



U.S. DEPARTMENT OF LABOR
Bureau of International Labor Affairs



TABLE OF CONTENTS

I. INTRODUCTION.....	3
II. LABOR RIGHTS.....	3
III. LEGAL FRAMEWORK FOR LABOR RIGHTS.....	4
IV. ADMINISTRATION OF LABOR LAW.....	5
A. MINISTRY OF LABOR AND EMPLOYMENT PROMOTION.....	5
B. THE LABOR COURT SYSTEM.....	7
V. LABOR RIGHTS AND THEIR APPLICATION.....	9
A. FREEDOM OF ASSOCIATION.....	9
B. THE EFFECTIVE RECOGNITION OF THE RIGHT TO COLLECTIVE BARGAINING	16
C. THE ELIMINATION OF ALL FORMS OF FORCED OR COMPULSORY LABOR	22
D. THE EFFECTIVE ABOLITION OF CHILD LABOR, A PROHIBITION ON THE WORST FORMS OF CHILD LABOR, AND OTHER LABOR PROTECTIONS FOR CHILDREN AND MINORS	26
E. ELIMINATION OF DISCRIMINATION IN RESPECT OF EMPLOYMENT AND OCCUPATION.....	30
F. ACCEPTABLE CONDITIONS OF WORK.....	37
LIST OF ACRONYMS.....	43

I. Introduction

This report on labor rights in Peru has been prepared pursuant to section 2102(c)(8) of the Trade Act of 2002 (“Trade Act”) (Pub. L. No. 107-210). Section 2102(c)(8) provides that the President shall:

[i]n connection with any trade negotiations entered into under this Act, submit to the Committee of Ways and Means of the House of Representatives and the Committee on Finance of the Senate a meaningful labor rights report of the country, or countries, with respect to which the President is negotiating.

The President, by Executive Order 13277 (67 Fed. Reg. 70305 (Nov. 21, 2002)), assigned his responsibilities under section 2102(c)(8) of the Trade Act to the Secretary of Labor and provided that they be carried out in consultation with the Secretary of State and the U.S. Trade Representative. The Secretary of Labor subsequently provided that such responsibilities would be carried out by the Secretary of State, the U.S. Trade Representative, and the Secretary of Labor (67 Fed. Reg. 77812 (Dec. 19, 2002)).

The report first describes Peru’s national legal framework. It describes the administration of labor law, labor institutions, and the system of labor justice. With regard to each of the covered labor rights, the report describes the relevant legal framework (national laws and international conventions) and practices. A companion report mandated by section 2102(c)(9) of the Trade Act provides additional information on the extent to which Peru has in effect laws governing exploitative child labor.

The report relies on information obtained from U.S. Department of State reports, the U.S. Embassy in Lima, Peru, and from other U.S. Government reports. It also relies upon a wide variety of reports and materials originating from Peru, international organizations, and non-governmental organizations (NGOs). In addition, the report draws on consultations held in Peru by U.S. Department of Labor officials and a U.S. interagency team with Peruvian government officials, representatives of worker and employer organizations, and NGOs.¹ The report also makes use of information submitted in response to the U.S. Department of Labor’s request for public comment published in the *Federal Register* on June 23, 2004.²

II. Labor Rights

This report examines the labor rights situation in Peru. The labor rights taken into consideration are those identified as internationally recognized labor rights in the

¹ The consultations were held in Peru on October 26-27, 2004. Section 2102(c)(7) of the Trade Act requires the Secretary of Labor to consult with any country seeking a trade agreement with the United States concerning that country’s labor laws and provide technical assistance if needed.

² U.S. Department of Labor, “Request for Information Concerning Labor Rights in Bolivia, Colombia, Ecuador, and Peru and Their Laws Governing Exploitative Child Labor,” 69 Fed. Reg. 35063 (June 23, 2004). The Department received comments from the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) in response to this notice.

definition of “labor law” under Chapter 17 of the *United States-Peru Trade Promotion Agreement*.³ They are:

- freedom of association;
- the effective recognition of the right to collective bargaining;
- the elimination of all forms of forced or compulsory labor;
- the effective abolition of child labor, a prohibition on the worst forms of child labor, and other labor protections for children and minors;
- the elimination of discrimination in respect of employment and occupation; and
- acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

III. Legal Framework for Labor Rights

Labor rights in Peru are set forth in its Constitution; the Law of Productivity and Labor Competitiveness; the Procedural Labor Law; the Law on Collective Labor Relations; the Law on Days of Work, Hours, and Overtime; and the Regulations on Safety and Health in the Workplace; as well as in sector-specific legislation and ratified international conventions.

Peru’s Constitution guarantees freedom of association and provides for collective bargaining and the right to strike. It also addresses forced labor, discrimination, protections for women and children in the workplace, minimum wages, working hours, and protection from arbitrary dismissal.⁴

Peru’s Law of Productivity and Labor Competitiveness of 1997 seeks to improve worker skills and training, increase workers’ earning capacity, consolidate regulations on employment contracts, and strengthen existing social benefits. The law regulates work contracts, employee training, domestic service work, and programs to redirect business activities towards more productive markets in the urban and rural sectors.⁵ The Procedural Labor Law of 1996 governs the procedures for labor court proceedings, as well as procedures for conciliation and arbitration.⁶

³ *United States-Peru Trade Promotion Agreement*, Article 17.8; available from http://www.ustr.gov/Trade_Agreements/Bilateral/Peru_TPA/Final_Texts/Section_Index.html.

⁴ *Constitución Política del Perú*, (1993), Articles 23-28; available from <http://www.tc.gob.pe/legconperu/constitucion.html>.

⁵ Government of Peru, *Ley de Productividad Y Competitividad Laboral, Decreto Supremo No. 003-97-TR*, (1997); available from http://www.mintra.gob.pe/contenidos/archivos/prodlab/legislacion/DS_003_1997.pdf.

⁶ Government of Peru, *Ley Procesal del Trabajo, Ley 26636*, (1996); available from <http://www.congreso.gob.pe/comisiones/1995/trabajo/361.htm>.

Peru's Law on Collective Labor Relations of 2003 regulates freedom of association, collective bargaining, and the right to strike.⁷ The Law on Days of Work, Hours, and Overtime of 2002 sets the maximum days and hours of work, including for night work, and regulates overtime.⁸ The Regulations on Safety and Health in the Workplace establish minimum safety and health standards, enforcement responsibilities, and rights and responsibilities of employers and employees.⁹

Peru has ratified all eight of the International Labor Organization's (ILO) fundamental conventions.¹⁰

IV. Administration of Labor Law

A. Ministry of Labor and Employment Promotion

The Ministry of Labor and Employment Promotion (*Ministerio de Trabajo y Promoción del Empleo*, MTPE) is the principal labor authority in Peru. The MTPE oversees enforcement of the labor law and is responsible for administering labor relations policy, promoting job creation, and encouraging the development of small and medium-sized enterprises. The MTPE also coordinates the development of new labor policy with the judicial and legislative branches of government, and works within the executive branch to develop policy positions for participation in international organizations concerning labor issues.¹¹ The MTPE is composed of four national directorates, two regional directorates, and presides over a national consultative body on labor issues.

The National Directorate of Labor Relations (*Dirección Nacional de Relaciones de Trabajo*) coordinates and evaluates executive branch policies for individual and collective labor relations. It also promotes and engages in dialogue, conciliation, mediation, and arbitration in resolving labor disputes. The Directorate is responsible for

⁷ Government of Peru, *Ley de Relaciones Colectivas de Trabajo, Decreto Supremo No. 010-2003-TR*, (2003); available from <http://www.mintra.gob.pe/contenidos/archivos/prodlab/TUO%20Relaciones%20Colectivas%20de%20Trabajo%20TUO%20DL.25593%20DS.%20010-2003-TR%2005-10-03.pdf>.

⁸ Government of Peru, *Ley de Jornada de Trabajo, Horario y Trabajo en Sobretiempo, Decreto Supremo No. 007-2002-TR*, (2002); available from <http://www.mintra.gob.pe/contenidos/archivos/prodlab/TUO%20del%20D.Leg.%20854%20-%20D.S%20007-02-TR-04-07-02.pdf>.

⁹ Government of Peru, *Reglamento de Seguridad y Salud en el Trabajo, Decreto Supremo No. 009-2005-TR*, (2005); available from http://www.mintra.gob.pe/contenidos/archivos/prodlab/legislacion/DS_009_2005_TR.pdf.

¹⁰ ILO, *Ratifications by Country*, accessed June 1, 2007; available from <http://www.ilo.org/ilolex/english/newratframeE.htm>. The eight conventions are Convention No. 29 on Forced Labor, Convention No. 87 on Freedom of Association and Protection of the Right to Organize, Convention No. 98 on the Right to Organize and Collective Bargaining, Convention No. 100 on Equal Remuneration, Convention No. 105 on Abolition of Forced Labor, Convention No. 111 on Discrimination in Employment and Occupation, Convention No. 138 on Minimum Age, and Convention No. 182 on the Worst Forms of Child Labor.

¹¹ U.S. Embassy-Lima, E-mail communication, December 3, 2004.

the development of internal directives for the application of labor regulations in the areas of inspection, occupational safety and health, and individual and collective labor rights.¹²

The National Directorate of Employment Promotion and Professional Development (*Dirección Nacional de Promoción del Empleo y Formación Profesional*) coordinates, evaluates, and supervises national employment and training policies and proposes relevant legal and technical regulations. The Directorate also has the administrative responsibility for individual matters involving employment promotion and professional development. The Directorate implements national and multi-regional programs and projects that seek to generate and improve employment, earnings, and professional development. It also conducts studies on national employment, wage levels, and the need for professional and human resource development.¹³

The National Directorate for Micro and Small Businesses (*Dirección Nacional de la Micro y Pequeña Empresa*) is responsible for national policy concerning micro and small enterprises and for proposing relevant legal and technical regulations. The Directorate also has the administrative responsibility for individual matters concerning micro and small enterprises. The Directorate provides technical guidance to micro and small enterprises, worker cooperatives, the self-employed, and other forms of business associations. It also conducts national and multi-regional programs that seek to promote micro and small enterprises.¹⁴

The new National Directorate of Labor Inspection (*Dirección Nacional de Inspección del Trabajo*) replaces the MTPE's previous Labor Inspectorate. It monitors enterprise-level compliance with labor law and regulations, including those concerning industrial relations, occupational safety and health, and protection of women workers, children, and the disabled. This new administrative and operating system for inspections was established on July 22, 2006, and its accompanying regulations were approved on October 28, 2006.¹⁵ Complementary measures in support of the law were enacted on January 17, 2007.¹⁶ The law reforms several aspects of the previous Labor Inspectorate, most notably by elevating the Inspectorate to the level of a National Directorate responsible for directing, organizing, and coordinating all matters related to labor inspections.¹⁷ The new law also requires that investigations and verifications be carried out no later than 30 days from the time an inspection order is issued,¹⁸ and removes the responsibility for levying fines from the labor inspectors, creating a separate mechanism

¹² Government of Peru, *Ley Orgánica del Ministerio de Trabajo y Promoción del Empleo*, Ley 27711, (2002), Article 21; available from http://www.mintra.gob.pe/leyes_org_mintra.php.

¹³ *Ibid.*, Article 22.

¹⁴ *Ibid.*, Article 23.

¹⁵ Government of Peru, *Ley General de Inspección del Trabajo*, Ley 28806, (2006); available from <http://www.mintra.gob.pe/contenidos/archivos/prodlab/LEY28806.pdf> and *Nuevo Reglamento de la Ley General de Inspección del Trabajo*, Decreto Supremo No. 019-2006-TR (2006); available from http://www.mintra.gob.pe/contenidos/archivos/prodlab/legislacion/DS_019_2006_TR.pdf.

¹⁶ Government of Peru, *Medidas Complementarias de Fortalecimiento del Sistema de Inspección Laboral a Nivel Nacional*, Decreto Supremo No. 002-2007-TR (2007); available from http://www.mintra.gob.pe/contenidos/archivos/prodlab/legislacion/DS_002_2007.pdf. See also U.S.

Embassy-Lima, *reporting*, April 27, 2007.

¹⁷ *Ley General de Inspección del Trabajo*, Article 19.

¹⁸ *Ibid.*, Article 13.

to assess fines based on an inspector's findings and recommendations.¹⁹ Finally, the law calls for the establishment of labor inspector career-track positions with professional standards.²⁰ The 2006 regulations established a scale of offenses, ranging from slight to very severe offenses, with fines ranging from five to 20 Peruvian tax levy units (*Unidad Impositiva Tributaria*, UIT) for each offense. The UIT is adjusted yearly. In 2007, five to 20 UITs is equivalent to 17,250 to 69,000 soles (USD 5,435 to 21,740). Failure to pay the required minimum wage; violations of child labor laws; and discrimination against an employee who is exercising his/her freedom of association rights, are all categorized as very severe offenses.²¹

As of June 1, 2007, there were 316 labor inspectors, 222 in Lima and Callao, and 94 in other regions. These figures include 100 new inspectors who were sworn in on March 20, 2007. The MTPE plans on hiring 250 additional inspectors by the end of 2007.²² In 2006, the Labor Inspectorate conducted 15,320 inspections; 14,784 of these were unannounced, while 536 were requested by someone at the subject workplace. As a result 4,647 fines were levied, totaling 44.95 million soles (USD 14.18 million).²³

The Regional Directorates of Labor and Employment Promotion (*Direcciones Regionales de Trabajo y Promoción del Empleo*) are tasked with preventing and resolving conflicts in their regions, promoting employment and professional development, and the development of micro and small enterprises.²⁴

The National Labor and Employment Promotion Council (*Consejo Nacional de Trabajo y Promoción del Empleo*, CNTPE) is a consultative body, comprised of representatives from the MTPE, trade unions, business groups, and NGOs concerned with labor issues. Its objective is to provide a forum for discussion and coordination of policies on labor, employment promotion, and social welfare for the advancement of national and regional development, including regulation of the minimum wage.²⁵

B. The Labor Court System

Peru's Procedural Labor Law establishes a hierarchy of courts to adjudicate labor disputes, consisting of the Peace Courts (*Juzgados de Paz Letrados*), the Labor Courts of

¹⁹ Ibid., Article 45.

²⁰ Ibid., Article 26.

²¹ *Nuevo Reglamento de la Ley General de Inspección*, Articles 25 and 48. See also, *Ley General de Inspección del Trabajo*, Articles 38 and 39. See also U.S. Commercial Service, U.S. Department of Commerce (2007) *Doing Business in Peru: A Country Commercial Guide for U.S. Companies*, Chapter 5; available from http://www.buyusainfo.net/docs/x_1578617.pdf. In 2007, the UIT is 3,450 soles.

