours worked	Pay rate of 125%+ For overtime hours	No overtime pay for night shifts	Allows accumulation of workdays without time off
Bonuses and annual compensation for time served	15 monthly salaries per year	Agreement between parties	Included

For Julio Gamero, former Vice Minister of Labor, the new proposal puts forth significant changes to the private-sector activity regime (Legislative Decree # 728). The main changes are:

- The creation of a new category: the family micro enterprise (due to the lack of a real interpretation since there are more than 2 million unpaid workers in micro and small enterprises with 2 to 4 workers)
- The incorporation of small enterprises employing 10–19 workers into the category of micro-enterprises (here is where the scope of the law would start to broaden from the bottom upward).
- The incorporation of co-financing by the State for health and retirement benefits (being the most positive aspect of the bill that, if passed into law, would constitute a significant social advance).

Table # 6
Comparison of individual labor rights in the labor regimes for the private-sector, for SMEs (small and micro-enterprises), and proposed legislation

Labor rights	Current labor regimes		Principal proposals for reform on the SMEs law		
	SMEs law (No. 28815)	Private-sector Activity (Leg. Decree 728)	SME Commission	Ministry of Production	Peru SME Coordinating Group
Regulations for temporary contracts	Indefinite unless the business is no longer an SME	8 modalities for temporary contracts (maximum of 5 consecutive years)	Renewable temporary contracts	Eliminate limit on workers to be part of this regime	Special SMEs regime
Pay	Minimum wage	Minimum wage	Minimum wage	Minimum wage differentiated by sector	Minimum wage

Working day, working hours	8 hours; no overtime pay of 35%	8 hours per day; 25% to 35% additional for overtime hours	8 hours per day; 15% additional for overtime hours	8 hours per day	8 hours per day; no overtime pay for night shift
Annual vacation time	15 days (7 days with prior "approval")	30 days	15 days	15 days	15 days
Benefits	Not established	Compensation for time served (1 month salary) and 2 annual bonuses	Not set	Compensation for time served and bonuses are included in the salary	Not set
Severance pay	15 days pay for every year worked (up to a maximum of 180)	1.5 monthly salaries for each year worked (12 maximum)	120 hours pay (15 days) per year of service	Not set	Not considered
Pension	Optional	Mandatory	Mandatory	Mandatory	Optional

Source: Compiled by author.

If the proposed legislation that would consolidate the special regime for the SMEs is passed in the coming days, the reduction of labor rights would cover a greater number of Peruvian workers who move among between being unemployed, under-employed and working in small businesses (no more than 19 workers). Although this proposed law excludes medium and large businesses (that employ 7.63% of the EAP), various experts have warned that some government officials and ministers of state – among them the Minister of Production, through its Produce program, and the Minister of the Economy and Finances (MEF) – seek to turn this regime of “exception” into a generalized labor regime for all private-sector activities.³¹

Of greatest concern is that this proposed legislation establishes that workers may be rehired by the same employer under the new regime one month after being laid off or dismissed. Furthermore, companies may remain in the micro-enterprise category one year after having lost that status, which allows them to continue accessing benefits available for that category of business.

Reviewing the application of these regulations during the last five years, the results are quite limited. Between 2004 and 2006, only 25,000 of the more than 2 million SMEs functioning nationally became part of the formal sector and are applying these labor regulations. With regard to the agro-industrial sector, the precarious nature of employment in most of agro-industry overshadows the little (but significant) progress made; a minority of businesses show sustainable growth in their volume of production and sales, but continue to keep their workers under the special regulations.

With regard to labor regulations for agro-industry, the Lawyers Association of Ica, with the support of the Center for Labor Assistance of Peru (CEDAL), has filed a petition with the court challenging the constitutionality of sections a), b), c) of Article 2 of Law No. 27360. The case charges that law establishes discriminatory labor conditions that violate the principle of

³¹ GAMERO, Julio. “¿Cómo va el empleo... y las relaciones laborales? A un año del nuevo gobierno” (How is the job market...and labor relations? One year into the new administration). En: Economía y Sociedad. CIES. July, 2007.

equal treatment in the workplace (ILO Conventions 110 and 111), which affect personnel in agro-businesses who receive fewer benefits than do workers in other sectors of the economy.

This case was accepted by the court on November 9, 2006 and was notified to the national Congress on March 14, 2007. Congress has questioned the procedural legitimacy of the case by filing a petition that is awaiting resolution in the Court for Constitutional Guarantees.

3.2 General Labor Law

One of the main tasks left pending from the previous administration - and from the return to democracy for that matter – is passage of the General Labor Law (LGT).

This bill has been before the National Labor Council (CNT) and the Congress since 2001 and, if passed, would not only unite in one law (a General Law) the group of current labor regulations and provisions, it would bring in line with international standards on human rights with regard to work, those aspects of individual workplace relations that are directly linked to the exercise of the fundamental rights of work.

It is further expected that the LGT will better regulate situations of subcontracting and outsourcing. As stated by the National Program for the Promotion of Decent Work in Peru, “when put into practice, subcontracting seems to have generated an increase in jobs whose working conditions are inferior to those found in the company using that service. At the same time, we have seen a reduction in the number of these companies’ full-time employees and 65% of the complaints lodged against employers for labor rights violations are coming from sub-contracted workers (temporary or complementary).”³²

As we will see further on, this situation simultaneously affects fundamental labor rights, namely equal treatment and discrimination (for receiving fewer labor rights and benefits, including profit-sharing as mandated by law), the right to association, and the right to collective bargaining directly with the business that uses the services of a subcontracting company.

Moreover, the LGT would grant greater protection to a worker in the face of unwarranted dismissal by including the legal right to be re-instated in cases where no “just” and “objective” cause could be found for the dismissal.

In terms of collective labor relations, the LGT would reestablish the right to collective bargaining industry-wide, which was weakened during the labor reform movement of the 1990’s when more power was given for negotiation within each company.

The five years of debate and lack of approval of the LGT shows the clear resistance of certain sectors of the government and powerful businesses to promoting Congressional approval of this bill since they see it as counterproductive to their own interests. Yet 75% of the articles in the bill have been approved by the CNT, and the content and spirit of current labor legislation would still be left practically untouched by this new law.

On the other hand, passage of the LGT is fundamental because it would serve as a legal reference for all trade negotiations (multilateral or bilateral) in which the Peruvian government is engaging with other countries or trading blocks. Government attempts to pass alternative labor regulations for SMEs could collide with the spirit of the LGT.³³

³² ILO. http://www.oit.org.pe/osra/documentos/programa_nacional_de_trabajo_decente_pntd_peru.pdf

³³ LA REPÚBLICA. Op. Cit. (August 2, 2007). <http://www.larepublica.com.pe/content/view/169980/484/>

3.3 Capacity and scope of oversight

One of the factors explaining the high levels of informality and non-compliance with labor law is the profound lack of oversight on the part of the Ministry of Labor. According to the ILO, the best indicators for showing this reality are the State's capacity to oversee working conditions, such as number of labor inspectors and number of workers and companies each inspector has to cover.

Along these same lines, the current administration has been implementing a strategy for monitoring labor standards as part of the sectoral policies adopted within the framework of the Labor Ministry's 2006–2011 Sectoral Plan: Jobs and Labor Rights for All Peruvians.³⁴ The following is a list of the most important measures included in the plan:

- Strengthening of the inspection systems (for labor, health, social security, and the protection of minors).
- Incorporating 100 new inspectors.
- Updating control processes through procurement of computers.
- Making inspections more practical by focusing them on cases of rights violations.
- Creating and implementing the National Labor Inspection Office with its corresponding National Inspector's Plan and National Formalization Plans.
- Collaborating with other institutions (joint SUNAT - MTPE inspections).
- Strengthening the Labor Ministry's right to coercive collection so it can exercise its authority and recoup resources for improved service.

Even with these important measures, the crisis and incapacity of the Labor Ministry to regulate and guarantee enforcement of labor law is evident, making the government's inspection function entirely inadequate. According to the Labor Ministry's publicity, the number of regular inspections grew from 78,999 during the period of August 2005-2006, to 94,820 during the period August 2006 – July 2007 (a 20% increase).

This has a direct relation to the insufficient number of current labor inspectors. According to the Labor Ministry, this year they expect to have 250 labor inspectors for a population of about 13,119,000 workers nationally. That would mean a proportion of one for every 52,476 workers, which would significantly reduce the oversight capacity of the labor authorities.

In July, the Union of Labor Inspectors of the MTPE (SIT-Peru) disseminated a public statement denouncing the refusal of the Labor Minister to address the labor demands they had presented, their primary demand being respect for their pay scale. According to the SIT, the Minister attempted to establish a fixed pay and another "variable" pay (pay per job) for labor inspectors, which sets differentiated labor conditions with regard to the rest of the Ministry's personnel, who are under the regulations for private-sector activity (Leg. Decree 728) and for the public sector (Leg. Decree 276). In addition, the Union denounced that labor inspectors working in the provinces continue to be employed through subcontracting ("services") and not as Ministry personnel or as professionals (without rights or benefits), and do not have adequate tools to carry out their functions (for example, they only have 10 autos to transport inspectors).