²² U.S. Embassy-Lima, *reporting*, July 3, 2007.

²³ U.S. Embassy-Lima, *reporting*, April 27, 2007. As of May 31, 2007, USD 1=3.17 soles.

²⁴ *Ley Orgánica del Ministerio de Trabajo y Promoción del Empleo*, Articles 24-25. See also U.S. Embassy-Lima, E-mail communication, December 3, 2004.

²⁵ Government of Peru, *Aprueban Reglamento Interno de Organización y Funciones del Consejo Nacional de Trabajo y Promoción del Empleo*, *Decreto Supremo No. 001-2005-TR* (2005), Articles 1 and 2(8); available from

http://www.oit.org.pe/portal/documentos/ds_reglamento_interno_de_organizacion_y_funciones_del_cntpe.pdf. See also, *Ley Orgánica del Ministerio de Trabajo y Promoción del Empleo*, Article 13, as amended by, *Ley 28318*, Article 1; available from <http://www.oit.org.pe/portal/ds/documentos/PERU-%20Ley%2028318%20que%20modifica%20el%2027711.pdf>.

First Instance (*Juzgados de Trabajo*), the Labor Branches of the Superior Court (*Salas Laborales de la Corte Superior*), and the Supreme Court (*Corte Suprema*).²⁶ Peace Courts may hear small-claim cases concerning payment of wages and compensation, appeals of disciplinary sanctions imposed by the employer, employment rights of domestic service workers, and matters concerning the private pension system.²⁷

The Labor Courts of First Instance have authority over cases of dismissal, payment of wages and compensation claims that are larger than small claims, non-compliance with labor laws and regulations, acts of employer hostility, including sexual harassment, and disputes involving internal work rules and internal union rules. These courts also have jurisdiction in cases involving suits brought by one union against another and workers against their own union, challenges to conciliation proceedings conducted by administrative labor authorities, and enforcement of administrative decisions.²⁸ The Labor Courts of First Instance also hear appeals of labor judgments by the Peace Courts.²⁹

The Labor Branches of the Superior Court (*Salas Laborales de la Corte Superior*) serve as courts of appeal for decisions made by the Labor Courts of First Instance.³⁰ They also rule on arbitration decisions arising from collective bargaining negotiations, and grant official approval for private conciliation proceedings. These courts have jurisdiction in cases involving labor matters in conjunction with issues of public interest claims and disputed administrative actions relating to social security funds. In addition, judges in these courts rule on conflicts of competency between Labor Courts of First Instance and non-labor specialized courts within the same judicial district, and on conflicts of authority between Labor Courts of First Instance and administrative authorities.³¹

The Constitutional and Social Rights Branch of the Supreme Court (*Sala de Derecho Constitucional y Social de la Corte Suprema*) is the court of final appeal on labor law matters, including appeals of initial rulings issued by the Labor Branches of the Superior District Courts, and has the authority to nullify lower court decisions on labor matters.³²

Institutions of labor administration and labor courts cover workers in the formal economy. They may not cover workers in the informal economy. Activities may be classified as outside of the formal economy because they are not subject to regulation, or because of evasion of regulation, of any or all of the following types: regulations governing the establishment and operation of businesses (including tax laws); regulations

²⁶ *Ley Procesal del Trabajo*, Articles 4-5.

²⁷ *Ibid.*, Article 4(3). In 2007, small claims amount to 3,450 soles (USD 1,087) or less. In the law, the small-claim limit is specified as ten Procedural Reference Units (*Unidad de Referencia Procesal*, URP). A URP is ten percent of the UIT. See Sandra Elena, Alvaro Herrero, and Keith Henderson (2004) "Barriers to the Enforcement of Court Judgments in Peru – Winning in Court is Only Half the Battle: Perspectives from SMEs and Other Uses," *IFES Rule of Law Occasional Paper Series*, 21; available from <http://www1.worldbank.org/publicsector/legal/EnforcementofJudgmentsinPeru.pdf>.

²⁸ *Ley Procesal del Trabajo*, Article 4(2).

²⁹ *Ibid.*, Article 5(3).

³⁰ *Ibid.*, Article 5(2). Peru has 28 Superior District Courts. See also U.S. Embassy-Lima, E-mail communication, December 3, 2004.

³¹ *Ley Procesal del Trabajo*, Article 4(1).

³² *Ibid.*, Article 5(1).

and laws concerning property rights; and, labor legislation and regulation covering employment relationships and the rights of workers.³³ Because of their unregulated nature, the extent of these activities and the associated labor force are hard to measure precisely or consistently. Although there are no reliable estimates on the size of the informal economy specifically related to a lack of coverage of labor legislation and regulation, some sources estimate that in excess of 50 percent of the labor force is part of the informal economy.³⁴

V. Labor Rights and Their Application

A. Freedom of Association

1. Trade Unions

Peru ratified ILO Convention No. 11 on the Right of Association in Agriculture on November 8, 1945, and ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organize on March 2, 1960.³⁵

Peru's Constitution and the Law of Collective Labor Relations provide for freedom of association for all citizens.³⁶ Workers are entitled to form unions on a voluntary basis without previous authorization.³⁷ Workers have the right to renounce their union membership at any time,³⁸ and trade unions are prohibited from coercing individuals to join or withdraw from a trade union, except in disciplinary cases of expulsion.³⁹

In 2006, Peru had 403 registered trade unions,⁴⁰ 186 in the private sector and 217 in the public sector. Also in 2006, the unionization rate was 8.1 percent of the formal sector workforce.⁴¹ There are no registered unions in Peru's four Export Processing Zones (EPZs), although there are no special restrictions in the law on forming unions in EPZs.⁴² In recent years, some Peruvian trade unions asserted that some companies were

³³ International Labor Conference, *Decent Work and the Informal Economy*, 2002, 27; available from <http://www.ilo.org/public/english/standards/relm/ilc/ilc90/pdf/rep-vi.pdf>. See also Norman V. Loayza, "The Economics of the Informal Sector: A Simple Model and Some Empirical Evidence from Latin America," Washington, D.C.: World Bank, 1996; available from <http://www.worldbank.org/html/dec/Publications/Workpapers/WPS1700series/wps1727/wps1727.pdf>.

³⁴ U.S. Embassy-Lima, *reporting*, August 25, 2004. See also U.S. Department of State, "Peru," in *Country Reports on Human Rights Practices – 2006*, Section 6e, Washington, D.C., March 6, 2007; available from <http://www.state.gov/g/drl/rls/hrrpt/2006/78902.htm>. See also ILO, *Key Indicators of the Labor Market*, 3rd edition, 2003. See also *Decent Work and the Informal Economy*, 14. See also MTPE, "Magnitud y características de la economía informal en el Perú," *Boletín de Economía Laboral No. 28-29* (December 2004); available from http://www.mintra.gob.pe/peel/publicaciones/bel/BEL_28-29.pdf.

³⁵ ILO, *Ratifications by Country*, accessed June 1, 2007; available from <http://www.ilo.org/ilolex/english/newratframeE.htm>.

³⁶ *Constitución Política del Perú*, Article 28(1). See also *Ley de Relaciones Colectivas de Trabajo*, Article 2.

³⁷ *Ley de Relaciones Colectivas de Trabajo*, Article 2-3.

³⁸ *Ibid.*, Article 25.

³⁹ *Ibid.*, Article 11.

⁴⁰ U.S. Embassy-Lima, *reporting*, April 27, 2007.

⁴¹ U.S. Embassy-Lima, *reporting*, July 3, 2007.

⁴² *Ibid.* See also Jean-Pierre Boyenge, *ILO Database on Export Processing Zones*, ILO, 2007; available from <http://www.ilo.org/public/english/dialogue/sector/themes/epz/epz-db.pdf>.

contracting excess temporary workers (above the level of 20 percent permitted by law⁴³) to prevent increases in union membership.⁴⁴

Workers contracted through job placement agencies may form or join unions within the placement agency or with workers at other placement agencies, but may not form or join a union within the contracting employer. In 2007, Peru amended its regulations regarding labor contracting to more precisely distinguish between main business activities and complementary (auxiliary) activities, the former of which are not permitted for contracting.⁴⁵ The regulations now specify that main activities include the different stages of the production process: exploration, extraction, transformation, production, organization, administration, marketing and generally any activity without which the work of the business would be interrupted.⁴⁶

There are four types of unions in Peru:

- a company-level union formed by workers of varying professions, trades, or specialties working for the same employer;
- a branch of activity union formed by workers of varying professions, trades, or specializations in two or more companies within the same branch of economic activity;
- a craft union formed by workers of different companies who have the same profession, trade, or specialty; and
- a union of varying trades established by workers who are involved in diverse professions, trades, or specializations and who work in different companies or companies engaged in different activities, when the number of workers in a particular place, province, or region does not reach the legal minimum to form other types of unions.⁴⁷

Unions can organize on a local, regional, or national level. In some cases, sectional unions may be formed to achieve workers' goals within a particular company.⁴⁸

A minimum of 20 workers is required to establish a company-level union, and 50 workers are needed to form all other types of unions.⁴⁹ To be eligible for union

⁴³ Government of Peru, *Establecen Disposiciones para la Aplicación de las Leyes Nos. 27626 y 27696, que Regulan la Actividad de las Empresas Especiales de Servicios y de las Cooperativas de Trabajadores, Decreto Supremo No. 003-2002-TR*, (2002), Article 3; available from http://www.mintra.gob.pe/prodlab_legislacion.php.

⁴⁴ U.S. Department of State, "Peru," in *Country Reports on Human Rights Practices – 2005*, Section 6a Washington, D.C., March 8, 2006; available from <http://www.state.gov/g/drl/rls/hrrpt/2005/61738.htm>. See also U.S. Department of State, "Country Reports – 2006: Peru," Section 6a.

⁴⁵ Government of Peru, *Modificación del Art. 1 del Decreto Supremo No. 003-2007-TR, Reglamento de la Ley que Regula la Actividad de las Empresas Especiales de Servicios y Cooperativas de Trabajadores, Decreto Supremo No. 008-2007-TR*, (2007), introduction; available from http://www.mintra.gob.pe/intranet/contenidos/NL/DS_008_2007_TR.pdf. See also, *Establecen Disposiciones para la Aplicación de las Leyes Nos. 27626 y 27696*, Articles 1 and 2.

⁴⁶ *Modificación del Art. 1 del Decreto Supremo No. 003-2007-TR*, Article 1.

⁴⁷ *Ley de Relaciones Colectivas de Trabajo*, Article 5.

⁴⁸ *Ibid.*, Article 7.

⁴⁹ *Ibid.*, Article 14.

membership, workers must work in the company, activity, profession or trade represented by the trade union; may not be an employee of confidence or serve in a management position; and must not be affiliated with another union of the same type.⁵⁰

The general assembly is the highest governing body of a Peruvian trade union. For company-level unions, the general assembly consists of all union members. In the other types of unions, as well as in company-level unions whose members may work in different localities, the assembly can be made up of proxies whose decisional authority is granted beforehand or ratified later by the union's membership.⁵¹ The general assembly is responsible for electing a group of union leaders, referred to in Peru's laws as the Executive Board; modifying union rules; determining disciplinary sanctions, including expulsion, for its affiliates; approving mergers with other unions or dissolution of the union; and granting affiliation with federations, confederations, and international trade union organizations.⁵² A trade union's internal rules must be developed by the assembly and approved by the Executive Board. These rules, both in their original form and following subsequent reforms, must be notarized by a notary public or by the Justice of the Peace in the Peace Court of the locality and reported to the MTPE.⁵³

Executive Boards are the legal representatives of Peruvian trade unions.⁵⁴ To be a member of a union's Executive Board a worker must be an employee of the enterprise in question.⁵⁵ Once the Executive Board has been elected, the union has five working days to supply the names of those elected to the Board to the MTPE and the employer. Any substitutions to the list of officers must be reported within five working days of their occurrence.⁵⁶ In enterprises having less than the number of workers required for a trade union, workers may elect two delegates to represent them before the employer and the MTPE. Selection of these delegates must be communicated to the MTPE and the employer within five working days of their election.⁵⁷

Trade unions must formally register with the MTPE. Registration may not be denied, unless the requirements established by law (i.e., have the requisite number of workers and establish internal union rules) are not met.⁵⁸ The Government of Peru is prohibited by law from coercing, restricting, or diminishing in any form trade union rights, and may not interfere in the creation, administration, or maintenance of union organizations.⁵⁹

Trade unions have the right to form federations and confederations.⁶⁰ A federation is composed of two or more registered unions of the same activity or type, and a

⁵⁰ Ibid., Article 12.

⁵¹ Ibid., Article 21.

⁵² Ibid., Article 22.

⁵³ Ibid., Articles 10 and 16.

⁵⁴ Ibid., Article 23.

⁵⁵ This requirement does not apply to federations and confederations. See Ibid., Article 24.

⁵⁶ Ibid., Article 10.

⁵⁷ Ibid., Article 15.

⁵⁸ Ibid., Article 17.

⁵⁹ Ibid., Article 4.

⁶⁰ Ibid., Article 35.

confederation comprises at least two registered federations.⁶¹ Federations and confederations in Peru have the same rights as trade unions.⁶² Trade unions and federations may withdraw from these types of affiliations at any time.⁶³ As of April 2007, there were 15 registered federations.⁶⁴

Peru has four major confederations:

- The General Confederation of Peruvian Workers (*Confederación General de Trabajadores del Perú*, CGTP) represents approximately 1.5 million workers in education, ports, mines, metallurgy, construction, and communication. The Unitary Trade Union of Education Workers (*Sindicato Unitario de Trabajadores en la Educación del Perú*, SUTEP) is a principal member of the CGTP, and claims to have 350,000 members.⁶⁵ SUTEP is associated with the Maoist Red Fatherland (*Patria Roja*) party.⁶⁶ The CGTP is affiliated with the Inter-American Regional Organization of Workers (*Organización Regional Interamericana de Trabajadores*, ORIT).⁶⁷
- The Peruvian Workers' Confederation (*Confederación de Trabajadores del Perú*, CTP) represents some 250,000 Peruvian workers,⁶⁸ primarily within the mining and petroleum sectors and the public service sector. The CTP is associated with the American Popular Revolutionary Party (*Alianza Popular Revolucionaria Americana*, APRA).⁶⁹
- The Unitary Confederation of Workers (*Central Unitaria de Trabajadores del Perú*, CUT) is composed of 12 federations,⁷⁰ representing 40,000 workers⁷¹ in several sectors, including communication, agriculture, transportation, petroleum, and the informal sector.⁷² The CUT is affiliated with the International Trade Union Confederation (ITUC, formerly the International Free Trade Union or ICFTU) and ORIT.⁷³
- The Autonomous Workers' Central of Peru (*Central Autónoma de Trabajadores del Perú*, CATP) represents 25,000 workers, primarily in the

⁶¹ Ibid., Article 36.