³⁴ Available at:
http://www.mintra.gob.pe/contenidos/portal_de_transparencia/transparencia_2007/PLAN_SECTORIAL_MTPE_2006_2011.pdf

3.4 National Plans for Promoting Fundamental Labor Rights

As indicated by the 2006–2011 Sectoral Plan: Jobs and Labor Rights for All Peruvians, the Labor Ministry has established as a goal to prepare and approve four sectoral plans that promote fundamental labor rights. To accomplish this, it has proposed the following:³⁵

- Creation of the National Office for Corporate Responsibility, Union Responsibility, and Fundamental Rights. Its area of expertise rests in formulating, developing, and supervising policies that promote fundamental labor rights, corporate labor responsibility, and non-discrimination (especially against young people, women as heads of household, disabled people, older adults, and indigenous communities). The corresponding proposed changes to the legislation have been submitted to the Council of Ministers for its approval.
- Creation of the National Commission for the Fight against Forced Labor, established by Supreme Decree # 001-2007-TR of January 13th, 2007. The MTPE presides over this body,³⁶ whose responsibility is to oversee on a permanent basis the strengthening of public policies that prevent, penalize, and make amends for situations of forced labor. The commission has already written the National Plan for the Fight against Forced Labor and is solidifying actions to begin its implementation, in collaboration with regional authorities in the Ucayali Region where there are known instances of forced labor.
- Creation of the National Steering Committee for the Prevention and Eradication of Child Labor, established when Supreme Decree # 008-2005-TR approved the Plan for Eradicating Child Labor. Activities proposed in this plan center on awareness raising and institutional strengthening.
- Creation of the National Plan for the Freedom of Association and Union Responsibility, which is in the final stages of drafting. It will seek to guarantee freedom of association and to garner the commitment of all unions to act responsibly.

To date, the only plans this body has prepared are the Plan for Eradicating Child Labor, National Plan for the Fight against Forced Labor, and the National Equal Opportunity Plan. Goals shared by all these plans focus on publishing, training, consulting, promoting, and providing special attention to fundamental labor rights. Nevertheless, in the opinion of some Labor Ministry officials, the few resources allocated for such goals will have little impact on actually realizing them. To date, there are no reports on levels of implementation and progress achieved in these plans.

3.5 Modernizing the administrative capacity of the MTPE (Labor Ministry)

One of the chief objectives of the 2006–2011 Sectoral Plan: Jobs and Labor Rights for All Peruvians is bolstering the jurisdiction of the MTPE nationwide in the following areas: policy making, regulation and supervision of regional labor offices, and job creation.

³⁵ MPTE. Logros del MPTE Agosto 2006 – Julio 2007 (MTPE Achievements from Aug 2006 – July 2007). www.mintra.gob.pe

³⁶ Members of the commission are from the MTPE (Labor Ministry), Ministry of Health, Ministry of Education, Ministry of Justice, Ministry of Agriculture, Ministry of the Interior, Ministry of Foreign Trade and Tourism, Public Ministry, Ministry of Women and Social Development, National Ombudsman Office, National Institute for the Development of Andean, Amazonian and Afro-Peruvian Populations (INDEPA), workers' organizations, and employers' organizations.

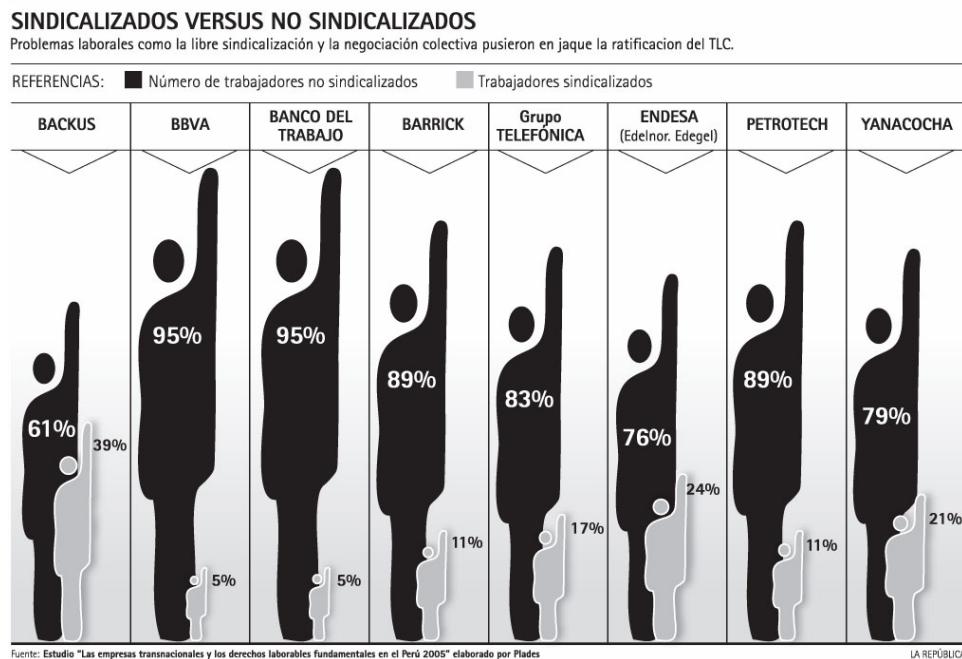
Some measures adopted by the MTPE include its modernization and the simplification of administrative processes. Likewise, it has reorganized its personnel and simplified its systems for keeping track of labor statistics.

4. Representative cases of fundamental labor rights violations in Peru

As we have described above, fundamental labor rights in Peru are far from being fully enforced. Proof of this is seen in the countrywide reappearance of labor conflicts. According to statistics from the National Ombudsman's Office, there were 35 social conflicts registered in June alone, of which 9% were involved labor issues and unions. Most cases of labor conflict were localized at the company where the problems arose, where workers were demanding better wages and the right to collective bargaining, yet the most extreme cases are corporate in nature and are led by craft [industry-wide] unions in strategic public and private sectors.³⁷

According to recent reports, 78% of the workers in 20 transnational companies investigated are not unionized. Of the universe of companies in the study, 72% carry out actions to weaken unions or to make conditions difficult for collective bargaining, despite publicizing themselves as being socially responsible companies. Furthermore, there are reports of leaders being fired while they are developing collective bargaining processes, and bonuses are given to workers who renounce unions. The preferred modality of these companies is indirect contracting or "tercerización" [outsourcing].³⁸

Graph #3
Rate of Unionization in 20 Transnational Companies in Peru (2005)
 Unionized workers (black) and Non-unionized workers (gray)



We will devote this section to discussing some of the most representative cases of labor conflict that have occurred in the past few months or years. These are not all the labor conflict cases, as job instability and lack of guarantees to exercise the right to protest in large

³⁷ Information according to daily reports on social conflict produced by the Ministry of Interior's National Intelligence Office (DIGEMAN).

³⁸ PLADES. Las empresas transnacionales y los derechos laborales en el Perú. Lima, 2005. http://www.viso.plades.org.pe/contenido/publicaciones/Informe_Anual_2005.pdf También se puede revisar: CEDAL. Vigilancia Social a los Derechos Fundamentales en el Trabajo, Lima, 2002.

part inhibit labor protest. The cases discussed are emblematic of the violation of fundamental rights, such as freedom of association, the right to collective bargaining and freedom from job discrimination. These cases were selected because of their implications in the context of the FTA, summed up in the following 2 factors:

- Companies involved in key national economic sectors involved in exports: the service sector, agro-industry, mining, and textile-apparel manufacturing. These cases are important because they are found in sectors that have been showing signs of sustainable growth in the past decade and have had a noticeable influence on job growth both in and outside of Lima.
- Conflicts taking place in companies considered leaders in their sectors. Paradoxically, these cases usually deal with economic activities whose practices are monitored from abroad and because of that, companies need to adopt practices in accordance with international labor and environmental standards.

Annex II features a table that summarizes the fundamental rights violated and the policies adopted by the current government and social actors to address them. Detailed information on cases of violation of worker and union rights in Peru can be found in the “Alertas Informativas” produced by PLADES (Labor Development Program), available at <http://www.viso.plades.org.pe/contenido/alertas/>

4.1 Banning collective bargaining and violating the right to strike³⁹

▪ Case: Sociedad Agrícola Virú

On May 7, 2007 about 4,000 workers at the company Sociedad Agrícola Virú S.A., located in the region of La Libertad (Trujillo, the capital), stopped working, set up a picket line, and blocked access to the plant to protest abuses they had suffered at the hands of their employer. According to the inspection report drawn up by the Regional Labor Office of the department of La Libertad, workers were accusing their employer of not paying them overtime or their [legally mandated] share of profits, as well as blackmailing them into doing extra work as a condition for paying their normal wages.⁴⁰

In spite of having verified the work stoppage at the company, the Ministry of Labor declared the work stoppage illegal, stating it was “ill timed” and thereby allowing the police to break up the assembly and arrest several of the workers. After the strike was put down, townspeople from the community of Víctor Raúl Haya de la Torre gathered together and marched in protest to the district of Virú, an act which laid the foundations for a dialogue among authorities, the company and the workers, which ended in the release of those arrested and in workers’ demands being taken seriously.

On May 9th, with mediation by the Regional Labor Office of La Libertad, workers and the company signed an agreement containing 20 points. In this agreement, the company committed itself to improving working conditions and its treatment of workers, implementing occupational health and safety policies, negotiating required production quotas (number of furrows dug per day, publishing daily production weights), providing benefits (maternity leave, training, mobility), and increasing wages and other economic compensation (legally

³⁹ Data gathered by Rocio Campana. “Paro en la Sociedad Agrícola Viru. Crónica de un conflicto anunciado” (Strike at the Sociedad Agrícola Viru. Story of a published conflict). In PLADES, Decent Work Bulletin, #2, May 2007. <http://www.plades.org.pe/programas/trabajodecente/boletin/n02/act-04.htm>

⁴⁰ Auto Sub-directoral # 155-07-GR-LL-GRDS/DRTP-DPSC-SDILSST (File #820-07), from May 9th, 2007. Cited in PLADES, Global Trabajo #2.

mandated overtime pay for additional hours worked and for night-shift, overtime pay for working on days off, profit sharing advances), and so forth.

Workers at Sociedad Virú, the principal asparagus exporting company in Peru, have reported to Peruvian civil society organizations⁴¹ a series of hostile actions by the company, which has wanted to discount the legitimacy of the workers' claims through stating they have been generated by "outside" and "foreign" agents who stir up trouble among the workers. Also reported have been a series of threats aimed at the families of workers who took part in the strike.

Generalized situation in the entire agro-export industry

Various NGOs have been following the labor situation in agro-industry.⁴² According to their findings, the problem described above is not exclusive to Sociedad Virú. It is just one part of the labor reality caused by the agro-industrial boom that the Peruvian coast has been experiencing since the 1990's.

In the department of Ica, for example, agro-industrial production grew 135% from 1994 to 2005, surpassing 230 million dollars in exports. Also in Ica, most workers (56.8%) are hired on time-limited contracts, and this figure may rise as high as 65.7% if apprenticeships are included. Temporary jobs prohibit workers from the complete exercise of their right to form unions, which in turn restricts their ability to collective bargaining with employers concerning job related demands.⁴³

The precariousness of work in agro-industrial activities is indicated by the temporary nature of jobs, long working days that exceed eight hours, and lack of benefits (in Ica, 54.7% of private salaried workers have no contract, 70% receive no pension and 64% lack health insurance).⁴⁴ The inexistence of unions makes social dialogue and collective bargaining difficult, deepening the gap in the distribution of profits. The labor authorities only have two labor inspectors to oversee more than 100 companies that operate in Ica.

Reviewing the evolution of the average wages in Ica reveals extreme inequality in the distribution of labor income. According to the Ministry of Labor, from 2000 to 2004, average wages of an executive grew by 51%, while average wages of laborers grew only by 1% (see graph). This explains why the 40% of workers at the bottom of the income scale (in Ica, 42% of the population lives in poverty) only receive 11% of total income, while the richest 10% get 41.8% of labor income in the region.⁴⁵

⁴¹ The NGOs PLADES (Labor Development Program) and Aurora Vivar have been investigating conditions in the agro-industrial sector of La Libertad and advising and training workers and their labor organizations. Teams of researchers and organizers receive permanent "alerts" from workers regarding hostile actions by their employers. Plades: www.plades.org (Contact: Juan Carlos Vargas, jcvargas@plades.org.pe, telephone: 470-0954) and Aurora Vivar (Contact: Miguel Calissaya, miquecali@lycos.es, telephone: 265-9323)

⁴² Interest in the social and labor impacts of the agro-export industry has grown along with the sector. The first systematic study was done by Custodio Arias (CEPES) and published by FEPROMU under the title *Labor situation of salaried workers in the Ica Valley* (Fepromu, 2000). Continuing with a gender focus, the Institute for Health and Work (ISAT) recently published *Work and Health Conditions of Women Workers in the Asparagus Industry in the Ica* (Oxfam, 2005). Currently, the NGOs CEDAL, Aurora Vivar and PLADES are following the situation of fundamental labor rights in Ica and Trujillo, with a focus that introduces the perspective of social responsibility in their indicators.

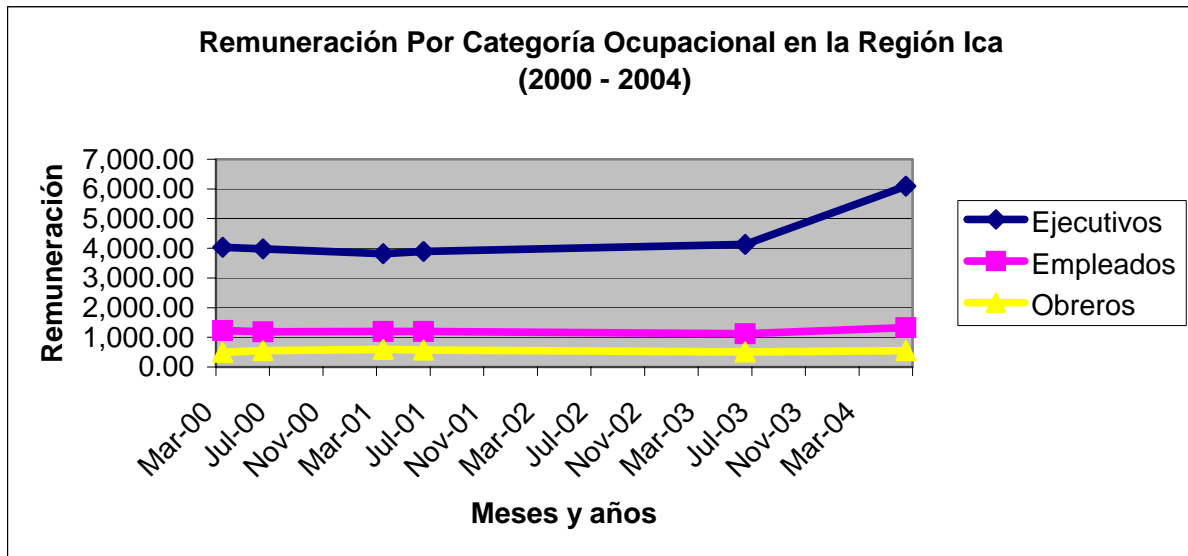
⁴³ FERNANDEZ-MALDONADO, Enrique. "Trabajo decente y responsabilidad social en la Agroindustria peruana" (Decent Work and Social Responsibility in Peruvian Agroindustry). CEDAL, Lima, 2005.

⁴⁴ MTPE. National Household Survey (ENAHO) IV Trimester 2005.

⁴⁵ MTPE. Boletín de Economía Laboral N° 30. http://www.mintra.gob.pe/peel/publicaciones/bel/BEL_30.pdf

In Trujillo, where there has also been an important increase in exports, the distribution of labor income is just as grossly unequal: from 2000 to 2004, average executive salaries increased by 65% (from 3,691 to 6,102 soles), while the average wages of [blue collar] workers in Trujillo increased by only 0.5% (from 596 to 626 soles) – less than 50 soles over four years.

Pay According to Occupational Category in the Region of Ica (2000-2004)



Executives, Employees, Laborers

Source: MTPE-DNPEFP. National Survey of Salaries and Wages, June 2004. Author's graph.

4.2 Violations of freedom of association and the right to work⁴⁶

There are innumerable cases of violations of the right to form trade unions in Peru. The public only becomes aware of them when they turn into social conflicts and the news media spins the situation, presenting it as if it were an act of random violence.

▪ Case: the mining company Casapalca

During the first half of this year in a number of important mining areas, such conflicts arose. One of the most reported cases was that of workers in the Casapalca mine (in the Lima Region), who stopped work during June because the company fired 300 workers – including 34 union leaders – when they tried to form a union and negotiate improved working conditions.

The company is owned by the Gubbins family, and officials there ignored all summons by the Ministry of Labor to reach a solution to the strike that looked like it would last indefinitely. According to information disseminated through the media, workers complained that they had not been paid for the month of May, while Casapalca admitted no wrongdoing and said that payment of wages was the responsibility of the companies that it has subcontracted to employ the miners.

⁴⁶ Data described in detail in "Trabajo decente sin sindicato? El caso de Topy Top" (Decent Work without Unions? The Case of Topy Top). In PLADES, Decent Work Bulletin #2, May 2007.
<http://www.plades.org.pe/programas/trabajodecente/boletin/n02/act-04.htm>

After two weeks of blocking the highway and clashing with police (which caused the death of four people), the Casapalca company decided to attend the meetings convened by the Labor Ministry and respond to the workers' demands. Available information indicates that the company has committed to making the payments corresponding to salaries from May.

- **Case: Topy Top, the textil and apparel sector**

During this same time period, workers at the Topy Top clothing manufacturer went on strike to protest the firing of 45 workers who had been "asked to voluntarily quit". The dismissal was based upon the decision of a group of workers to form a union in order to collectively bargain with the company, and it was done to terminate the union's formal registration. Nevertheless, the company did not realize that the union had already signed up 80 new members, which forced the Labor Ministry to reject the company's union termination request and recognize its existence.

Topy Top is one of the leading companies in Peru's apparel market and textile exports. According to its own leaders, it is the second largest textile exporter in Peru, registering sales of US\$ 71 million a year. The company boasts an average production of 2.9 million pieces a month for the domestic and international markets, and has 4,570 workers.