⁶² Ibid., Article 38.

⁶³ Ibid., Article 37.

⁶⁴ U.S. Embassy-Lima, *reporting*, April 27, 2007.

⁶⁵ U.S. Embassy-Lima, *reporting*, July 3, 2007. The Government of Peru does not require confederations to document membership claims. SUTEP membership has been estimated alternatively at 80,000.

⁶⁶ U.S. Embassy-Lima, E-mail communication, December 3, 2004.

⁶⁷ ORIT, *Organizaciones Afiliadas*, [online] 2002 [cited June 5, 2007]; available from <http://www.cioslorit.org/afiliadas>.

⁶⁸ U.S. Embassy-Lima, *reporting*, July 3, 2007.

⁶⁹ U.S. Embassy-Lima, E-mail communication, December 3, 2004.

⁷⁰ Ibid.

⁷¹ U.S. Embassy-Lima, *reporting*, July 3, 2007.

⁷² U.S. Embassy-Lima, E-mail communication, December 3, 2004.

⁷³ Ibid. See also ITUC, "List of Affiliated Organizations," June 2007; available from http://www.ituc-csi.org/IMG/pdf/ITUC_List_Affiliates_02GC_230707.pdf.

transportation and informal sectors. The CATP is associated with the Christian Democratic Party⁷⁴ and affiliated with the ITUC.⁷⁵

Federations and confederations of public servants are barred from joining organizations that represent workers other than public servants.⁷⁶ A prohibition on political activities by trade union organizations was repealed in 2003; however, trade unions still may not devote themselves exclusively to political party matters.⁷⁷

2. Right to Strike

Peru's Constitution recognizes the right to strike but this right is subject to limitations and exceptions based on public interest considerations.⁷⁸ For example, the right to strike is not extended to members of the armed forces, the national police, and judges. Peru's Law on Collective Labor Relations defines a strike as a collective suspension of work conducted in a peaceful and voluntary manner by workers who leave the work site.⁷⁹ A strike may only be called in the defense of labor rights and the socio-economic or professional interests of workers, and may occur only after direct negotiations between the employer and trade union have been exhausted.⁸⁰ Striking is prohibited if the parties agree to submit the dispute to arbitration.⁸¹ If a strike is called, workers and employers may still agree to request arbitration of the dispute. During the strike, the MTPE or the parties acting together may also appoint a mediator to seek a resolution.⁸²

According to the Law on Collective Labor Relations, a strike declaration must be made in accordance with internal union rules and must represent the will of the majority of all workers represented by the union.⁸³ In 2005, the International Labor Organization's Committee of Experts on the Application of Conventions and Recommendations (ILO CEACR) observed to the Government of Peru that this requirement was overly restrictive, and requested that the Government amend the law so that the decision to strike could be adopted by a majority of members present for the vote.⁸⁴ In response to this observation, the President of Peru issued a Decree⁸⁵ in 2006, which amended the

⁷⁴ U.S. Embassy-Lima, E-mail communication, December 3, 2004. See also U.S. Embassy-Lima, *reporting*, July 3, 2007.

⁷⁵ ITUC, "List of Affiliated Organizations."

⁷⁶ International Labor Conference, *2007 Report of the Committee of Experts on the Application of Conventions and Recommendations*, (CEACR) 143; available from <http://www.ilo.org/public/english/standards/relm/ilc/ilc96/pdf/rep-iii-1a.pdf>.

⁷⁷ *Ley de Relaciones Colectivas de Trabajo*, Article 11. See also International Labor Conference, *2005 Report of the CEACR*, 94; available from <http://www.ilo.org/public/english/standards/relm/ilc/ilc93/pdf/rep-iii-1a.pdf>.

⁷⁸ *Constitución Política del Perú*, Article 28(3).

⁷⁹ *Ley de Relaciones Colectivas de Trabajo*, Articles 72 and 79.

⁸⁰ *Ibid.*, Articles 73(a) and 75.

⁸¹ *Ibid.*, Article 73(d).

⁸² *Ibid.*, Article 62.

⁸³ *Ibid.*, Article 73(b).

⁸⁴ International Labor Conference, *2005 Report of the CEACR*, 94.

⁸⁵ Generally, Supreme Decrees (*Decretos Supremos*, also referred to as Decrees in this report) are statutorily-mandated regulations issued by the President. In some cases, Supreme Decrees are used to consolidate related legislation and to direct the actions of federal government agencies, or to amend existing regulations. The law states that Supreme Decrees must be approved by the Council of Ministers if the pertinent legislation stipulates that this is a requirement. In some cases, they are signed by the President and endorsed by the appropriate

accompanying regulations of the collective relations law, stating that labor unions may declare strikes, provided the strike is declared in accordance with internal union rules, and is approved by at least the majority of voting members when at least two thirds of all union members are present at the time of the vote.⁸⁶

The act of assembly approving a strike must be documented by a notary public or, in his/her absence, by a Justice of the Peace in the Peace Court of the locality. The strike declaration, accompanied by a copy of the vote results, must be delivered to the MTPE and to the employer at least five working days in advance of the strike or 10 days if it is in an essential public service.⁸⁷ Within three days of receiving the declaration, the MTPE must determine if it complies with all legal requirements.⁸⁸

A strike may cover a company, one or more of its establishments, a branch of activity, or an entire trade, and can be for a pre-determined or indefinite period.⁸⁹ When a strike occurs, all individual work contracts are suspended, and with the exception of management, employees of confidence, and essential personnel, all workers must abstain from engaging in work activities.⁹⁰ Machinery, primary materials, and other goods may not be removed from the work site during a strike, except under exceptional circumstances and with prior approval from the MTPE.⁹¹

The Government of Peru has determined the following to be essential public services (i.e., services whose paralysis could threaten the population, security, or perishable goods): sanitation and health; cleaning services; electricity, water and drainage, gas and combustibles; burial and autopsies; penal establishments; communications and telecommunications; transportation; services of a strategic nature or that are linked with defense or national security; the administration of justice as declared by the Supreme Court; and other services as declared by law.⁹² On an annual basis, companies performing essential services must provide their workers or the unions that represent them, and the MTPE, with a list identifying the number and occupation of the workers that are necessary to continue some level of service, their schedules and shifts, and frequency of shift changes. When a strike occurs, workers that are identified as necessary for the continuation of essential services who are absent from work without justified cause will be fined. The MTPE resolves matters concerning disputes between the union and the employer on the numbers and occupations of essential workers.⁹³ In 2005, the ILO CEACR observed to the Government that, in the event of failure to agree on the

Minister(s), depending on the nature of the Decree. Supreme Decrees generally take effect the day after they are published in Peru's *El Peruano*, the equivalent of the U.S. *Federal Register*. See Government of Peru, *Ley del Poder Ejecutivo*, (1990), *Decreto Legislativo No.560*, Article 3(2).

⁸⁶ Government of Peru, *Sustituyen Artículos del D.S. No. 011-92-TR que Aprobó el Reglamento de la Ley de Relaciones Colectivas de Trabajo*, *Decreto Supremo No. 013-2006-TR*, (2006), Article 1 modifying Article 62 of *D.S. No 011-92-TR*; available from http://www.mintra.gob.pe/contenidos/archivos/prodlab/legislacion/DS_013_2006_TR.pdf.

⁸⁷ *Ley de Relaciones Colectivas de Trabajo*, Articles 73(b) and (c).

⁸⁸ *Ibid.*, Article 74.

⁸⁹ *Ibid.*, Article 76.

⁹⁰ *Ibid.*, Articles 77(a)-(b), 78, and 82.

⁹¹ *Ibid.*, Article 77(c).

⁹² *Ibid.*, Article 83.

⁹³ *Ibid.*, Article 82.

number and occupations of workers for minimum service, the disagreement should be resolved by an independent body, not the administrative authority.⁹⁴ Amended regulations, adopted in 2006, require the MTPE to designate an independent entity to make the decision when there is disagreement over which workers are considered essential in case of a strike, and to provide for appeal of that entity's decision.⁹⁵

When a minimum of one-fifth of affected workers request it, continuation of a strike will be subject to a vote under the same requirements as those that governed the initial strike vote.⁹⁶ Strikes can also be terminated by an agreement of both parties to end the dispute, or by an MTPE decision that the strike is illegal. Finally, if the MTPE determines that the strike is excessively prolonged and seriously jeopardizing the company or productive sector, or if the strike results in acts of violence, the MTPE may promote the peaceful resolution of the strike, or if this fails, issue a final resolution. When the MTPE determines a strike to be illegal, violent, or excessively prolonged, it may intervene to attempt to resolve the dispute.⁹⁷ The MTPE may declare a strike illegal if essential workers do not report for work, if essential workers deliberately slow down their work in a manner that causes paralysis of critical sections or zones of the company, if workers other than management or essential workers remain at the work site, or if workers obstruct the entrance to the work site.⁹⁸ Additionally, the MTPE may declare a strike illegal if it continues after the disputing parties have notified it of their decision to end the dispute.⁹⁹ The initial determination of illegality by the MTPE may be appealed internally to the MTPE.¹⁰⁰ The final MTPE determination may be appealed to the Labor Courts of First Instance.¹⁰¹

In 2006, of the 67 strikes that occurred, 65 were declared illegal. In 2005, there were 65 strikes, and 63 were declared illegal. In 2004, 104 of 107 strikes were declared illegal.¹⁰² The MTPE reported that 18,423 workers were affected by strikes in the first 11 months of 2005, while 29,273 workers were affected in 2004.¹⁰³ The majority of strikes involve requests for salary increases.¹⁰⁴ In 2005 and 2007, the ILO CEACR continued discussions of provisions in Peru's laws that give the Government the power to determine the legality of strikes. Certain of these provisions (e.g., the definition of minimum or essential services and the definition of a quorum for a strike vote mentioned above) appear to be the subject of on-going discussions between the CEACR and the Government of Peru.¹⁰⁵

⁹⁴ International Labor Conference, *2005 Report of the CEACR*, 94.

⁹⁵ *Sustituyen Artículos del D.S. No. 011-92-TR*, Article 68.

⁹⁶ *Ley de Relaciones Colectivas de Trabajo*, Article 80.

⁹⁷ *Ibid.*, Articles 68 and 85.

⁹⁸ *Ibid.*, Articles 78, 81, 82, and 84.

⁹⁹ *Ibid.*, Article 84.

¹⁰⁰ *Ibid.*

¹⁰¹ *Ley Procesal del Trabajo*, Article 4(2).

¹⁰² U.S. Embassy-Lima, *reporting*, April 27, 2007. See also U.S. Embassy-Lima, *reporting*, July 3, 2007.

¹⁰³ MTPE, "Cuadro No. 12: Huelgas, Trabajadores Comprendidos y Horas Hombre Perdidas en el Sector Privado Según Años y Meses, Enero 2003-Noviembre 2005," *Informe Estadístico Mensual* 10, no. 114 (2005).

¹⁰⁴ U.S. Embassy-Lima, E-mail communication, December 3, 2004.

¹⁰⁵ International Labor Conference, *2007 Report of the CEACR*, 143. See also International Labor Conference, *2005 Report of the CEACR*, 94.

Workers in Peru are able to express their opinions publicly, with the police generally maintaining order in a lawful manner.¹⁰⁶ In recent years, police have used tear gas at some strike demonstrations and arrested strikers on charges of violent and destructive offenses.¹⁰⁷

In 2003, when teachers, healthcare workers, farmers and court workers went on a joint strike, the President of Peru declared a state of emergency for 30 days and temporarily suspended freedom of assembly.¹⁰⁸ Clashes between the strikers and police ensued, but the state of emergency was lifted after three weeks when the teachers reached agreement with the President for higher wages.¹⁰⁹ In response to a complaint filed by the CGTP in 2003, the International Labor Organization's Committee on Freedom of Association (ILO CFA) recognized that Article 137 of Peru's Constitution gives the President authority to declare a state of emergency and suspend the exercise of some constitutional guarantees. It further stated that the enactment of emergency regulations empowering the Government to place restrictions on all public assembly does not in and of itself constitute a violation of trade union rights. Nevertheless, in June 2004, the CFA requested that the Government ensure that an independent investigation of the repression of freedom of assembly and the arrest of trade unionists by security forces would be conducted, and that trade union officials still imprisoned would be granted due process rights.¹¹⁰ In June 2006, the CFA asked the Government to report on whether the workers in question had been able to avail themselves of their rights.¹¹¹ In October 2006, the Government replied to the CFA, describing generally how 248 people arrested in the demonstration had been treated. However, the reply made no specific reference to trade union officials, and in March 2007, the CFA asked for specific information on whether trade union officials had been arrested, on what charges, and the judgments handed down against them.¹¹² At the time of this report, it is unknown if additional information from the Government has been provided to the CFA.

¹⁰⁶ U.S. Department of State, "Peru," in *Country Reports on Human Rights Practices – 2003*, Section 2b, Washington, D.C., February 25, 2004; available from <http://www.state.gov/g/drl/rls/hrrpt/2003/27916.htm>.

¹⁰⁷ Ibid. See also Public Services International, *General Strikes in Peru*, [online] 2006 [cited June 5, 2007]; available from http://www.world-psi.org/TemplateEn.cfm?Section=Affiliate_News1&CONTENTID=1855&TEMPLATE=/ContentManagement/ContentDisplay.cfm.

¹⁰⁸ ILO CFA, *Report 334 (June 2004)*, paras. 684, 685, and 690; available from <http://www.ilo.org/public/english/standards/relm/gb/docs/gb290/pdf/gb-5.pdf>. See also ICFTU, *Annual Survey of Violations of Trade Union Rights 2004*, Brussels, 129; available from <http://www.icftu.org/www/pdf/Survey04-EN.pdf>.

¹⁰⁹ U.S. Department of State, "Country Reports – 2003: Peru," Section 6b. See also ICFTU, *Annual Survey of Violations of Trade Union Rights 2004*, 129.

¹¹⁰ ILO CFA, *Report 334*, paras. 696-698.

¹¹¹ ILO CFA, *Report 342, (June 2006)*, para. 903; available from <http://www.ilo.org/public/english/standards/relm/gb/docs/gb296/pdf/gb-4.pdf>.