Labor inspections uncovered that all the letters signed by the fired workers had been processed by the same notary at no cost to the workers since they "had paid in advance for their notice to quit."⁴⁷

Far from modifying its behavior, Topy Top took a harder line in its anti-union posture and dismissal policy by firing another 70 workers in June.

The case was taken on by the International Federation of Textile Workers, which engaged with representatives of the companies GAP and INDITEX in order to insist that Topy Top, their supplier in Peru, reinstate the 93 workers fired for trying to form a union and strictly comply with their Code of Conduct, particularly with regard to fundamental labor rights.

This was an historic achievement, which created an important precedent in Peruvian labor relations. It also shows the importance of the effective application of multinational companies' instruments for regulation of businesses when these are seriously taken on and applied, in light of the state's inability to orient the behavior of economic actors. It also shows the importance of coordination among unions in the multinational's headquarter country, the international labor federation and the union in the supplier company.⁴⁸

- **Case: ITETE Perú⁴⁹**

ITETE Peru is a contracting company that provides home telephone hook-up services to Telefónica del Perú, a subsidiary of the transnational Spanish phone company, Telefónica. This union has received strong pressure from ITETE to force its disappearance.

⁴⁷ Information provided by former Labor Minister (2003-2004), Javier Neves Mujica.

⁴⁸ <http://www.fiteqa.ccoo.es/Barnner/TopyTop/AcuerdohistoricoTOPYTOP.pdf>

⁴⁹ The information container here has been provided by Hector Díaz, Secretary General of the Union of Workers of Itete Perú (Sut-ITETE). Contact: sut_itete@hotmail.com. Telephone: 9847-0078.

Six days after the union (SUT-ITETE) filed its papers with labor authorities in 2005,⁵⁰ the company ITETE fired the union's secretaries for press and defense, as well as a union member.

On March 29th of that year (2005), SUT-ITETE presented its first list of demands and insisted that the company begin a process of collective bargaining (30.03.05 EXP. N° 53953-2005 DRTPEL-DPSC-SDNC (N35131)). That same month, the company fired nine more workers for having formed a union.

In April, the company appealed, alleging lack of compliance with legal regulations by questioning the validity of the signature of union leaders Wilmer Floriano and Will Ramos, of the Board of Directors, who were also fired.

The company supported its refusal to respond to the list of demands and begin a collective bargaining process by saying that there should only be three and not four members of the Board involved in the bargaining process. The labor authorities communicated this to the union. At the end of the month, 10 more workers were fired for having formed a union.

From that month on, the company ITETE repeatedly refused to participate conciliation meetings convened by the labor authorities, alleging that the union's Board of Directors was not duly accredited, despite the labor authorities having indicated that the conciliation process must begin. In October of 2005, the judicial system ruled that the Deputy Director for Collective Bargaining should abstain from following through with the process until the litigation over registration of the union was resolved.⁵¹

At the same time, the company insisted that two workers from the company testify before the civil court of Surquillo (Lima district) that the union did not exist. This occurred precisely while the process of collective bargaining was being delayed and while "incentives" and veiled "threats" of dismissals were being used to encourage as many affiliated workers as possible to renounce their union membership (90% of employees are working under temporary contracts).

Since the union was formed, the company has fired more than 45 affiliated workers.

Telefónica del Perú provides home phone service, Internet, cable television and other services through a series of intermediaries, of which ITETE is one. In 1994, before the privatization of Telefónica del Perú, 90% of workers were contracted directly by the company. Thirteen years later, almost 100% of all primary activities of the company (installations, maintenance, customer service) are carried out by outsourced technicians.

The sub-contracting is transferred, in turn, to contracting companies. Over 85% of the work that Telefónica is responsible for is carried out by technicians sub-contracted by the contracting companies that provide their services to Telefónica del Perú. There is a chain of precarious labor conditions - low salaries (pay by the piece or by productivity), limits to the right to association or collective bargaining - due in large part to the temporary contracts these workers have. According to information from SUT-ITETE, it is known that the differences in salaries between a worker contracted directly by Telefónica and that of outsourced workers can be as much as 8 or 9 times.

⁵⁰ Record of Automatic Registration, granted by the Labor Ministry authorities. EXP N° 23847-05-DRTPELC/DPSC/SDRG/DRS

⁵¹ Auto Sub-Directoral N° 042-2005-DRTPEL-DPSC-SDNC (N114116)

▪ **Case: CAM Perú⁵²**

Cam Peru is a subsidiary of the transnational Chilean company Americana de Multiservicios (CAM) and a contractor for the company Edelnor, responsible for the domestic distribution of electricity in the northern section of Lima. CAM Peru does not recognize the formation by its workers of a local of the Union of Electrical Workers of Lima and Callao (SUTREL), registered since 2001, in spite of having been legally recognized by the labor authorities through their Deputy Director for Union Registration.

Using this argument, in 2002 CAM Peru refused to accept the list of the union's demands and began an administrative procedure with the Labor Ministry, a process that favors the company. CAM Peru believes it is a "services" company that does not carry out activities that are part of the primary activity or process of Edelnor and, therefore, that SUTREL (a union of electrical industry workers) cannot represent its workers, who belong to another sector (services or maintenance).

This situation was repeated in response to the union's demands in 2002, 2003 and 2004. After exhausting administrative solutions, SUTREL filed suit to restore the rights infringed by the decision against them stipulating that negotiation by industrial sector was not the correct means. For the case of its 2005 demands, SUTREL obtained a favorable ruling through the administrative procedure, yet the company refused to initiate collective bargaining or attend the conciliation meetings convened by the labor authorities. Once the MTPE mediation process was exhausted, the case was sent to arbitration but the company again refused to participate. On July 27th of that year, SUTREL was cited with a "litigious administrative" claim that sought to eliminate the resolutions obtained favoring its recognition as an industrial union able to bargain collectively in CAM Peru.

In 2006, the union presented its list of demands jointly with the Union of Workers of Concessionary Electricity Companies (SUTECEA), which was lost because the union had received court rulings against it, despite the fact that the labor authorities had testified (June 23, 2006) that the company's refusal to bargain collectively with SUTREL was groundless (Case no. 213678-2005-DRTPEL-DPSC-SDNC). In this particular case, SUTREL filed a motion to protect, which is still in process. Their list of demands for 2007 is awaiting resolution in the office of the Deputy Director for Union Registration.

From 2001 to date, CAM Peru has insisted on two occasions that its personnel sign individual four-year agreements (2002-2005 and 2006-2009). In this way, the company is boycotting and denying legitimacy to the actions carried out by SUTREL to collectively bargain on issues of salary and working conditions.

At the same time, according to statements by SUTREL leaders, CAM Peru has not deducted union dues, as is established under Law No. 25593. Furthermore, the company does not process communications sent by the union, forcing the union to send its communication to the company through a notary public.

This anti-union policy – which violates the right to union representation and to bargain collectively and obstructs social dialogue – also occurs in Edelnor, which is pressuring its personnel to sign individual work agreements for four years (2002-2005). This year, Edelnor negotiated a similar agreement with its workers, in effect until 2009. This time, both unions participated and signed the collective bargaining proposal from the company, faced with the

⁵² The information presented here was provided directly by Julio Rivera and Humberto Estrada, leaders of SUTREL. Contact: juliosutrel@yahoo.com, Telephones: 9894-0048, nextel 9409-5995; Humberto Estrada: hestradav@hotmail.com.

threat of massive renunciations by union members because of the individual offers the company was making.

Violation of the individual right to freedom of association and exercise of union activities: the case of Luis del Río (SUTREL)⁵³

Luis Martín del Río Reátegui, former Secretary General of the Union of Electrical Workers of Lima and Callo (SUTREL), was fired from the company Luz del Sur, a subsidiary of the U.S. company PSEG Global of New Jersey and SEMPRA of California, for providing “public information” to NGO researchers interested in finding out about the labor conditions in multinational companies operating in Peru, at the time when he was the Secretary of Defense and Human Rights of SUTREL.

From these studies, it was concluded that it was necessary to make known:

- (1) anomalies in the payment to workers of their share of profits [as mandated by law], having found strong indications of misuse of the law – Law 26283 and its Regulations DS-120-1994-MEF – in apparent complicity with government officials in office at the time;
- (2) use of the “RUC sensible” [corporate tax loophole], since for example they paid little or no taxes, despite profits being made by those companies that benefited from the privatization of Electrolima SA and other transnational companies, particularly in the mining and electricity sector;
- (3) failure to pay or partial payment of profit shares to workers [as mandated by law], despite payment of significant dividends to shareholders;
- (4) failure of the electricity companies (EDELNOR SAA., EDELSUR SAA. now Luz del Sur, and EDEGEL SAA., resulting from the break-up of Electrolima S.A.) to respect workplace seniority or pay scales;
- (5) failure to validate or recognize agreed time-off for union activities;
- (6) pressure on workers to renounce their union membership, providing them with “incentives” or simply firing them;
- (7) hiring of new workers as “confidential employees” in order to prevent their union membership and provide fewer labor rights and benefits.

The company Luz del Sur argued that Luis Martín del Río Reátegui, then Secretary General of SUTREL, acted individually, accused him of “slander” and fired him on September 2, 2003. Yet the dismissal was overturned by Peruvian courts in October, 2003.