¹¹² ILO CFA, *Report 344, (March 2007)*, paras. 162-163; available from <http://www.ilo.org/public/english/standards/relm/gb/docs/gb298/pdf/gb-7-1.pdf>.

B. The Effective Recognition of the Right to Collective Bargaining

1. Right to Organize

Peru ratified ILO Convention No. 98 on the Right to Organize and Bargain Collectively on March 13, 1964.¹¹³

Peru's Law on Collective Labor Relations prohibits employers from conditioning employment on affiliation or non-affiliation with a union.¹¹⁴ Employers who, through violence or threats, demand the affiliation or non-affiliation of workers with a union may be penalized with up to two years imprisonment.¹¹⁵ Employers also are prohibited from coercing, restricting, or weakening trade union rights and may not interfere in the creation, administration, or maintenance of union organizations.¹¹⁶ However, the ILO CEACR has noted a lack of sanctions in Peruvian legislation against acts of interference by employers in trade union affairs, and has requested that the Government institute effective and dissuasive sanctions against such acts.¹¹⁷ In 2007, the CEACR asked the Government to report on measures to achieve this, and on measures to expedite administrative and judicial procedures for cases of anti-union discrimination.¹¹⁸ At the time of this report, it is unknown if additional information from the Government has been provided to the CEACR.

Under the Law on Collective Labor Relations, *fuero sindical* is defined as the right of a worker involved in certain union activities not to be terminated or transferred to other establishments of the same enterprise without legal determination of just cause or without his/her consent.¹¹⁹ All workers involved in the establishment of a union are protected by *fuero sindical* from the date the union presents the registration request to the MTPE until three months thereafter. Candidates for positions of union leadership on the Executive Board are granted such protection 30 days before the election and up to 30 days after its completion, and members of negotiating committees are accorded *fuero sindical* protection until three months after bargaining proceedings are concluded.¹²⁰ Elected delegates of non-unionized workplaces also are guaranteed this protection, as are members of the Executive Boards of trade unions, federations, and confederations and delegates of sectional union boards.¹²¹ A trade union may select three leaders to receive protection if it has at least 50 members and may add one leader for each additional 50

¹¹³ ILO, *Ratifications by Country*, accessed June 1, 2007; available from <http://www.ilo.org/ilolex/english/newratframeE.htm>.

¹¹⁴ *Ley de Relaciones Colectivas de Trabajo*, Article 3.

¹¹⁵ *Código Penal del Perú*, (1991), Article 168; available from <http://www.devida.gob.pe/documentacion/Decreto%20Legislativo%20635-CODIGO%20PENAL.doc>

¹¹⁶ *Ley de Relaciones Colectivas de Trabajo*, Article 4.

¹¹⁷ International Labor Conference, *2005 Report of the CEACR*, 95.

¹¹⁸ International Labor Conference, *2007 Report of the CEACR*, 144.

¹¹⁹ The worker's acceptance is not required if the transfer does not impede performance of his/her union duties. *Ley de Relaciones Colectivas de Trabajo*, Article 30.

¹²⁰ *Ley de Relaciones Colectivas de Trabajo*, Articles 31 and 49. See also *Ley de Productividad y Competitividad Laboral*, Article 29(b).

¹²¹ *Ley de Relaciones Colectivas de Trabajo*, Articles 15, 31, and 47. See also *Ley de Productividad y Competitividad Laboral*, Article 29(b).

members, up to a maximum of 12 leaders.¹²² Federations may have up to 15 leaders protected by *fuero sindical*, while this number is increased to 20 for confederations.¹²³ Limits established in law for *fuero sindical*, including the number of leaders protected, may be broadened via collective bargaining agreements.¹²⁴

Peru's Constitution protects workers against arbitrary dismissal, and the Law of Productivity and Labor Competitiveness prohibits dismissal of workers due to their union affiliation or participation in union activities.¹²⁵ While a complaint or proceeding is pending, an employer may not terminate a worker presenting a complaint or participating in a process against the employer before competent authorities, except where the worker engages in serious indiscipline, acts of violence, or verbal or written aggression against the employer, his/her representatives, supervisory personnel, or other workers.¹²⁶ Workers whose terminations are declared invalid are to be reinstated, unless they opt to receive compensation instead.¹²⁷ Such compensation should be equivalent to one and a half times the worker's regular monthly wage times the number of years worked at the company, up to a maximum of 12 years.¹²⁸ The worker may also request payment of any other rights or social benefits due to him/her.¹²⁹

Some Peruvian trade unions assert that union organizers lose their jobs because of their activities, though employers maintain that employees are let go as a result of restructuring or because of poor performance.¹³⁰ The ILO CFA is following five cases that allege the dismissal of workers to undermine trade unions and has requested that the Government of Peru continue investigations of these allegations. Peruvian Government responses generally indicate that investigations by Peruvian authorities and judicial proceedings are on-going.¹³¹

Workers may file complaints concerning anti-union discrimination with the MTPE's Labor Inspectorate or may go directly to the courts.¹³² Legal challenges against

¹²² *Ley de Relaciones Colectivas de Trabajo*, Article 31.

¹²³ The number of protected leaders in federations and confederations is determined by multiplying the number of affiliated trade unions and federations respectively by two. In addition, the list of protected leaders of federations and confederations may not include more than one leader per company. See *Ley de Productividad y Competitividad Laboral*, Article 29(b).

¹²⁴ *Ibid.*

¹²⁵ *Constitución Política del Perú*, Article 27. See also *Ley de Productividad Y Competitividad Laboral*, Article 29.

¹²⁶ *Ley de Productividad Y Competitividad Laboral*, Articles 25(f) and 29.

¹²⁷ *Ibid.*, Article 34.

¹²⁸ *Ibid.*, Article 38.

¹²⁹ *Ibid.*, Article 34.

¹³⁰ U.S. Embassy-Lima, E-mail communication, December 3, 2004.

¹³¹ ILO CFA, *Report 333 (March 2004)*, paras. 863-877; available from <http://webfusion.ilo.org/public/db/standards/normes/libsynd/frReport.cfm?hdroff=1>. See also ILO CFA, *Report 335 (November 2004)*, paras. 1186-1215; available from <http://webfusion.ilo.org/public/db/standards/normes/libsynd/frReport.cfm?hdroff=1>. See also ILO CFA, *Report 338 (November 2005)*, paras. 1187-1210; available from <http://www.ilo.org/public/english/standards/relm/gb/docs/gb294/pdf/gb-7-1.pdf>. See also ILO CFA, *Report 340 (March 2006)*, paras. 1199-1231; available from <http://www.ilo.org/public/english/standards/relm/gb/docs/gb295/pdf/gb-8-1.pdf>. See also ILO CFA, *Report 342 (June 2006)*, paras. 143-145. See also ILO CFA, *Report 344 (March 2007)*, paras. 164-169.

¹³² U.S. Embassy-Lima, E-mail communication, December 3, 2004.

dismissals generally take two to three years to adjudicate, and labor activists report that unions are often dissolved for lack of membership before dismissed workers are reinstated.¹³³

2. Right to Bargain Collectively

Peru's Constitution provides for collective bargaining and ensures that collective bargaining agreements are binding.¹³⁴ Peru's Law on Collective Labor Relations grants trade unions (or elected representatives of non-unionized workers if no union exists) and employers or employers' associations the right to enter into binding collective agreements that regulate wages and conditions of work and productivity.¹³⁵ An enterprise must be in existence for at least one year to negotiate a collective bargaining agreement.¹³⁶

There are three types of collective bargaining agreements in Peru:

- A company agreement that is applied to all workers of a company or to a certain portion of workers within it;
- A branch of activity agreement that is applied to all workers of the same economic activity or a determined portion therein; and
- A craft agreement that is applied to all workers that hold the same profession, trade or specialization in different companies.¹³⁷

In order for a branch of activity or craft agreement to have general effect for all workers in that activity or craft, whether at the local, regional or national level, the union(s) negotiating the collective bargaining agreement must represent the majority of workers and the majority of companies engaged in the activity or craft. If the union does not meet this requirement, any collective bargaining agreement reached would only apply with respect to the workers affiliated with the union(s) that negotiated the agreement.¹³⁸

For collective bargaining agreements at the company level, the company-level union (or in the case of a non-unionized establishment, representatives expressly elected by the absolute majority of workers) comprising the majority of workers is entitled to negotiate collectively on behalf of all workers in the company with the business owner or his/her representatives.¹³⁹ Collective bargaining agreements by branch of activity or craft are

¹³³ AFL-CIO, *Bolivia, Colombia, Ecuador, and Peru: Labor Rights and Child Labor Reports Pursuant to the Trade Act of 2002, Section 2102(c)(8)-(9)*, Washington, D.C: 2004, 21.

¹³⁴ *Constitución Política del Perú*, Article 28(2).

¹³⁵ *Ley de Relaciones Colectivas de Trabajo*, Articles 41 and 42.

¹³⁶ *Ibid.*, Article 41.

¹³⁷ *Ibid.*, Article 44.

¹³⁸ *Ibid.*, Article 46.

¹³⁹ *Ibid.*, Articles 47 and 48. With respect to collective bargaining, the trade union that has the absolute majority of workers affiliated assumes the representation of all workers, even those not unionized. If more than one union exists, the unions that together represent more than half of the workers can jointly represent the entire workforce. The unions in question must determine the form of such representation, be it prorated, proportional to the number

negotiated between the branch of activity or craft union(s) and employers in the respective economic activity.¹⁴⁰ Workers' negotiating committees collectively bargain on behalf of workers and must be composed of three to 12 members, determined in proportion to the number of workers to be covered by the collective bargaining agreement.¹⁴¹ Employer's negotiating committees cannot have more representatives than workers' committees.¹⁴²

A company-level trade union may initiate collective bargaining negotiations by presenting the company with a petition that indicates the union's legal name, registration number, and address; the names of the members of the workers' negotiating committee; the legal name and address of each of the companies or employers' organizations with which it seeks to negotiate an agreement; the union's proposal concerning wages, conditions of work, productivity, and any other matters to be considered; and the signatures of the trade union leaders.¹⁴³ The trade union also must send a copy of the petition to the MTPE. With respect to collective bargaining negotiations by branch of activity or craft, the petition must contain the same information as a company-level petition but must be presented to the relevant company through the MTPE.¹⁴⁴

A petition may be presented between 30 and 60 days before the expiration (during the second-to-last month) of the current collective bargaining agreement.¹⁴⁵ An employer is legally obligated to accept a petition unless the petition does not meet the requirements identified above, or is otherwise legally deficient.¹⁴⁶ Collective bargaining negotiations must commence within 10 calendar days of delivery of a petition. An employer may make counter proposals including those to retain clauses from prior agreements.¹⁴⁷

Parties are required by law to negotiate in good faith and abstain from all harmful actions, without diminishing the right to strike.¹⁴⁸ At the request of workers' representatives, the employers must provide the necessary information concerning the economic, financial, and social situation of their company(ies), provided that divulging such information would not harm the company(ies). The workers, their representatives, and their advisors may not disclose information they receive from the company(ies).¹⁴⁹

Once negotiated, copies of the collective bargaining agreement must be provided to each party and the MTPE. The collective bargaining agreement comes into effect the day after the previous agreement lapses, or if there is no previous agreement, from the date of the petition. If the duration of the agreement is not specified in the agreement, then its

of affiliates, or entrusted to one of the unions. If there is no agreement, each union represents its own members.

See also *Ibid.*, Article 9.

¹⁴⁰ *Ibid.*, Articles 47 and 48.

¹⁴¹ *Ibid.*, Article 47.

¹⁴² *Ibid.*, Article 48.

¹⁴³ *Ibid.*, Articles 51 and 53.

¹⁴⁴ *Ibid.*, Article 53.

¹⁴⁵ *Ibid.*, Article 52.

¹⁴⁶ *Ibid.*, Article 54.

¹⁴⁷ *Ibid.*, Article 57.

¹⁴⁸ *Ibid.*, Article 54.

¹⁴⁹ *Ibid.*, Article 55.

duration will be one year. In cases of a company merger, transfer, or sale, collective bargaining agreements remain in force until expiration. In addition, the terms of the agreement will remain in effect until expiration if they are not modified by subsequent agreements.¹⁵⁰

If the parties terminate the negotiations without concluding an agreement, they must inform the MTPE, at which time they may request conciliation or the MTPE may initiate it unilaterally if the Ministry believes it necessary or appropriate.¹⁵¹ If the parties agree, the conciliator (chosen from a specialized technical corps of MTPE employees) may assume the role of mediator and present one or more proposals for the parties to consider.¹⁵² If the parties agree, they may also seek conciliation outside of the MTPE process through a private party, but they must provide the MTPE with copies of any accord reached.¹⁵³ During conciliation, the parties retain the right to resume direct negotiations at any time.¹⁵⁴ If the parties fail to resolve the collective bargaining dispute in either direct negotiations or conciliation, they may submit their differences to arbitration, or the workers may choose to strike.¹⁵⁵ During the strike, the parties or the MTPE may designate a mediator, or the parties may agree to submit the dispute to arbitration.¹⁵⁶

Arbitration may be conducted by a single arbitrator, an ad-hoc tribunal, a representative institution, the MTPE, or any other entity to which the parties agree. If there is no agreement, a tripartite tribunal (composed of one impartial arbitrator selected by each party and a chairperson selected by the two arbitrators, or if there is no agreement as to the chairperson, selected by the MTPE) would carry out the arbitration.¹⁵⁷ The arbitration decision must reflect the final proposal of one of the parties.¹⁵⁸ The decision is binding and may only be challenged before the Labor Branch of the Superior Court based on a claim that it is legally invalid or contains fewer rights for workers than established by law.¹⁵⁹ In practice, union officials have reported that the arbitration process is quite costly.¹⁶⁰ In response to this, a cap on arbitrators' fees was established, which the MTPE estimates may reduce arbitration costs by 50 percent.¹⁶¹

During the operation of a collective bargaining agreement, employers may propose temporary changes in work schedules and conditions of work.¹⁶² In times of economic crisis, employers may also terminate the employment contract of workers. However, the employer must first negotiate the terms of the terminations or measures that can be taken to avoid or limit the need for the terminations with the affected workers or their

¹⁵⁰ Ibid., Article 43.

¹⁵¹ Ibid., Article 58.

¹⁵² Ibid., Article 59.

¹⁵³ Ibid.

¹⁵⁴ Ibid., Article 60.

¹⁵⁵ Ibid., Articles 61 and 62.