Despite all the evidence presented and the favorable court rulings – 9th district labor court (case no. 500-2003), ratified by the 3rd circuit labor court (case no. 275-2004), as well as protective measures (“medida cautelar de reposición”) declared by the Supreme Court (case no. 1043-2005) – the rulings were later reversed arguing lack of clarity (the Supreme Court’s “Primera Sala Constitucional y Social Transitoria” overturned the ruling of the 3rd circuit labor court, despite its clarity and overwhelming legal arguments). The same circuit court (via three “Vocales Dirimientes por Discordia”) later also overturned the sentence of the first court, thereby avoiding compliance with the protective measures ordered by the Supreme Court. This case merited a complaint by the General Confederation of Workers of Peru (CGTP) with the Office of Judiciary Oversight (OCMA) – case no. 2350-2006. The process was taken up again in November of 2006 with the court (“Primera Instancia”), and since December 26, 2006, the protective measures (“Medida Cautelar Innovativa”) were removed and payment of Mr. Martín del Río’s salary was ended.

The ILO, in November of 2004 and in March of this year, requested information from the government on this particular case and urged the Peruvian state to respect and comply with

⁵³ This information has been provided by the victim, Luis del Río (luderperu@hotmail.com), former Secretary General of SUTREL, 9920-4627.

the fundamental rights of workers, and especially the rights of unionization. Currently, an appeal against removal of the protective measure (“medida cautelar”) is in the 3rd circuit labor court - case no. 3138-2007 ND(As). To date, the company has not complied with the reinstatement of Luis Del Río and has not paid his salary (to which should be added payment for his share of profits earned in part of 2005 and in 2006, as well as the CTS – bonus for time served – from the last half year), in spite of the existence of the protective measure since January of this year.

4.3 Job discrimination

Cases of job discrimination resulting from the various sets of labor regulations parallel to the private-sector activity regime (Leg. Decree 728) are seen mostly – though not exclusively – in the mining sector, in apparel manufacturing and in agro-industry.

▪ In mining:

The strike by workers at the mining company Casapalca (Lima region) during June of this year was chiefly done to force the company to hire directly its outsourced mining workers. The basis of the complaint came from the difference in wages and working conditions experienced between the two types of workers: those who were subcontracted and those who were on payroll. In its defense, Casapalca alleged that it had established a relationship with “contracting” companies and not with the outsourced workers themselves and therefore did not deny this complaint. Yet, only 200 of the 1,900 people who work in the company are on the company’s payroll, while 1,700 appear as salaried workers for over a dozen subcontracted companies.

In April, 800 workers at the mining company Shougang in Marcona, Ica, stopped work, demanding better wages and to be directly hired by the mining company. A large number of workers complained that for more than a year they had been working under the status of “non-permanent workers”, thereby earning a third of what payroll workers earned, not receiving profit sharing,⁵⁴ and having to pay higher rent for dilapidated housing and for access to water at the mining camp. They also reported having to work close to 12 hours per day.⁵⁵

Just like what happened at Casapalca, there were reported cases in the Chinese company of workers demanding full payment of their wages and receipt of benefits, which are cut by 35-45% by the contracting companies. Workers contracted in this way are harmed the most, in terms of not having vacation time, retirement pay, or CTS (compensation for time of service).⁵⁶

The Casapalca and Shougang cases are normal for the mining sector. Legalized job flexibility established in the General Mining Law specifically allows mining concessionaires to “outsource” and subcontract their prospecting, development, exploitation, and smelting⁵⁷

⁵⁴ In the case of the mining sector, Legislative Decree # 892, issued in 1996, established profit sharing at a fixed rate of 8% with a maximum of 18 pay-outs per year. The mining federation has claimed this decree to be unconstitutional and of a confiscating nature since the money not received by the workers ends up in the government’s hands through the legal entity called FONDOEMPLEO.

⁵⁵ DIEZ CANSECO, Javier. “Alan al service” (Alan Garcia at your service). La Republica, 30/04/2007

⁵⁶ CAMPODÓNICO, Humberto. Minería: es hora de terminar con el abuso de las services (Mining: time to end outsourcing abuses). La Republica, 28/04/07. <http://www.cristaldemira.com/articulos.php?id=1482>

⁵⁷ Supreme Decree # 014-92-EM, General Mining Law: “Article 37: Concessionaires shall enjoy the following: (...) 11. to use specialized companies, registered with the General Mining Office, for prospecting, development, exploitation, and smelting.” This provision is regulated by Supreme Decree # 043-2001-EM, issued on 21/07/2001.

activities. In addition, mining companies make use of different ways of hiring workers that are offered in the regime of private-sector activity (Legislative Decree # 728), such as sub-contracting, short-term contracts, and apprenticeships.⁵⁸

The majority of workers in the mining sector are hired using various modalities of third-party contracts (sub-contracting and outsourcing). Close to 80% of those who work in medium and companies are hired under such contracts or through independent/non-personal services contracts. This means that these workers cannot benefit from the companies' profit-sharing schemes (mandated by law) and do not enjoy basic rights such as social security benefits and vacation time. Furthermore, mining workers generally work more than 8 hours per day, without being paid overtime.

The economically active population in Lima (where one third of Peruvians live) includes 3,837,000 workers, of whom 1,123,000 or 29% are employed under third-party contracting systems, independent/non-personal services contracts or other similarly unstable labor contracts. This reality today contrasts with 1985 when 378,000 workers were employed under such contracts. Now only 340,000 people or 8% of the economically active population have permanent or stable contracts, while 11% (437,000) are openly unemployed.

On the basis of SUNAT (National Tax Authority) estimations, there are about 3,000 companies or "work cooperatives" nationwide engaged in contracting workers for other employers.

The temporary nature and precarious conditions for miners hired using the flexibility inherent in the legislation are factors that inhibit union affiliation since workers fear their contracts will not be renewed or that they will be penalized or even fired, and weak protection measures hinder mining workers from fully exercising their right to form unions. This situation appears in contradiction to the incredible growth experienced by the mining sector, which reported a 14 billion dollar profit in 2006.

4.4 Child labor in Peru

Child labor is an issue that is on the cusp of becoming a structural problem in our country and in the region as a whole. Even if most child labor is used in sectors that are not directly associated with the flow of foreign trade, there is a certain consensus that deems it to be a priority issue and one of the root causes of chronic poverty, since the unfair structures it establishes are damaging to the overall and timely development of the children and young people involved.

As stated in Peru's Child and Adolescent Code, a person is allowed to work a) in non-labor-intensive agricultural jobs when they reach the age of 15, b) in industry, sales, or mining jobs when they reach the age of 16, and c) in industrial fishing jobs when they reach the age of 17. Nevertheless, it goes further and states that 12-year-olds can work in other jobs (unspecified) as long as they have parental or guardian approval to do so.⁵⁹

Table # 7
Jobs performed by children and adolescents in Peru

⁵⁸ According to Ministry of Energy and Mining (MEM) statistics, there are 101,192 mining workers, out of which 36% are payroll workers (at the beginning of the 90's, 75% were on the payroll), while the remaining 64% are hired on an indirect basis through contracting companies ("services"). Even in large mining companies, the proportion is very similar: 60% of staff are employed by such contracting companies.

⁵⁹ MTPE. Child and Adolescent Code. Law # 27337 (07/08/2000). http://www.mintra.gob.pe/leyes_adol.php

6 – 13 years old		14 – 17 years old	
Agricultural activities	81%	Farm hand	48.7%
Supporting family business	11%	Wholesaler	11.6%
Domestic work outside the home	3.7%	Domestic worker	8.6%
Helping to produce products for sale	2%	Weaver, knitter, brick maker, mechanic helper	7%
Selling products (Candies, food)	1.9%	Service worker, cleaner, launderer	8.4%
Cargo carrier, brick maker	0.4%	Sidewalk seller	3.7%
		Cook, waiter, cargo carrier, mason, and other	11.8%

Source: ILO. Special Peruvian Report

According to the ILO,⁶⁰ child labor in Peru is mainly found in jobs where no technical ability is needed or those that are labor intensive, in family businesses, and with little to no pay. Regardless of the economic sector in which these jobs are found, child labor is closely related with the informal economy and is outside the jurisdiction of the Ministry of Labor.

According to this same source, the departments with the greatest incidence of child labor are Puno (69.7%), Huancavelica (58.9%), Apurimac (58.1%), Cajamarca (56.4%), and Cuzco (50%), all with at least half the population between 6 and 17 working. The riskiest jobs children are involved in are related to recycling, brick making, primitive mining, domestic work, and sex work.

In total, the ILO estimates that close to 2 million (28.6%) children and young people between the ages of 6 and 17 work. Of these, 53.9% are boys and 46.1% are girls. Nearly 1.2 million (25.7%) children and young people between the ages of 6 and 13 work, and around 800,000 (35.2%) young people between 14 and 17 work.

90% of child laborers work in the informal sector, and their work schedule lasts longer than 45 hours per week. A similar percentage of children from 10 to 14 receive a wage that is equal to or less than the minimum wage (S/. 600.00), and when child laborers enter adulthood, they earn 20% less when compared with their peers who studied at least 7 years.⁶¹

4.5 Forced labor in illegal logging in the jungle

This is by far one of the most difficult aspects to record, since it is a very complex issue and it is difficult to gain access to the regions where there are restrictions on the right to work or where people are forced to work against their will. Cases of this type in Peru are mainly found in the informal sector and in geographical regions that are hard to reach, such as primitive mining and illegal logging in the Amazon. These cases have recorded instances of child labor, discrimination, sexual exploitation, and physical and social violence, etc.

In the mid 19th century, Ramon Castilla abolished slavery in Peru. However, dishonest hiring practices (known as the “enganche” [hook] in Peru) and other forms of forced labor, such as

⁶⁰ ILO. Trabajo infantil en el Perú (Child Labor in Peru). http://www.oit.org.pe/ipecc/tid/docs/la_ninez_en_el_peru.pdf Report using data from 2001 fourth quarter INEI National Household Surveys.

⁶¹ The NGO, Mantohc (Movimiento de Adolescentes y Niños Trabajadores Hijos de Obreros Cristianos), specializes in working with child laborers. <http://www.mantohcperu.org/index.html>

job recruiting strategies, remained in use in spite of their legal banning in 1909, continuing for decades in “distant” regions that were out of reach of the State’s jurisdiction and control.

In the case of the Peruvian jungle, forced recruitment (enslavement of Amazonian indigenous peoples when first contacted by the outside world) has been recorded and analyzed, providing evidence that the loss of freedom is almost always related to a vicious circle of indebtedness, where the workers are forever subordinate to their logging masters.

The most recent data has been recorded in the study by Eduardo and Alvaro Bedoya, which was published by the ILO Sub-regional Office for the Andean Countries in 2005. The study shows that forced labor still exists, mainly in illegal logging in the departments of Ucayali and Madre de Dios, though there are other places within the Peruvian jungle where forced labor continues to be a reality.

Again, this study estimates that 33,000 people are forced to work against their will, chiefly people from the different ethnic groups of the Peruvian Amazon. Depending on the form of exploitation, it is estimated that 75% of workers in logging camps come from places far from the logging site, and, to a lesser degree, 25% of them come from the nearby indigenous communities.⁶²

The research cites that a significant number of logging companies in the Amazon still use the “habilitacion-enganche” hiring system (a dishonest practice as cited above) that is based upon “loaning” workers money or assets (machinery) up front, which they have to pay off in timber, in order to hook them into logging. This is the most widespread means of forced labor, and, according to some calculations, 2/3 of those working under conditions of forced labor are recruited in this way – having been conned or extorted – and work in areas near their native communities.

This recruitment pattern leads inevitably towards a system of subordination or indentured labor due to indebtedness. This system must be seen as one of the worst forms of worker exploitation, loss of freedom, and the absolute lack of a labor market or any market for that matter that is based upon modern ideas. Generally speaking, these situations include non-payment of wages or payment in kind, female prostitution in logging camps, and subhuman working conditions that offer no job security at all.

One of the most important characteristics concerning the contracts or agreements signed by the middlemen, “enganchadores”, and the indigenous communities is the frequent omission of specific monetary values that show the price of timber bought from the workers corresponds to the real market price. This is an easy way for the companies to control the debt owed to them from the initial “loan” given to the indigenous “recruits” that tricks them into becoming involved in this illegal industry.

4.5 *Unfair distribution of salaries and wages*

One of the factors explaining the rise in labor conflicts has to do with the unfair distribution of earnings. According to the 2004 National Household Survey (ENAHU) of Peru, the richest 10% of the population earns 29 times more than the poorest. This difference can be as high as 70 times when comparing the richest 1% to the poorest 10%. In Europe, for example, the difference is just 8 to 10 times.

⁶² BEDOYA GARLAND, Eduardo y Alvaro Bedoya Silva-Santiesteban. Trabajo Forzoso en la Extracción de la Madera en la Amazonía Peruana (Forced Labor in Logging in the Peruvian Amazon). ILO. Lima, 2005.

As stated by the National Wage and Salary Survey for Companies with 10 or more Workers, recently published by the Ministry of Labor, for the second half of 2006, workers' wages in the urban sector fell 3.98%, while in Lima, wages (paid monthly) fell by 0.03% and salaries (paid by the hour) by 4.4%.

This gap is related to profitability levels reached in the last few years in some business sectors. Share of salaries have been dropping off since the middle of the 1970's (when they reached 50% of the GDP), a trend that continued during Alan Garcia's first administration of the 1980's.

The country has still not been able to reverse this trend in recent years even though it has experienced 50 months of economic growth. According to the INEI (National Statistics Institute), the portion of GDP corresponding to salaries dropped from 30.1% to 22.9%, losing a total of 7.2% of GDP between 1991 and 2004. On the other hand, the portion of GDP corresponding to company earnings for the same time period increased from 52.7% to 60.6%, an increase of 7.9%.⁶³

Furthermore, profits rose 32% in the first quarter of 2007, surmounting the increases experienced from years before. The Lima stock market grew an average of 170% in 2006 (mining profits alone surpassed 5 billion dollars that year). As these figures correspond to businesses with 10 or more workers (nationwide, there are 14,318 businesses within this category, 10,328 of which are found in Lima and the other 3,990 outside the capital), which represent just 0.75% of all businesses, this growth included just 14.2% of the economically active population (EAP), meaning the rest of the EAP are in worse circumstances. It is known that most people in businesses with 10 or more workers are employed in Lima.⁶⁴

4.6 Peru: world champion in extended work days

The latest ILO study on international work hours demonstrated a generalized reality that seems very familiar in Peru. Statistics from the report place Peru at the head of the list of countries with workers who work, on average, more than 48 hours per week (50.9%). Korea, Thailand, and Pakistan share the top spots with Peru on this infamous list.⁶⁵

The study furthermore cites that 22% of the labor force around the world (614.2 million people) work "excessively long" work weeks; in other words, they work longer than 48 hours per week. The study included 50 countries, among them developed, less developed, and developing ones, from different continents.

One reason that might explain the high number of working hours is the low levels of productivity, which reduces the cost of a working hour and in turn forces Peruvians to work longer hours to earn more money.

Another explanation has to do with the unstable job situation that dominates the labor market landscape, forcing workers to work longer hours as a strategy to keep the job they have, showing employers they are "committed" to the job and have a strong "work ethic". Workers interviewed by the newspaper, La Republica, described feeling vulnerable vis-à-vis the

⁶³ CAMPODÓNICO, Humberto. Gana el capital, pierde el trabajo (Earning money, losing jobs). La Republica, 01/06/06. <http://www.cristaldemira.com/articulos.php?id=1237>

⁶⁴ CAMPODONICO, Humberto. No habrá mejora salarial "por un periodo más" (No more rise in salaries "for one term more"). La Republica, 16/7/07. <http://www.cristaldemira.com/articulos.php?id=1530>

⁶⁵ Working Time Around the World: Trends in working hours, laws, and policies in a global comparative perspective. Shangeon Lee, Deirdre McCann, and Jon C. Messenger, 240 pgs. ISBN 978-92-2-119311-1, ILO, Geneva. <http://www.oei.es/noticias/spip.php?article424>

discretionary power of their employers. "If I leave work after just 8 hours, I am certain that the next day I will be fired because lined up behind me are 50 others ready to take my place who will work longer than 8 hours. This is the fear that management takes advantage of."⁶⁶

4.7 Occupational health and safety

High rates of job-related accidents and occupational illnesses are mainly recorded in the mining and construction industries. In the case of mining, the MEM (Ministry of Energy and Mining) states that from 2002 to 2006, there were 437 reported cases of fatal accidents in the mines (a little more than 60 deaths per year). Of this figure, 67% were sub-contracted workers.

Construction workers fare little better. Between 2000 and 2007, around 120 workers died and 42 experienced debilitating accidents that have left them disabled.⁶⁷ It is important to recognize that several of the accidents occurred in construction linked with extractive industries, such as mining, that are "indirectly" involved in export processes.

Other sectors, similarly linked to foreign trade, demonstrate rates of occupational illnesses and job-related accidents that are contradictory to the levels of modernization, productivity, and profitability that differentiate them from average companies in the country.

Take, for example, the case of the agro-export industry. Despite the fact that current law sees little risk inherent in this activity, potential occupational health and safety risks have been documented. According to the Institute for Occupational Health (ISAT), workers in this sector habitually suffer from bronco-pulmonary diseases, poisoning caused by contact with agrochemicals (fertilizers and pesticides), health issues associated with solar radiation, and ergonomic risk (14% of workers report pain in the lumbar region because of kidney infections).⁶⁸

A recent survey given to agro-industrial workers from the Ica Region, one of the main agricultural producing regions on the Peruvian coast, revealed that 2/3 of the people surveyed (72.9%) stated they had not received any training on occupational health and safety prevention policies, while a lesser percentage (62%) believes their employer takes the necessary preventative measures to assure occupational health (24.8% spoke of receiving "lectures" on first aid).⁶⁹

⁶⁶ LA REPUBLICA, OIT: 50% de los trabajadores peruanos laboran más de 48 horas semanales (ILO sources say 50% of Peruvians work longer than 48 hours per week). 09/06/2007

⁶⁷ The list for all job related accidents and the circumstances surrounding them can be found in the Federation of Civil Construction Workers of Peru. http://www.ila.org.pe/publicaciones/docs/rel_fallec_construccion.pdf

⁶⁸ ISAT. Condiciones de Trabajo y Salud de las Mujeres Trabajadoras de la Agroindustria del Espárrago (Working conditions and female workers' health in asparagus agroindustry), Ica Region. Oxfam, 2005.