¹⁵⁶ Ibid., Articles 62 and 63.

¹⁵⁷ Ibid., Article 64.

¹⁵⁸ Ibid., Article 65.

¹⁵⁹ Ibid., Article 66.

¹⁶⁰ U.S. Department of State, "Country Reports – 2006: Peru," Section 6a.

¹⁶¹ *Sustituyen Artículos del D.S. No. 011-92-TR*, Article 1. See also Ibid.

¹⁶² *Ley de Productividad Y Competitividad Laboral*, Article 9.

representatives. Among the measures that can be considered are temporary suspensions of employment contracts, changes in work schedules and conditions of work, and revisions to an existing collective bargaining agreement. If during the negotiations, the employer petitions the MTPE to suspend the employment contracts, the employees or their representatives may challenge the petition. After the period for filing employee responses, the MTPE will convene conciliation hearings. If parties cannot reach an agreement, the MTPE will issue a resolution on the employer's petition.¹⁶³ In 2006, the Government clarified that the Law of Productivity and Labor Competitiveness cannot be interpreted to allow employers to unilaterally modify or require workers to renegotiate an existing collective bargaining agreement, or to otherwise limit workers' freedom of association.¹⁶⁴

In 2006, there were 453 collective bargaining agreements in place, covering 121,261 workers. In 2005, 390 agreements covered 112,760 workers. In 2004, 384 agreements covered 105,946 workers.¹⁶⁵

C. The Elimination of All Forms of Forced or Compulsory Labor

Peru ratified ILO Convention No. 29 on Forced Labor on February 1, 1960 and ILO Convention No. 105 on the Abolition of Forced Labor on December 6, 1960.¹⁶⁶

Peru's Constitution prohibits slavery, servitude, trafficking in persons, and any restriction of personal liberties except in cases prescribed by law and guarantees that no person may be forced to work without his/her free consent or without payment.¹⁶⁷ However, Peruvian law does recognize compulsory labor as a result of a judicial sentence or as a result of *force majeure* (as in times of war or natural disaster).¹⁶⁸ Peru's Child and Adolescent Code prohibits forced labor, economically exploitative labor, prostitution, and trafficking of children and adolescents.¹⁶⁹ Pursuant to Peru's Penal Code, including amendments in 2004, a person who forces another to work without payment by means of violence or threat may be punished with imprisonment for up to two years.¹⁷⁰ The Penal Code prohibits the promotion of prostitution that involves the abuse of a position of authority or use of violence, deceit, or any means of intimidation with a penalty of five to 12 years imprisonment.¹⁷¹ Peru's Penal Code establishes penalties of six to 12 years

¹⁶³ Ibid., Articles 15, 46, and 48.

¹⁶⁴ *Sustituyen Artículos del D.S. No. 011-92-TR*, Article 2.

¹⁶⁵ U.S. Embassy-Lima, *reporting*, July 3, 2007.

¹⁶⁶ ILO, *Ratifications by Country*, accessed June 1, 2007; available from <http://www.ilo.org/ilolex/english/newratframeE.htm>.

¹⁶⁷ *Constitución Política del Perú*, Articles 2(24)(b) and 23.

¹⁶⁸ U.S. Embassy- Lima, *reporting*, April 24, 2007.

¹⁶⁹ Government of Peru, *Ley que Aprueba el Nuevo Código de los Niños y Adolescentes*, Ley No. 27337, (2000), Article 4; available from <http://www.cajpe.org.pe/rjj/bases/legisla/peru/ley1.html>.

¹⁷⁰ *Código Penal del Perú*, Article 168. See also Government of Peru, *Ley que modifica los artículos 170, 171, 172, 173, 174, 175, 176, 176-A, 179, 180, 181, 182, 183, 183-A, e incorpora los artículos 179-A, 181-A, 182-A a los capítulos IX, X y XI del título IV, del libro segundo del Código Penal*, Ley No. 28251, (2004), available from <http://www.congreso.gob.pe/ntley/Imagenes/Leyes/28251.pdf>.

¹⁷¹ Ibid., Article 179.

imprisonment for pimping if violence, threats, abuse of authority, or other means of coercion are used.¹⁷²

With regard to trafficking, the amended Penal Code states that anyone who promotes or facilitates the entry into or exit from the country of a person for the purpose of practicing prostitution or any other form of sexual exploitation may be punished by imprisonment for five to 10 years. The penalty is increased to 10 to 12 years imprisonment in cases involving the same aggravating circumstances that apply to the pimping provision above, as well as in cases in which the victim is less than 18 years of age.¹⁷³ In 2007, Congress passed Law No. 28950, which further defines trafficking in persons, provides protection to victims and witnesses, and strengthens sentencing guidelines.¹⁷⁴ Under the new law, the penalty for trafficking in persons, including for forced labor, is eight to 15 years imprisonment. The penalty is 12 to 20 years imprisonment if the victim is between 14 and 18 years old; the trafficker is in a position of authority, family member, or guardian; or there are multiple victims or perpetrators. The penalty is no less than 25 years in prison if the victim dies or is seriously injured, is under 14, is physically or mentally handicapped, or if the trafficker is a member of a criminal organization. Regulations required to implement Law No. 28950 had not been finalized as of this writing.¹⁷⁵

In recent years, forced labor has been found in the logging, small scale mining and fishing, domestic service, and agricultural (chestnuts) sectors, and as a result of trafficking, primarily of women and girls.¹⁷⁶ In addition, the National Commission for the Fight against Forced Labor (*Comisión Nacional para la Lucha contra el Trabajo Forzoso*) has indicated that it has received unconfirmed reports of forced labor in diverse sectors of the Peruvian Amazon region and has indicated the need for further investigation of this issue.¹⁷⁷

Despite recent government efforts to combat forced labor in the logging industry, as of 2005, some 33,000 workers were estimated to be engaged in forced labor in this industry in the tropics of Peru.¹⁷⁸ Local bosses employed by multinational corporations arrange illegal logging activities on or near indigenous lands.¹⁷⁹ While engaged in these

¹⁷² Ibid., Article 181.

¹⁷³ Ibid., Article 182.

¹⁷⁴ Government of Peru, *Ley Contra la Trata de Personas y el Trafico Ilícito de Migrantes, Ley No. 28950*, (2007); available from <http://www.congreso.gob.pe/ntley/Imagenes/Leyes/28950.pdf>.

¹⁷⁵ U.S. Embassy- Lima, *reporting*, March 8, 2007.

¹⁷⁶ Comisión Nacional Intersectorial para la Erradicación del Trabajo Forzoso, *Plan de Acción Nacional para la Erradicación del Trabajo Forzoso, Perú*, 2005, 10-19; available from http://www.mintra.gob.pe/documentos/trabajo_forzoso.pdf. See also ILO CEACR, *Individual Observation concerning Forced Labor Convention*, 1930 (No. 29) Peru (ratification: 1960) [online] 2006 [cited June 25, 2007]; available from http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=8340&chapter=6&query=Peru%40ref&highlight=&q_uerytype=bool. See also U.S. Embassy- Lima, *reporting*, April 24, 2007. See also Government of Peru, *Aprueban el "Plan Nacional para la Lucha contra el Trabajo Forzoso," D.S. No. 009-2007-TR*, (2007); available from <ftp://ftp2.minsa.gob.pe/normaslegales/2007/DS009-2007TR.pdf>.

¹⁷⁷ *Aprueban el "Plan Nacional para la Lucha contra el Trabajo Forzoso."*

¹⁷⁸ Comisión Nacional Intersectorial, *Plan de Acción Nacional para la Erradicación del Trabajo Forzoso*, 13. See also ILO, *El Trabajo Forzoso en la Extracción de la Madera en la Amazonía Peruana*, 2005; available from http://www.oit.org.pe/portal/documentos/alianza_global_contra_trabajo_forzoso_estudio_peru.pdf.

¹⁷⁹ Comisión Nacional Intersectorial, *Plan de Acción Nacional para la Erradicación del Trabajo Forzoso*, 11-13.

activities, workers become indebted to their employer through a series of subtle illegal practices over time, such as employers overvaluing subsistence commodities they sell to the workers and undervaluing extracted wood they purchase from the workers. Once indebted, many workers experience mistreatment and considerable restriction of movement.¹⁸⁰ Eighty percent of these workers are mestizo or altoandino (from the Andean highlands), and the remaining 20 percent are indigenous to the Amazon.¹⁸¹

Narcotraffickers and *Sendero Luminoso* terrorists hold indigenous families captive in remote areas forcing them to grow crops and coca.¹⁸² Forced labor also occurs with respect to the harvest of chestnuts and the mining of gold in the Madre de Dios region.¹⁸³ In other cases, domestic service workers continue to work under conditions of servitude.¹⁸⁴ For example, parents in rural areas send their children to a benefactor or relative in an urban setting who is in a better economic position and to whom a debt may be owed. By providing their children as domestic service workers, the parents are freed from any debt owed to the benefactor, and some may eventually receive money from the work of the children. With the exception of food and lodging, the majority of children do not receive any benefits for their labor. Employers generally make promises of continuing or improving the child's education; however, education is seldom a priority. Usually children are sent to school only after several years of domestic service.¹⁸⁵

Peru is a source country for trafficking in persons to Spain, Italy, Japan, and the United States.¹⁸⁶ However, eight out of every 10 cases in Peru concern internal trafficking, primarily of women and adolescent girls. They are trafficked for the purpose of commercial sexual exploitation to the cities of Yurimaguas, Iquitos, and Pucallpa; mining zones in the south of the country; and to the regions of Tumbes, Tacna, Puno, Piura, and Cuzco during agricultural harvests.¹⁸⁷ Female trafficking victims are forced into prostitution in nightclubs, bars, and brothels.¹⁸⁸

The Government of Peru established the National Intersectoral Commission for the Eradication of Forced Labor (*Comisión Nacional Intersectorial para la Erradicación del Trabajo Forzoso*) in 2005, which analyzed the problem and developed the National Plan to Combat Forced Labor (*Plan para la Lucha contra el Trabajo Forzoso*).¹⁸⁹ During 2006, the plan received public support in public forums conducted by the Government. In January 2007, the National Commission for the Fight against Forced Labor was formed with members from 13 ministries and organizations to coordinate forced labor

¹⁸⁰ Ibid., 11-13.

¹⁸¹ Ibid., 11-12. See also ILO CEACR, *Individual Observation concerning Forced Labor Convention* 2006.

¹⁸² U.S. Department of State, "Country Reports – 2006: Peru," Section 6d.

¹⁸³ Comisión Nacional Intersectorial, *Plan de Acción Nacional para la Erradicación del Trabajo Forzoso*, 16. See also ILO CEACR, *Individual Observation concerning Forced Labor Convention*, 2006.

¹⁸⁴ Comisión Nacional Intersectorial, *Plan de Acción Nacional para la Erradicación del Trabajo Forzoso*, 16.

¹⁸⁵ Ibid., 17.

¹⁸⁶ U.S. Embassy- Lima, *reporting*, April 24, 2007. See also U.S. Department of State, "Peru," in *Trafficking in Persons Report – 2007*, Washington, D.C., June 12, 2007; available from <http://www.state.gov/g/tip/rls/tiprpt/2007/>.

¹⁸⁷ Comisión Nacional Intersectorial, *Plan de Acción Nacional para la Erradicación del Trabajo Forzoso*, 14.

¹⁸⁸ U.S. Department of State, "Trafficking in Persons Report – 2007: Peru."

¹⁸⁹ Comisión Nacional Intersectorial, *Plan de Acción Nacional para la Erradicación del Trabajo Forzoso*, 10-19, 27.

policies in Peru. The Commission has responsibility for writing an annual report and developing policy through a decentralized mechanism. The final National Action Plan, approved on May 3, 2007, has six components: research and statistics; education, communication and awareness; legislation; strengthening institutions; strengthening social development and public participation; and social dialogue.¹⁹⁰ Under its sector plan 2006-2011, the MTPE is creating a specialized unit of 30 inspectors focused on fundamental rights, including forced labor issues.¹⁹¹

Additionally, in 2005, the Ministry of Foreign Relations (*Ministerio de Relaciones Exteriores*, MRE) launched a campaign about the dangers of international trafficking, and the Ministry of Commerce and Tourism (*Ministerio de Comercio Exterior y Turismo*, MCET) initiated an anti-trafficking campaign.¹⁹² In 2004, the Ministry of Interior (*Ministerio del Interior*, MININTER) created a new anti-trafficking unit, which conducts raids on brothels and rescues trafficking victims.¹⁹³ The MININTER and the National Police (*Policía Nacional*, PNP) are the entities responsible for addressing domestic trafficking, while the MRE and Immigration authorities work on international trafficking issues.¹⁹⁴ Eighty-one underage victims were removed from raided premises in the Lima region in 2005.¹⁹⁵ During 2006, 2,901 police operations were conducted to combat trafficking in persons, procurement, and child prostitution.¹⁹⁶ A total of 23 persons were arrested for trafficking children; charges were brought against seven of the accused. During 2006, prosecutors were processing six trafficking cases from 2005, and as of July, the police referred four additional cases regarding trafficking crimes to prosecutors for further investigation.¹⁹⁷ There was one trafficking conviction reported in 2006.¹⁹⁸ A total of 13 cases are currently pending before the courts.¹⁹⁹ (See the following section for more information on the situation of children and trafficking.) The Government of Peru, with support from the U.S. Government, has received specialized training in dealing with trafficking in persons, including providing aid to victims, collecting credible statistical data on trafficking cases, and aiding government officials outside of the capital in recognizing cases.²⁰⁰ In 2007, a database system was formally approved to register

¹⁹⁰ Government of Peru, *Crean la Comisión Nacional para la Lucha contra el Trabajo Forzoso, Decreto Supremo No. 001-2007-TR*, (2007); available from <ftp://ftp2.minsa.gob.pe/normaslegales/2007/DS001-2007TR.pdf>. See also *Aprueban el "Plan Nacional para la Lucha contra el Trabajo Forzoso."*

¹⁹¹ Minister of Labor and Employment Promotion, Written communication to U.S. Ambassador to Peru, Lima, April 13, 2007.

¹⁹² U.S. Department of State, "Peru," in *Trafficking in Persons Report – 2005*, Washington, D.C., June 3, 2005; available from <http://www.state.gov/g/tip/rls/tiprpt/2005/46614.htm>.

¹⁹³ U.S. Department of State, "Peru," in *Trafficking in Persons Report – 2004*, Washington, D.C., June 14, 2004; available from <http://www.state.gov/g/tip/rls/tiprpt/2004/33198.htm>.