⁶⁹ MIROQUESADA, Jose Antonio and Juan Carlos Moreno. Condiciones laborales en fundos de agroexportación costera: el caso de Ica (Working conditions on coastal farms involved in agroindustry: the Ica Region Case. University of the Pacific. June, 2006.

5. Public policies targeting compliance with labor standards included in the U.S.–Peru FTA

As it is clear that current and previous administrations have had limited governance capacity and a demonstrated lack of political will with regard to enforcing fundamental labor rights, various civil-society organizations and labor experts agree in indicating short-term measures that should be taken to bring Peruvian labor law in line with international standards of decent work.

The measures would include the following:

- Enactment of the General Labor Law.
- Elimination of regimes (labor regulations) that promote production on the basis of reducing labor costs, and no creation of special labor regimes that include fewer standards than are in force right now.
- Formation of a tripartite commission for monitoring effective compliance with commitments on decent work.
- Implementation of a public awareness campaign promoting freedom of association and collective bargaining.

The ILO Sub-regional Office for the Andean Countries has, in the framework of its 2004–2006 National Program for the Promotion of Decent Work in Peru, performed an appraisal on the chief recorded shortfalls in terms of decent work in Peru. The report focused on analyzing levels of compliance with fundamental labor rights, labor policies, social protection, and the promotion of a social dialogue.

Part of the objectives of this appraisal was the proposal to the MTPE of a series of policy guidelines in six areas: macroeconomic framework, compliance with standards, jobs and wages, social protection coverage, promotion of a social dialogue and collective bargaining, and policies promoting gender equality.

Though this report touched on areas we feel are related and interdependent, this paper just includes (in Annex II) the guidelines for the second area (compliance with standards), since it is directly related to the purposes of this paper.

Annex I: Chart comparing the original text of FTA chapter 17 and the FTA Amendment

Original Text	Amended text
<p>Art. 17.1</p> <p>Statement of Shared Commitments</p> <p>1. The Parties reaffirm their obligations as members of the International Labor Organization (ILO) and their commitments under the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998). Each Party shall strive to ensure that such labor principles and the internationally recognized labor rights set forth in Article 17.7 are recognized and protected by its law.</p> <p>2. The Parties reaffirm their full respect for their Constitutions and recognize the right of each Party to adopt or modify its labor laws and standards. Each Party shall strive to ensure that it provides for labor standards consistent with the internationally recognized labor rights set forth in Article 17.7 and shall strive to improve those standards in that light.</p>	<p>Art. 17.1</p> <p>Statement of Shared Commitments</p> <p>The Parties reaffirm their <i>obligations</i> as members of the International Labor Organization (ILO).</p>
	<p>Art. 17.2.</p> <p>Fundamental Labor Rights.</p> <p>1. Each Party shall adopt and maintain in its statutes and regulations, and practices thereunder, the following rights, as stated in the <i>ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up</i> (1998) (ILO Declaration):</p> <ul style="list-style-type: none"> ▪ freedom of association;; ▪ the effective recognition of the right to collective bargaining; ▪ the elimination of all forms of compulsory or forced labor; ▪ the effective abolition of child labor and, for purposes of this Agreement, a prohibition on the worst forms of child labor; and; ▪ the elimination of discrimination in respect of employment and occupation. <p>2. Neither Party shall waive or otherwise derogate from, or offer to waive or otherwise derogate from, its statutes or regulations implementing paragraph 1 in a manner affecting trade or investment between the Parties, where the waiver or derogation would be inconsistent with a fundamental right set out in that paragraph.</p>
<p>Art. 17.2.</p> <p>Enforcement of Labor Laws</p> <p>1. (a) A Party shall not fail to effectively enforce its labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties, after the date</p>	<p>Art. 17.3</p> <p>Enforcement of Labor Laws</p> <p>1. (a) A Party shall not fail to effectively enforce its labor laws, including those it adopts or maintains in accordance with Article 17.2.1, through a sustained or recurring course</p>

<p>of entry into force of this Agreement..</p> <p>1. (b) Each Party retains the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other labor matters determined to have higher priorities. Accordingly, the Parties understand that a Party is in compliance with subparagraph (a) where a course of action or inaction reflects a reasonable exercise of such discretion, or results from a bona fide decision regarding the allocation of resources.</p> <p>2. The Parties recognize that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic labor laws. Accordingly, each Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws in a manner that weakens or reduces adherence to the internationally recognized labor rights referred to in Article 17.7 as an encouragement for trade with another Party, or as an encouragement for the establishment, acquisition, expansion, or retention of an investment in its territory.</p> <p>3. Nothing in this Chapter shall be construed to empower a Party's authorities to undertake labor law enforcement activities in the territory of another Party.</p>	<p>of action or inaction, in a manner affecting trade or investment between the Parties, after the date of entry into force of this Agreement.</p> <p>1. (b) A decision a Party makes on the distribution of enforcement resources shall not be a reason for not complying with the provisions of this Chapter. Each Party retains the right to the reasonable exercise of discretion and to bona fide decisions with regard to the allocation of resources between labor enforcement activities among the fundamental labor rights enumerated in Article 17.2.1, provided the exercise of such discretion and such decisions are not inconsistent with the obligations of this Chapter.</p> <p>2. Nothing in this Chapter shall be construed to empower a Party's authorities to undertake labor law enforcement activities in the territory of another Party.</p>
<p>Art.17.6:</p> <p>Cooperative Labor Consultations</p> <p>1. A Party may request cooperative labor consultations with another Party regarding any matter arising under this Chapter by delivering a written request to the Contact Point that the other Party has designated under Article 17.4.5.</p> <p>2. The cooperative labor consultations shall begin promptly after delivery of the request. The request shall contain information that is specific and sufficient to enable the Party receiving the request to respond.</p> <p>3. The consulting Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter, taking into account opportunities for cooperation related to the matter, and may seek advice or assistance from any person or body they deem appropriate in order to fully examine the matter at issue.</p> <p>4. If the consulting Parties fail to resolve the matter pursuant to paragraph 3, a consulting Party may request that the Council be convened to consider the matter by delivering a written request to the Contact Point of each of the Parties.</p> <p>5. The Council shall promptly convene and shall endeavor to resolve the matter, including, where appropriate, by consulting</p>	<p>17.7:</p> <p>Cooperative Labor Consultations</p> <p>The paragraph wording changes.</p> <p>6. If the consulting Parties have failed to resolve the matter within 60 days of a request under paragraph 1, the complaining Party may request consultations under Article 21.4 (Consultations) or a meeting of the Commission under Article 21.5 (Intervention of the Commission) and, as provided in Chapter Twenty-One (Dispute Settlement), thereafter have recourse to the other provisions of that Chapter. The Council may inform the Commission of how the Council has endeavored to resolve the matter through consultations.</p> <p>7. No Party may have recourse to dispute settlement under this Agreement for a matter arising under this Chapter without first seeking to resolve the matter in accordance with this Article.</p>

<p>outside experts and having recourse to such procedures as good offices, conciliation, or mediation.</p> <p>6. If the matter concerns whether a Party is conforming to its obligations under Article 17.2.1(a), and the consulting Parties have failed to resolve the matter within 60 days of a request under paragraph 1, a complaining Party may request consultations under Article 21.4 (Consultations) or a meeting of the Commission under Article 21.5 (Intervention of the Commission – good offices, conciliation or mediation) and, as provided in Chapter Twenty-One (Dispute Settlement), thereafter have recourse to the other provisions of that Chapter. The Council may inform the Commission of how the Council has addressed the matter through consultations.</p> <p>7. No Party may have recourse to dispute settlement under this Agreement for any matter arising under any provision of this Chapter other than Article 17.2.1 (a).</p>	
<p>Art. 17.7</p> <p>Definitions</p> <p>For purposes of this Chapter:</p> <p>labor laws means a Party's statutes or regulations, or provisions thereof, that are directly related to the following internationally recognized labor rights:</p> <ul style="list-style-type: none"> a) the right of association; b) the right to organize and bargain collectively; c) a prohibition on the use of any form of forced or compulsory labor; d) labor protections for children and minors, including a minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor; and e) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health. <p>For greater certainty, the setting of standards and levels in respect of minimum wages by each Party shall not be subject to obligations under this Chapter. Each Party's obligations under this Chapter pertain to enforcing the level of the general minimum wage established by that Party.</p> <p>statutes or regulations means:</p> <p>for the United States, acts of Congress or regulations promulgated pursuant to an act of Congress that are enforceable by action of the federal government.</p>	<p>Art. 17.8</p> <p>Definitions</p> <p>For purposes of this Chapter:</p> <p>labor laws means a Party's statutes and regulations, or provisions thereof, that are directly related to the following internationally recognized labor rights:</p> <ul style="list-style-type: none"> (a) freedom of association; (b) the effective recognition of the right to collective bargaining; (c) the elimination of all forms of forced or compulsory labor; (d) the effective abolition of child labor, a prohibition on the worst forms of child labor, and other labor protections for children and minors; (e) the elimination of discrimination in respect of employment and occupation; and (f) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health. <p>For greater certainty, the setting of standards and levels in respect of minimum wages by each Party shall not be subject to obligations under this Chapter. Each Party's obligations under this Chapter pertain to enforcing the level of the general minimum wage established by that Party.</p>