¹⁹⁴ U.S. Department of State, "Country Reports – 2004: Peru," Section 5.

¹⁹⁵ U.S. Department of State, "Trafficking in Persons Report – 2005: Peru."

¹⁹⁶ U.S. Embassy- Lima, *reporting*, April 24, 2007

¹⁹⁷ U.S. Department of State, "Country Reports – 2006: Peru," Section 5.

¹⁹⁸ U.S. Department of State, "Country Reports – 2006: Peru," Section 5.

¹⁹⁹ U.S. Department of State, "Trafficking in Persons Report – 2007: Peru."

²⁰⁰ U.S. Embassy-Lima, *reporting*, January 27, 2005.

and make accessible information on trafficking cases, under the responsibility of the MININTER and the PNP. It will be connected to a trafficking telephone hotline.²⁰¹

D. The Effective Abolition of Child Labor, a Prohibition on the Worst Forms of Child Labor, and Other Labor Protections for Children and Minors

Peru ratified ILO Convention No. 138 on Minimum Age for Admission to Employment on November 13, 2002, and ILO Convention No. 182 on the Worst Forms of Child Labor on January 10, 2002.²⁰²

The minimum age for employment in non-industrial agricultural work is 15 years; 16 years for work in the industrial, commercial, and mining sectors (in above ground operations); and 17 years for work in the industrial fishing sector.²⁰³ Children ages 12 to 14 may perform certain jobs, subject to restrictions, only if they obtain legal permission from the MTPE and can certify that they are attending school.²⁰⁴ The MTPE's Office of Labor Protection for Minors (*Dirección de Protección del Menor y de la Seguridad y Salud en el Trabajo*, PMT) issues permits for children 12 to 17 to work legally.²⁰⁵ During 2006, the MTPE issued 1,326 work permits for children 12 to 17, the majority of which (1,086) were issued for children between 16 and 17.²⁰⁶ Children ages 12 to 14 years are prohibited from working more than four hours a day, or over 24 hours a week, and adolescents between 15 and 17 years may not work more than six hours a day, or over 36 hours a week.²⁰⁷ Children working non-paid jobs for family members or in domestic service are entitled to a daily 12-hour rest period. Regulations require that children under 18 who work in domestic service must have access to education.²⁰⁸ Night work or work that might serve as an obstacle to continued school attendance is prohibited for children under 18 years of age,²⁰⁹ although adolescents 15 to 17 can work for a maximum of four hours at night with a special permit.²¹⁰ Underground work or work that involves heavy lifting, toxic substances, or responsibility for one's own safety or the safety of other workers is prohibited for children under 18 years.²¹¹ Working children must be paid at the same rate as adult workers in similar jobs.²¹² In July 2006, the

²⁰¹ Government of Peru, *Institucionalizan el "Sistema de Registro y Estadística del delito de Trata de Personas y Afines (RETA)" Decreto Supremo No. 2570-2006-IN/0105*, (2007), available from <http://ftp2.minsa.gob.pe/normaslegales/2007/RM2570-2006IN-105.pdf>.

²⁰² ILO, *Ratifications by Country*, accessed June 1, 2007; available from <http://www.ilo.org/ilolex/english/newratframeE.htm>.

²⁰³ Government of Peru, *Ley que Modifica el Artículo 51 de la Ley No. 27337, Código de los Niños y Adolescentes*, (2001); available from <http://www.cajpe.org.pe/rij/bases/legisla/peru/27571.htm>. Although the general minimum age for employment in Peru is 14 years, the provisions subsequently described in this paragraph restrict the ability of children of that age or younger to work legally.

²⁰⁴ U.S. Department of State, "Country Reports – 2004: Peru," Section 6d. See also *Ibid.*

²⁰⁵ U.S. Department of State, "Country Reports – 2006: Peru," Section 6d.

²⁰⁶ *Ibid.*, Section 6d.

²⁰⁷ *Ley que Aprueba el Nuevo Código de los Niños y Adolescentes*, Article 56.

²⁰⁸ *Ibid.*, Article 63. See also U.S. Embassy-Lima, *reporting*, August 25, 2004.

²⁰⁹ U.S. Embassy- Lima, *reporting*, August 15, 2003.

²¹⁰ *Ley que Aprueba el Nuevo Código de los Niños y Adolescentes*, Article 57.

²¹¹ *Ibid.*, Article 58.

²¹² *Ibid.*, Article 59 and 63.

Government of Peru approved a list of Hazardous Occupations for Children which includes activities linked to commercial sexual exploitation and domestic work.²¹³

Various statutes prohibit the worst forms of child labor in Peru. Laws prohibiting forced labor and trafficking of children are discussed in Section C. The Penal Code prohibits promoting the prostitution of a child less than 18 years of age and imposes a penalty of five to 12 years imprisonment.²¹⁴ Peru's Penal Code establishes penalties of six to 12 years imprisonment for pimping if the victim is under age 18.²¹⁵ The penalty for using, promoting or commercializing pornography that exploits adolescents ages 14 to 18 is four to six years in prison and fines equivalent to 120 to 365 days income. The penalty is six to eight years and fines equal to 150 to 365 days income if the victim is under 14. In the case of involvement by the child's guardian or a member of a pornography ring, the penalty is eight to 12 years in prison.²¹⁶ Law No. 28251 states that the penalty for promoting sexual tourism exploiting adolescents ages 14 to 18 is two to six years in prison. The penalty is six to eight years if the victim is under 14, and, in case of involvement by a government official or child's guardian, the penalty is eight to 10 years in prison.²¹⁷ Military service is prohibited for children under the age of 18. The Law on Military Service prohibits forced recruitment.²¹⁸

In 2000, an estimated 22 percent of children ages six to 14 years were counted as working in Peru. Approximately 24 percent of all boys six to 14 were working compared to 21 percent of girls in the same age group. The majority of working children were found in the agricultural sector (73 percent), followed by services (24 percent), manufacturing (3 percent) and other sectors (0.2 percent).²¹⁹ Children work in mining and with their families in agriculture. In the cities, children often sell goods and services in the streets and work in garbage dumps. In the outskirts of Lima, children work in the brick making industry.²²⁰ Many girls work as paid or non-paid domestic laborers.²²¹

In 2004, the National Commission for Development and Life Without Drugs estimated that 5,000 children were employed in the illegal narcotics industry, exposing them to

²¹³ ILO-IPEC, *The Prevention and Elimination of Child Domestic Labour and CSEC in South America*, technical progress report, Geneva, September 2006.

²¹⁴ *Código Penal del Perú and Ley que modifica los artículos 170, 171, 172... del Código Penal*, Article 179.

²¹⁵ *Ibid.*, Article 181.

²¹⁶ *Ibid.*, Article 183-A.

²¹⁷ *Ibid.*, Article 181.

²¹⁸ Coalition to Stop the Use of Child Soldiers, "Peru," in *Child Soldiers Global Report 2004*, London; available from http://www.child-soldiers.org/document_get.php?id=966.

²¹⁹ UCW analysis of ILO SIMPOC, UNICEF MICS, and World Bank surveys, *Child Economic Activity and School Attendance Rates*, October 7, 2005.

²²⁰ U.S. Department of State, "Country Reports – 2006: Peru," Section 6d. See also UN Committee on the Rights of the Child (CRC), *Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding observations of the Committee on the Rights of the Child: Peru*, Geneva: March 14, 2006, para. 62; available from [http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/b67fbbfa8f470bdfc125715600319d7e/\\$FILE/G0640887.doc](http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/b67fbbfa8f470bdfc125715600319d7e/$FILE/G0640887.doc).

²²¹ ILO-IPEC, "El trabajo infantil doméstico, un obstáculo para la educación de las niñas," *Boletín Encuentros* (December 2006); available from http://www.oit.org.pe/ipecc/boletin/noticia_m.php?notCodigo=716.

toxic chemicals that could cause serious damage to their health or even death.²²² Children are also exploited in prostitution.²²³ Peru is a source country for children trafficked internally for commercial sexual exploitation and forced domestic labor. Most victims are girls moved from rural to urban areas who are coerced into prostitution at nightclubs, bars, and brothels.²²⁴ Child sex tourism exists, especially in the Amazon region of Peru.²²⁵

The Government of Peru has programs and policies in place to address the worst forms of child labor. The MTPE is responsible for enforcing child labor laws and its inspectors have legal authority to investigate reports of illegal child labor practices. The MTPE has the authority to levy fines on firms found violating child labor laws and suspend their operations.²²⁶

The PNP and local prosecutors also have law enforcement authority over child labor violations,²²⁷ and the PNP operates a Division for Matters Concerning Children and Adolescents to address cases concerning the rights of children and adolescents.²²⁸ The Municipal Child and Adolescent Defender Centers (*Defensoría Municipal del Niño y el Adolescente*, DEMUNA) work with local governments to supervise investigations, apply punishments, and monitor compliance of child labor laws. DEMUNA operate through more than 1,000 offices around the country.²²⁹

The MTPE heads the National Committee to Prevent and Eradicate Child Labor (*Comité Directivo Nacional para la Prevención y Erradicación del Trabajo Infantil*, CPETI), an organization composed of representatives from various ministries, NGOs, labor unions, and employers' organizations,²³⁰ which is responsible for addressing child labor issues and fulfilling Peru's international commitments to fight illegal child labor.²³¹ In October 2005, the Committee launched its National Plan for the Prevention and Eradication of Child Labor. The Plan proposes to raise awareness; strengthen judicial and legislative frameworks to eliminate labor exploitation of children; generate credible statistics; develop social policy on children's rights; and promote the strengthening of institutional capacities.²³² In 2006, CPETI approved the National Plan against Commercial Sexual

²²² U.S. Department of State, "Country Reports – 2005: Peru," Section 6d.

²²³ ECPAT International CSEC Database, *Peru*, accessed June 7, 2007; available from http://www.ecpat.net/eng/Ecpat_inter/projects/monitoring/online_database/index.asp. See also U.S. Department of State, "Country Reports – 2006: Peru," Section 5.

²²⁴ U.S. Department of State, "Trafficking in Persons Report – 2007: Peru."

²²⁵ *Ibid.*

²²⁶ U.S. Department of State, "Country Reports – 2006: Peru."

²²⁷ U.S. Embassy- Lima, *reporting*, October 7, 2002.

²²⁸ Government of Peru, *Directiva No. 19-95-DIVIPOLNA Sobre Atención y Intervención Policial con Niños y Adolescentes (25 de abril de 1995)*, [online] April 25, 1995 [cited June 7, 2007]; available from <http://www.asesor.com.pe/teleley/direc-19-95.htm>.

²²⁹ U.S. Department of State, "Country Reports – 2006: Peru," Section 6d.

²³⁰ U.S. Embassy-Lima, *reporting*, August 25, 2004.

²³¹ *Ibid.*

²³² ILO-IPEC, "Perú presentó Plan Nacional contra el trabajo infantil," *Boletín Encuentros* (October 2005); available from http://www.oit.org.pe/ipecc/boletin/noticia_imprimir.php?notCodigo=748. See also CPETI, *Plan Nacional de Prevención y Erradicación del Trabajo Infantil*, Peru, 2005; available from http://www.mimdes.gob.pe/dgna/Plan_Nacional_Trabajo_Infantil.pdf.

Exploitation of Boys, Girls and Adolescents.²³³ The Ministry of Women and Social Development (*Ministerio de la Mujer y Desarrollo Social*, MIMDES) has a National Action Plan for Children and Adolescents 2002 – 2010. Among other goals, the plan focuses on eliminating the worst forms of child labor for children ages six to 11 years and promoting the improvement of working conditions for adolescents at or above the legal working age.²³⁴

The Government participated in a USD 1.6 million regional project to eliminate child labor in small-scale mining in the Andean region. The project was funded by the United States Department of Labor (USDOL) and implemented by the ILO's International Program on the Elimination of Child Labor (ILO-IPEC). The project ended in February 2005. The Government also participated in a USDOL-funded USD 1.5 million four-year project to combat child labor in mining by improving access to and quality of basic education.²³⁵ The project was implemented by the NGO World Learning, and ended in September 2006. The MTPE and Ministries of Health, Education, and Energy and Mines operate a system that allows the Government to monitor and verify progress in the elimination of child labor in small-scale mining for a 10-year period (2002-2012).²³⁶ The Government of Peru supports and contributes to a regional USD 5.5 million USDOL-funded ILO-IPEC program to eliminate exploitative child labor in the domestic service and commercial sex sectors.²³⁷ Starting in 2006, the Government of Peru began participating in a USDOL-funded USD 5 million project that combats child labor through education. The project, implemented by a consortium of NGOs, works for the withdrawal and prevention of children from exploitative work in the urban informal sector in Lima, Trujillo, Callao and Iquitos.²³⁸ A 2006 project, funded by the Inter-American Development Bank (IDB) provides support to community groups for reducing child labor in the mining sector through the provision of alternative income-generation activities.²³⁹

With technical assistance from the ILO, the MIMDES is implementing a 10-year plan to eliminate child sexual exploitation called Network Now Against Child Sexual Exploitation.²⁴⁰ The plan includes coordinating various NGOs to combat commercial

²³³ ILO-IPEC, *The Prevention and Elimination of CDL and CSEC, technical progress report*, 11.

²³⁴ MIMDES, *Plan Nacional de Acción para la Infancia y la Adolescencia 2002 - 2010: Construyendo un Perú Mejor para la Niñas, Niños y Adolescentes*, Perú, 2002, 12-13; available from http://www.oei.es/quipu/peru/PNAIA_2002_2010.pdf.

²³⁵ The project included Bolivia, Ecuador and Peru. Phase I of this project began in 2000. See ILO-IPEC, *Phase I: Program to Prevent and Progressively Eliminate Child Labor in Small-scale Traditional Gold Mining in South America*, project document, Geneva, April 1, 2000. See also ILO-IPEC, *Phase II: Prevention and Progressive Elimination of Child Labor in Small-scale Traditional Gold Mining in South America*, project document, Geneva, September 3, 2002. See also ILO-IPEC, *USDOL-funded ILO Project*, project revision form, Geneva, April 1, 2004.

²³⁶ U.S. Embassy- Lima, *reporting*, August 15, 2003.

²³⁷ See also ILO-IPEC, *Prevention and Elimination of CDL and of CSEC in Chile, Colombia, Paraguay and Peru, project summary*, Geneva, September 8, 2004.

²³⁸ U.S. Department of Labor, "Project Summary," in *Preparándonos para la vida*, 2006.

²³⁹ IDB, *Reduce Child Labor in Artisanal Gold-mining Communities in Puno*, [online] 2006 [cited June 7, 2007]; available from <http://www.iadb.org/projects/Project.cfm?project=PE-T1023&Language=English>.

²⁴⁰ U.S. Embassy-Lima, *reporting*, August 25, 2004.

sexual exploitation of minors in Iquitos, a popular tourist spot for child prostitution.²⁴¹ The MIMDES has been raising awareness of legislation prohibiting the commercial sexual exploitation of minors through radio broadcasts and other means.²⁴² The Government has been supporting NGOs that provide services to sexually exploited and trafficked minors, including self-esteem workshops, medical attention, and job training.²⁴³ The MININTER has been working with its counterparts in the Chilean Government to develop joint policy on the prevention of trafficking and protection of children and adolescents in the border regions between the two countries.²⁴⁴

The Child and Adolescent Code provides for special arrangements and school timetables so that working children and adolescents can attend school regularly.²⁴⁵ The Ministry of Education has operated a tutoring program for children formerly excluded from the public system, including working children.²⁴⁶ In addition, the Ministry has established night classes and lengthened matriculation periods for youth employed as domestic servants in third-party homes.²⁴⁷ The National Institute of Family Welfare (*Instituto Nacional de Bienestar Familiar*, INBF) has provided a variety of services to working youth, including support for school supplies, reinsertion into educational settings, reintegration into the family after exploitative situations, and vocational training.²⁴⁸

E. Elimination of Discrimination in Respect of Employment and Occupation

1. General Legal Framework

Peru ratified ILO Convention No. 100 on Equal Remuneration on February 1, 1960, and ILO Convention No. 111 on Discrimination (Employment and Occupation) on August 10, 1970.²⁴⁹

The Constitution of Peru states that all people have the right to equality before the law and that no one may be discriminated against by reason of national origin, race, sex, language, religion, opinion, socio-economic or other status.²⁵⁰ It also states that in labor

²⁴¹ U.S. Embassy-Lima, *reporting*, August 26, 2005.

²⁴² U.S. Embassy-Lima, *reporting*, August 25, 2004.

²⁴³ *Ibid.*

²⁴⁴ ILO-IPEC, "Perú-Chile: dialogo fronterizo para enfrentar el tráfico de niñas, niños y adolescentes," *Boletín Encuentros* (April 2005); available from <http://www.oit.org.pe/ipecc/boletin/noticia.php?notCodigo=677>.

²⁴⁵ ILO, *The Effective Abolition of Child Labor*, 2001, 344; available from <http://www.ilo.org/public/english/standards/relm/gb/docs/gb280/pdf/gb-3-2-abol.pdf>.

²⁴⁶ U.S. Embassy-Lima, *reporting*, August 25, 2004.

²⁴⁷ U.S. Embassy-Lima, *reporting*, August 15, 2003.

²⁴⁸ National Institute of Family Welfare, *Educadores de calle*, [previously online] [cited July 1, 2005]; available from ²⁴⁸ INBF, *Educadores de calle*, [cited August 17, 2007]; available from http://www.inabif.gob.pe/web/portal/02_lineas/pec/pec.htm.

²⁴⁹ ILO, *Ratifications by Country*, accessed June 25, 2007; available from <http://www.ilo.org/ilolex/english/newratframeE.htm>.

²⁵⁰ *Constitución Política del Perú de 1993*, (1993), Article 2(2); available from <http://www.cajpe.org.pe/RIJ/bases/LEGISLA/peru/consper.HTM>.

relations, the principle of equality of opportunity without discrimination is to be respected.²⁵¹

The Law Against Acts of Discrimination of 2000, which amended Peru's Anti-discrimination Law in Employment Offers and Access to Training of 1997, prohibits requirements that “discriminate, nullify or impair equality of opportunity and treatment ... in offers of employment and access to means of educational training.”²⁵² The 2000 law prohibits such requirements if based on race, sex, religion, opinion, social origin, socio-economic class, civil status, age, or any other basis.²⁵³ University Law 23733 bans discrimination in university admissions.²⁵⁴

Peruvian law also protects workers from job dismissals based on discrimination. The Law of Productivity and Labor Competitiveness nullifies the termination of employment contracts if the termination was on the basis of sex, race, religion, opinion, or language.²⁵⁵ The law also prohibits the dismissal of pregnant women during pregnancy and 90 days after the birth of a child, unless the employer can show just cause for the termination.²⁵⁶ The Law Implementing the National Plan Against AIDS provides that people living with HIV/AIDS may continue working and that job dismissals against such people are deemed to be invalid.²⁵⁷

The MTPE is the entity responsible for investigating alleged discrimination and it has authority to fine organizations that have violated this law; fines are greater for repeat offenders.²⁵⁸ The MTPE also has the authority to order an entity to suspend operations for a period not to exceed one year.²⁵⁹ According to the MTPE, however, the law does not provide for the investigation or sanction of non-compliance with laws prohibiting wage discrimination on the basis of gender.²⁶⁰ Disputes regarding acts of employment discrimination are typically handled by courts at the regional level, although all levels of the judicial system have the capacity to try such cases. Cases involving constitutionally-defined rights, including the constitutionally-defined right to equality before the law and

²⁵¹ Ibid., Article 26(1).

²⁵² Government of Peru, *Ley Contra Actos de Discriminación 2000*, Ley No. 27270, (2000), Article 2; available from <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/56275/65196/S00PER02.htm>.

²⁵³ Ibid.

²⁵⁴ Government of Peru, *Ley Universitaria*, Ley No. 23733 (1983), Article 3. See also, U.S. Embassy – Lima, *reporting*, July 5, 2007.

²⁵⁵ Government of Peru, *Texto Unico Ordenando del D. Leg. No. 728, Ley de Productividad y Competitividad Laboral*, Decreto Supremo No. 003-97-TR, (1997), Article 29; available from http://www.mintra.gob.pe/prodlab_legislacion.php.

²⁵⁶ Ibid., Article 29e.

²⁵⁷ Government of Peru, *Ley Contra Sida*, Ley No. 26626, (1996), Article 6; available from <http://www2.congreso.gob.pe/ccd/leyes/cronos/1996/ley26626.htm>.

²⁵⁸ Government of Peru, *Dictan normas reglamentarias de la Ley No. 26772, sobre prohibición de discriminación en las ofertas de empleo y acceso a medios de formación educativa*, Decreto Supremo No. 002-98-TR, (1998), Articles 5-7; available from http://www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_country=PER&p_classification=05&p_origin=COUNTRY&p_sortby=SORTBY_COUNTRY.

²⁵⁹ *Ley Contra Actos de Discriminación 2000*, Article 2.

²⁶⁰ Minister of Labor and Employment Promotion, Written communication to U.S. Ambassador to Peru, Lima, September 29, 2006.

the prohibition of discrimination, may be submitted directly to a constitutional tribunal.²⁶¹

The Law Against Acts of Discrimination also amended the Penal Code to include a Chapter on Discrimination, which provides that the penalty for discrimination against a person or group of people based on racial, ethnic, religious, or gender differences is 30 to 60 work days of community service or the loss of 20 to 60 vacation days.²⁶² If the person committing the act of discrimination is a civil servant, the penalty is increased to 60 to 120 work days of community service, and the violator will be ineligible for employment with the Government for three years.²⁶³

The following sections provide information on the situation facing specific demographic groups in Peru, where further specific information is available.

2. Women

The Government of Peru has passed laws designed to establish equality of opportunity between men and women, including in employment. The Law of Equality of Opportunity between Women and Men guarantees women and men the ability to exercise their rights to equality and prevent discrimination in all spheres of life.²⁶⁴ This law specifically guarantees the right to productive work without discrimination between women and men in access to employment, training, conditions of work, and equal pay for work of equal value.²⁶⁵ Law No. 26628 of June 13, 1996, obligates all armed forces institutions to restructure their rules, manuals and guidelines so that women who wish to join the military may do so and may obtain the same rank and benefits as their male counterparts.²⁶⁶ It also allows women access to schools for officers and non-commissioned officers.²⁶⁷

Women traditionally have not had a presence in the labor force equal to that of men, although recent data show a steady increase in women's workforce participation. In the 2005 national census, women comprised 50.1 percent of the total population²⁶⁸ and 53 percent of the working-age population.²⁶⁹ The MTPE reports that in 2005 women

²⁶¹ U.S. Embassy – Lima, *reporting*, July 5, 2007.

²⁶² *Ley Contra Actos de Discriminación 2000*, Article 1.

²⁶³ *Ibid.*

²⁶⁴ Government of Peru, *Ley de Igualdad de Oportunidades Entre Mujeres y Hombres*, Ley No. 28983, (2007), Article 1; available from <http://www.mimdes.gob.pe/dgm/ley28983.pdf>.

²⁶⁵ *Ibid.*, Article 6.

²⁶⁶ Government of Peru, *Amplían para las Mujeres el Acceso a las Escuelas de Oficiales y de Suboficiales de las Fuerzas Armadas*, Ley No. 26628, (1996), Article 1; available from <http://www.elperuano.com.pe/>.

²⁶⁷ *Ibid.*

²⁶⁸ Government of Peru, *Instituto Nacional de Estadística e Informática (INEI), Censos Nacionales X de Población y V de Vivienda 2005, Cuadro No. 2 Peru: Población Total, por Sexo y Lugar de Empadronamiento, Según Provincia, Distrito y Ámbito Geográfico Censal*, [online] 2005 [cited July 3, 2007]; available from <http://inei.inei.gob.pe/inei/cpv2005>.

²⁶⁹ MTPE: *Programa de Estadísticas y Estudios Laborales (PEEL), Perú: Indicadores sobre PET, PEA y PEA ocupada, según sexo; tasas de actividad y desempleo, y ratio empleo/población, 2002, 2003 y 2005*, [cited July 3, 2007]; available from http://www.mintra.gob.pe/peel/estadisticas/ind_PET_PEA_INEI.pdf.

comprised 46 percent of the total economically active population.²⁷⁰ Other Government data state that in 2000 this figure was 36 percent, reflecting a gradual increase since 1970 when only 27 percent were female.²⁷¹ This source notes that various factors affect the workforce participation rate of women, such as marital status, family obligations, and household poverty level.²⁷²

Women are not proportionally represented in all occupational classifications and economic sectors, particularly in those jobs typically seen as accompanied by higher wages and social status. In 2005, 29 percent of private sector employees were women while 70 percent of all those working for another family member and not receiving any remuneration were women.²⁷³ That same year, 32 percent of all legislators, senior officials, and managers were female.²⁷⁴ The proportions of women in skilled agricultural and fishery jobs (19 percent) and plant and machine operating and assembly jobs (5 percent) were low.²⁷⁵ The majority of clerks (57 percent), service workers, and shop and market sales workers (59 percent), however, were women.²⁷⁶

With respect to income, women are disproportionately over-represented among those earning lower wages and under-represented among those earning higher wages, and there appears to be a consistent wage gap between men and women. In 2005, women were 70 percent of the economically active population who did not earn any wages; by contrast, women were 22 percent of those earning 4,000 soles or more per month.²⁷⁷ According to statistics analyzed by the MTPE, female workers consistently earn lower wages across all occupational groups. Female managers, administrators, civil servants, professionals, and technicians earned, on average, 1,128 soles per month while male workers in the same category averaged 2,334 soles per month (twice the female average). Male artisans earned on average 688 soles or 2.5 times their female counterparts (279 soles).²⁷⁸ The smallest discrepancy in wages existed between men and women who work in the home, with men earning 456 soles versus 433 soles earned by women.²⁷⁹

²⁷⁰ MTPE: PEEL, *Perú: Distribución de la PEA ocupada por sex según estructura de mercado, 2002, 2003 y 2005 (En porcentajes)*, [cited July 3, 2007]; available from http://www.mintra.gob.pe/peel/estadisticas/ind_EST_MER_INEI.pdf. “Economically active population” is defined as all people of working age who, in the week of reference in the survey, said they were working or looking for work.

²⁷¹ INEI, *Peru: Estimaciones de la Poblacion Economicamente Activa 1970 – 2015*, [cited August 9, 2007]; available from <http://www.inei.gob.pe/biblioinei/pub/bancopub/Est/Lib0176/n00.htm>.

²⁷² Ibid.

²⁷³ MTPE: PEEL, *Perú: Distribución de la PEA ocupada por sex según estructura de mercado, 2002, 2003 y 2005 (En porcentajes)*, [cited July 3, 2007]; available from http://www.mintra.gob.pe/peel/estadisticas/em_ofer_lab_per_tot_INEI.htm.

²⁷⁴ ILO, *Economically active population – Economically active population, by industry and by occupation (Thousands)*, [cited July 2, 2007]; available from <http://laborsta.ilo.org/cgi-bin/brokerv8.exe>.

²⁷⁵ Ibid.

²⁷⁶ Ibid.

²⁷⁷ MTPE: PEEL, *Perú: Indicadores sobre PET, PEA y PEA ocupada, según sexo; tasas de actividad y desempleo, y ratio empleo/población, 2002, 2003 y 2005*.

²⁷⁸ MTPE: PEEL, *Perú: Distribución del ingreso promedio nominal de la PEA ocupada por sexo según grupo ocupacional, 2003 y 2005 a/ (En nuevos soles)*, [cited July 3, 2007]; available from http://www.mintra.gob.pe/peel/estadisticas/ing_grup_ocupa.pdf.

²⁷⁹ Ibid.

The mission of the MTPE includes the promotion of employment within a framework of equal opportunity, especially by promoting the development of small- and micro-enterprises as the basis of economic development with equality.²⁸⁰ One of the principal functions of the MTPE in the area of employment is to develop, establish, direct, supervise, and evaluate socio-labor policies aimed at creating employment with social protections, especially for sectors of society with the greatest difficulty accessing the labor market, such as people with disabilities, youth, and poor women.²⁸¹

The MTPE has established the Plan of Equality of Opportunity between Men and Women 2006-2010. Its strategic objectives include guaranteeing the full exercise of the economic rights of women, including equality of access to the labor market and equality of opportunities for the generation and improvement of income in both urban and rural areas.²⁸² The plan includes commitments to reach the following results by 2010:²⁸³

- Increase the number of women in managerial positions in the public and private sector by 30 percent.
- Institute plans in 60 percent of public institutions and 20 percent of private institutions to prevent and penalize sexual harassment.
- Increase the number of women in entrepreneurial associations by 30 percent.
- Institute Economic Development Plans in 50 percent of regional governments and 25 percent of local governments that include equality of economic opportunities between men and women.
- Increase the number of women who hold title to property and capital assets by 20 percent.