ANNEX II: Summary of policies, stakeholder behavior, and current situation for one of the labor standards in the FTA

Violated Right	Context	Social and labor Impact	Behavior of the State and involved social actors	Current situation
Freedom of association and right to collective bargaining	<ul style="list-style-type: none"> Exports: <u>Topy Top</u>; <u>Sociedad Viru</u>; <u>Minera Casapalca</u>. Formal and informal sectors The law blocks and hinders union affiliation and also restricts collective bargaining. 	<ul style="list-style-type: none"> Workers dismissed. Weakness and refusal to collective bargaining Large number of workers hired on a temporary basis or through third parties (outsourced). Precarious and dangerous working conditions. 	<ul style="list-style-type: none"> Lack of or weakened oversight by MTPE. Some companies taking authoritarian or insolent positions towards public authorities and their workers. Workers took violent actions that ended either because they were exhausted or they began dialoguing with the company. 	<ul style="list-style-type: none"> Congress debating the LGT while other sectors trying to promote an alternative labor regime that will be a set back for labor conditions.
Right to equality at work and elimination of discrimination in respect of employment and occupation	<ul style="list-style-type: none"> Mining sector: High number of subcontracted or outsourced workers: Shougang and Casapalca mining companies 	<ul style="list-style-type: none"> Difference in accessing social and labor benefits. Unfair wages. 	<ul style="list-style-type: none"> Lack of "shared solidarity" between the mining companies and their subcontracted workers; dismissal of union leaders and workers. Government intensifies labor oversight. Workers are demanding the mining companies put them on their payrolls. 	<ul style="list-style-type: none"> Congress has amended the regulations to the Law for Labor Intermediation.⁷⁰ This law specified the concepts of "principal activity" and "complementary activity". The MTPE has proposed a bill that "establishes labor guarantees for contracting and subcontracting works and services" that protects the rights of outsourced workers. The MTPE has proposed a bill to amend Legislative Decree #688 which regulates profit sharing for workers of companies that fall within the third category of income tax according to Peruvian law.
Child labor	<ul style="list-style-type: none"> 2 million (28.6%) working children and young people between 6 and 17. 	<ul style="list-style-type: none"> 90% work in the informal sector with work weeks longer than 45 hours. A similar percentage of children from 10 to 14 receive a wage that is equal to or less than the minimum wage (S/. 600.00). 		<ul style="list-style-type: none"> The MTPE is implementing the National Action Plan for Children and Young People in cooperation with the ministries of Education and Health and other public institutions.

⁷⁰ This law allows a company to subcontract another entity to employ its workers, which leaves no direct contract relationship between the employer and the employee.

Forced labor	<ul style="list-style-type: none"> • Close to 33,000 people in the Peruvian Amazon are working in situations of indentured servitude because they owe debts or because they are forced to. Most of these are indigenous people living isolated from the majority of society or who have just experienced first contact. 	<ul style="list-style-type: none"> • Labor and sexual exploitation. • Physical, psychological, and moral violence • Degradation of the environment and of social relations. • Absolute impunity of those who commit these crimes. 	<ul style="list-style-type: none"> • Presence of illegal timber dealers and the support they get from armed “enganchadores” (middlemen). • Indigenous communities exposed to timber dealers’ cons and abuses. • Complicity and corruption of public officials. • Total lack of labor oversight by the State 	<ul style="list-style-type: none"> • The MTPE, National Police Force, and the Ministry of Agriculture have the support of local indigenous populations and leaders in performing inspections of forested areas.
Wages	<ul style="list-style-type: none"> • Income is highly concentrated in the owners of capital, who take in the lion’s share of GDP, while wage increases are miniscule and labor income represents a small portion of GDP. • Minimum wage has remained static while the GDP and company profits have increased. 	<ul style="list-style-type: none"> • Majority of the population has limited purchasing power. • There is a widespread feeling of anger, dissatisfaction, and frustration in society that is feeding labor disputes. • Peruvian immigration is on the rise due to economic reasons (3 million Peruvians are now living abroad). 	<ul style="list-style-type: none"> • The State expects economic growth will “naturally” distribute domestic revenue. • Trade unions state that any increase must be the result of increased productivity and not through legislated measures. • Workers are demanding an immediate increase in the minimum wage. 	<ul style="list-style-type: none"> • What has been done: • The government is calling for a “social pact” for productivity and labor competitiveness that would set the minimum wage.
Working hours	<ul style="list-style-type: none"> • According to a recent ILO report, Peru is the country with the greatest percentage of people (60%) working longer than 48 hours per week. 	<ul style="list-style-type: none"> • High levels of work-induced stress and work-related illnesses. • A feeling of apathy and work frustration. 	<ul style="list-style-type: none"> • The State has passed a law demanding strict adherence to working hours and is requiring tighter record keeping of overtime work. • Some companies are paying greater attention out of fear of having to pay fines. 	<ul style="list-style-type: none"> • What has not been done: • Limited number of inspectors per number of workers. • A large informal labor sector.
Occupational health and safety	<ul style="list-style-type: none"> • High rates of work-related accidents in economic sectors showing sustained growth and that are tied to international trade: mining, agro-industry and construction. 			<ul style="list-style-type: none"> • A bill has been introduced into Congress awaiting its debate and full approval: “Occupational Health and Safety Law for Truck Loaders and Porters”

ANNEX III: ILO proposed sectoral policy on compliance with ILO labor standards

Desired objectives	Short-term measures	Long-term measures	Progress achieved
Ratification of conventions and observations made by oversight bodies	<ul style="list-style-type: none"> Solving observation specific situations 	<ul style="list-style-type: none"> Ratifying Priority Conventions #129 concerning labor inspection in agriculture and #144 concerning tripartite consultations to promote the implementation of international labor standards Promoting ratification of other convention, among them being the Maternity Protection Convention (# 183). 	<ul style="list-style-type: none"> The government has ratified just Convention #144 in November 2004.
Adapting labor laws	<ul style="list-style-type: none"> Reviewing content of the Child and Adolescent Code Reviewing temporary contract regulations Reviewing standards of conventions concerning adolescent job training, pre-professional practicums, and apprenticeship contracts. Revising outsourcing regulations Study on adapting the law to conventions on right to equality at work and non discrimination National awareness campaign where published is the Global Report "Time for Equality at Work" and Peruvian ratified Conventions # 100, 111, and 156. 	<ul style="list-style-type: none"> Designing law and regulation reforms. Supporting legislative renewal process through initiatives like the LGT that provide alternatives that solve the abovementioned issues. Designing legal reforms on right to equality at work and non discrimination, based on the proposed study. Based on the awareness campaigns, proposal submission and debate with tripartite stakeholders to include more content and promote separate and joint agreements. 	<ul style="list-style-type: none"> The government has not approved the LGT yet is trying to approve "progressive access to labor rights" regimes which could affect access to equal opportunities and job discrimination. In 2004, Congress passed the Apprenticeship and Pre-professional Practicum Law, which amended and specified the scope of Law N° 728, broadening companies' prerogatives to hire personnel in these categories.
Enforcement of labor laws	<ul style="list-style-type: none"> Applying strategic planning processes. Strengthening the Labor Inspection System through a better regulatory framework, superior retention of officials in their posts, greater available resources, improved organization, and streamlined operating procedures and methods that make its task more efficient in order so it can enforce labor laws. Improving and strengthening the legal protection of labor rights through a better regulatory framework, greater available resources, improved organization, streamlined operating procedures and methods that make it possible for officials to respond quickly and in a timely manner to workers' legal complaints. Supervising registration of companies that are work in Supplementary Insurance for High-risk Activities (SCTR). Improving contributions to the Supplementary Insurance for High-risk Activities Fund through registering more high-risk companies in this regime than are currently operating within its scope and bettering supervision of them. 	<ul style="list-style-type: none"> Coordinating among ministries and with workers' organizations and employers' organizations for publishing inspection standards Creating a national labor inspection policy. Broadening the scope of inspection to include technical areas not sufficiently covered in different arenas (minimum wage, working time, occupational health, social security registration) and productive sectors – SME's Reforming and adopting labor procedures and methods for achieving the above objectives. Training officials on how to efficiently carry out inspections. Reforming operating procedures and methods. Improving its organization, resources, and increasing the number of labor courts to a sufficient number. Training adequately officials and judges. Streamlining previous administrative mechanisms of reconciliation and mediation so case loads are lessened. Improving legal aid. 	<ul style="list-style-type: none"> Creating the National Labor Inspection Board and preparing the National Inspection Plan. Increasing the MTPE budget by 138% for this purpose. Hiring 100 new labor inspectors and carrying out nationwide training programs. Using spreadsheets, in coordination with the SUNAT, to assist in computer based supervision programs