One program managed by the MTPE's Directorate of Small and Micro Enterprises to support the employment of women is the Women's Employment Consolidation Program (*Programa Femenino de Consolidación de Empleo*, PROFECE). Created in October 1996, it is designed to promote market opportunities and generate financial wealth for women by promoting economic initiatives for groups of women.²⁸⁴ Program objectives include improving market access for products and services provided by female entrepreneurs, promoting commercial ventures managed by [groups of] women of limited resources to local and regional markets and for export outside the country, and to

²⁸⁰ *Ley Orgánica del Ministerio de Trabajo y Promoción del Empleo*, Article 4.

²⁸¹ *Ibid.*, Article 5.

²⁸² Minister of Labor and Employment Promotion, Written communication to U.S. Ambassador to Peru, Lima, September 29, 2006.

²⁸³ *Ibid.*

²⁸⁴ MTPE, *PROFECE – Mujeres Emprendedoras: ¿Quiénes somos?*, [cited June 7, 2007]; available from <http://www.mypeperu.gob.pe/profece.php?cap=1>.

improve the level of productivity and skills of women of limited resources.²⁸⁵ In 2005, 146 enterprises and 1,088 women participated in PROFECE.²⁸⁶

The MIMDES is responsible for promoting equality of opportunity and fairness for people experiencing high levels of poverty, violence, discrimination, and social exclusion, including women.²⁸⁷ The Vice-Ministerial Office of Women of MIMDES is the specific office responsible for implementing this mission, including directing, coordinating, evaluating, and supervising achievement of the Plan of Equality of Opportunity between Men and Women.²⁸⁸ One of its functions is to promote temporary affirmative action plans in order to remedy situations of gender discrimination.²⁸⁹ The Vice-Ministerial Office of Women also has responsibility for directing, coordinating, evaluating, and supervising the pursuit of equality of opportunity for children and youth, and the disabled.²⁹⁰

Another government agency responsible for ensuring equality of employment opportunity for women is the Ministry of the Promotion of Women and Human Development (*Ministerio de Promoción de la Mujer y del Desarrollo Humano*, PROMUDEH). One of the objectives of PROMUDEH is to promote equal access to education, health, occupation and employment.²⁹¹ Within PROMUDEH, the Directorate of Education for Development is responsible for executing strategies for communication and sensitization on subjects such as women's rights and equality of opportunity.²⁹²

In addition, four Peruvian trade union centers developed a 2002-2005 action plan aimed at promoting equal employment opportunity for women and men. One of the three focus areas of the action plan was women's participation in the labor market, and activities targeting female workers in the informal sector, domestic workers, and agricultural workers.²⁹³

²⁸⁵ Ibid.

²⁸⁶ MTPE, *PROFECE – Mujeres Emprendedoras: Estadísticas*, [online] 2005 [cited June 7, 2007]; available from <http://www.mypeperu.gob.pe/profece/estad/ANUARIO2005.xls>.

²⁸⁷ Government of Peru, *Aprueban el Reglamento de Organización y Funciones del Ministerio de la Mujer y Desarrollo Social*, *Decreto Supremo No. 008-2002-MIMDES*, (2002), Article 6; available from <http://www.congreso.gob.pe/comisiones/2002/discapacidad/ds/008-2002-mimdes.htm>.

²⁸⁸ Ibid., Article 15.

²⁸⁹ Ibid., Article 38.

²⁹⁰ Ibid., Articles 14 - 15.

²⁹¹ Government of Peru, *Reglamento de Organización y Funciones del Ministerio de Promoción de la Mujer y del Desarrollo Humano*, *Decreto Supremo No. 001-97-PROMUDEH*, (1997), Article 4; available from http://www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_country=PER&p_classification=05&p_origin=COUNTRY&p_sortby=SORTBY_COUNTRY.

²⁹² Ibid., Article 22.

²⁹³ ICFTU, "Despite discrimination women are becoming more assertive," *Trade Union World Briefing*, no. 17 (2006); available from <http://www.icftu.org/www/PDF/LMSDossier17-06PerouEN.pdf>.

3. People with Disabilities

The General Law on Persons with Disabilities establishes legal protections for people with disabilities, including with respect to work.²⁹⁴ It states that people with disabilities shall have all the benefits and rights accorded to workers under the labor law and prohibits acts that disadvantage people with disabilities with respect to access to and conditions of employment, including both physical conditions and the terms of employment.²⁹⁵ Educational institutions must also adapt their admissions policies and evaluation procedures to accommodate people with disabilities.²⁹⁶ The law provides for preferential terms of credit or financing for small- and micro-enterprises that employ people with disabilities.²⁹⁷ The law also states that public sector enterprises and institutions are to give preferences to products and services provided by small- and micro-enterprises employing people with disabilities.²⁹⁸ Businesses with a workforce that includes at least 30 percent of people with disabilities also benefit from special government incentives.²⁹⁹

A 2004 modification to this law established a National Office of Labor Promotion for Persons with Disabilities under the MTPE to promote the rights of workers with disabilities, offering free counseling, legal defense, and mediation and conciliation services.³⁰⁰ The law was also modified to require government agencies and enterprises (at the regional and local as well as national level) to fill no less than three percent of all personnel positions with people with disabilities who are qualified for the requisite job requirements.³⁰¹ The MIMDES also protects the rights of disabled workers to be free from employment discrimination.³⁰²

In December 1998, the Government created the National Council for the Integration of Persons with Disabilities (*Consejo Nacional para la Integración de la Persona con Discapacidad*, CONADIS) to formulate and approve policies designed to integrate people with disabilities into the mainstream.³⁰³ Its responsibilities include working with the MTPE to promote the employment of people with disabilities,³⁰⁴ including programs to facilitate the employment and retention of workers with disabilities by building professional or vocational skills and providing job retraining.³⁰⁵ The Government,

²⁹⁴ Government of Peru, *Ley General de la Persona con Discapacidad*, Ley No. 27050, (1999), Article 31; available from <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/51404/68464/S98PER02.htm>.

²⁹⁵ *Ibid.*, Article 1.

²⁹⁶ *Ibid.*, Article 25.

²⁹⁷ *Ibid.*, Article 37.

²⁹⁸ *Ibid.*, Article 38.

²⁹⁹ *Ibid.*, Articles 41-42.

³⁰⁰ Government of Peru, *Ley que Modifica Diversos Artículos de la Ley No. 27050, Ley General de la Persona con Discapacidad*, Ley N° 28164, (2004), Article 1; available from <http://www.congreso.gob.pe/comisiones/2002/discapacidad/LEY28164.pdf>.

³⁰¹ *Ibid.*

³⁰² *Aprueban el Reglamento de Organización y Funciones del Ministerio de la Mujer y Desarrollo Social*, Article 6.

³⁰³ *Ley General de la Persona con Discapacidad*, Article 8.

³⁰⁴ *Ibid.*, Article 33.

³⁰⁵ *Ibid.*, Article 32.

however, did not fund programs in 2006 to train workers with disabilities.³⁰⁶ Organizations serving people with disabilities generally rely on public charities and international organizations for funding.³⁰⁷ Some companies operate programs to hire and train persons with disabilities, and a private foundation has provided small loans to persons with disabilities to start businesses.³⁰⁸ According to officials of the Institute for Social Security, less than one percent of persons with severe disabilities work.³⁰⁹

4. Indigenous Peoples

PROMUDEH carries out education campaigns aimed at promoting equality of opportunities for indigenous populations.³¹⁰ Although the law prohibits the mention of race in advertising job openings, NGOs claim that employers find ways to identify the race of an applicant so as to refuse Afro-Peruvian jobs or to relegate them to low-paying service positions.³¹¹ In 1999, the U.N. Committee on the Elimination of Racial Discrimination had also noted with concern reports about the influence of racial criteria on hiring and promotions, and that “certain minor or disparaged jobs are left to persons of indigenous or African origin.”³¹² Additionally, the Committee noted that because indigenous peoples often lack identity papers and are illiterate, they are thus deprived of the possibility of exercising their civic and political rights.³¹³ In response, the ILO CEACR in 2000 requested information from the Government regarding its policies to promote equality of opportunity and treatment in employment and occupation regarding indigenous and African communities.³¹⁴ The Government informed the ILO that a Special Program for Indigenous Communities of the Human Rights and Disabled Persons Unit is responsible for examining problems related to the protection and promotion of the rights of indigenous communities.³¹⁵ In 2006, the CEACR asked the Government for additional, more specific, information on the Special Program and its impact.³¹⁶ As of this writing, it is unknown if a response has been made.

On February 22, 2007, as part of the broader Modernization Process of the State of Peru, the President issued a Decree for MIMDES to absorb CONADIS and the National

³⁰⁶ U.S. Department of State, “Country Reports – 2006: Peru,” Section 5.

³⁰⁷ *Ibid.*

³⁰⁸ *Ibid.*

³⁰⁹ *Ibid.* The source does not define the term “severe disabilities.”

³¹⁰ *Reglamento de Organización y Funciones del Ministerio de Promoción de la Mujer y del Desarrollo Humano*, Article 22.

³¹¹ U.S. Department of State, “Country Reports – 2006: Peru,” Section 5. For instance, job applicants are often required to submit photographs.

³¹² UN Committee on the Elimination of Racial Discrimination, Consideration of Reports Submitted by States Parties under Article 9 of the Convention, Concluding Observations of the Committee on the Elimination of Racial Discrimination: Peru, Geneva: April 13, 1999, para.20; available from [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CERD.C.304.Add.69.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CERD.C.304.Add.69.En?OpenDocument).

³¹³ *Ibid.*, para.18.

³¹⁴ ILO CEACR, *Direct Request, Discrimination (Employment and Occupation), 1958 (No. 111) Peru (ratification: 1970)* [online] 2000, para. 3; available from <http://www.ilo.org/ilolex/english/newcountryframeE.htm>.

³¹⁵ ILO CEACR, *Direct Request, Discrimination (Employment and Occupation), 1958 (No. 111) Peru (ratification: 1970)* 2002, para. 5.

³¹⁶ ILO CEACR, *Direct Request, Discrimination, (Employment and Occupation), 1958 (No. 111) Peru (ratification: 1970)* 2006, para. 6.

Institute for the Development of Andean, Amazonian and Afro-Peruvian Peoples (*Instituto Nacional de Desarrollo de Pueblos Andinos, Amazónicos y Afroperuano*).³¹⁷ The resources, personnel, materials and obligations of these entities would be transferred to MIMDES, and after the completion of the integration these two entities would officially cease to exist.³¹⁸

F. Acceptable Conditions of Work

1. Minimum Wage

Peru ratified ILO Convention No. 26 on Minimum Wage-Fixing Machinery on April 4, 1962 and ILO Convention No. 99 on Minimum Wage Fixing Machinery (Agriculture) on February 1, 1960.³¹⁹

Peru's Constitution guarantees workers a "just and sufficient" wage and states that the payment of wages and social benefits has priority over any other obligations of the employer.³²⁰ Changes to the minimum wage are proposed by the President and approved by the Council of Ministers,³²¹ which is comprised of all the State Ministers, in consultation with the CNTPE.³²² There is no set formula used to establish the minimum wage; instead, the Government takes into account the current rate of inflation and a wage ceiling to prevent layoffs due to increased costs for employers.³²³ The most recent change of the minimum wage became effective in 2006, when the Government of Peru increased the wage to 500 soles (USD 158) per month,³²⁴ up from 460 soles (USD

³¹⁷ The websites of MIMDES, CONADIS and INDEPA do not address this transfer. Government of Peru, *Aprueban fusión del CONADIS y del INDEPA con el Ministerio de la Mujer y Desarrollo Social, Decreto Supremo No. 001-2007-MIMDES*, (February 23, 2007), Article 1. See also, http://www.mimdes.gob.pe/noticias/2007/not09ago2007_1.html. See also, <http://www.indepa.gob.pe/index.php?id=66,0,0,1,0,0>.

³¹⁸ Ibid, Article 2.1.

³¹⁹ ILO, *Ratifications by Country*, accessed June 1, 2007; available from <http://www.ilo.org/ilolex/english/newratframeE.htm>.

³²⁰ *Constitución Política del Perú*, Article 24.

³²¹ Ibid, Article 125.2. See also, Government of Peru, *Presidencia del Consejo de Ministerios*, [cited August 7, 2007]; available from <http://www.pcm.gob.pe/>.

³²² Government of Peru, *Aprueban Reglamento Interno de Organización y Funciones del Consejo Nacional de Trabajo y Promoción del Empleo, Decreto Supremo No. 001-2005-TR*, (2005), Articles 1 and 2(8) of the Internal Regulations, as amended; available from http://www.oit.org.pe/portal/documentos/ds_reglamento_interno_de_organizacion_y_funciones_del_cntpe.pdf. See also Ibid. See also *Ley Orgánica del Ministerio de Trabajo y Promoción del Empleo*, Articles 5 and 13. See also, MTPE, *Consejo Nacional de Trabajo y Promoción del Empleo*, [cited August 7, 2007]; available from http://www.mintra.gob.pe/con_nac_trabajo.php

³²³ U.S. Department of Labor, ILAB, *Wages, Benefits, Poverty Line and Meeting Workers' Needs in the Apparel and Footwear Industries of Selected Countries*, Washington D.C.: 2000, II-124; available from <http://www.dol.gov/ilab/media/reports/oiea/wagestudy/wagestudy.pdf>. See also Government of Peru, *Reajustan A S/460.00 Mensuales La Remuneración Mínima Vital De Trabajadores Sujetos Al Régimen Laboral De La Actividad Privada, Decreto de Urgencia No. 022-2003*, (2003); available from <http://www.mintra.gob.pe/contenidos/archivos/prodlab/D.U.No.%20022-03-Remuneracion%20Minima%20Vital%20-%202013-09-03.pdf>.

³²⁴ Government of Peru, *Reajustan Monto de la Remuneración Mínima Vital de los Trabajadores Sujetos al Régimen Laboral de la Actividad Privada, Decreto Supremo No. 016-2005-TR* (2005), Article 1; available from http://www.leyesdelperu.com/Normas_legales/2005/12_Diciembre/NL_29122005.pdf. See also,

145).³²⁵ The Government estimated the poverty line at approximately 207 soles (USD 65) per month, although this varied by region.³²⁶ This figure is down from 224 soles (USD 71) a month per person in 2005.³²⁷

Roughly half of the Peruvian workforce earned the minimum wage or less in 2005.³²⁸

2. Hours of Work

Peru ratified ILO Convention No. 1 on Hours of Work in Industry and ILO Convention No. 14 on Weekly Rest in Industry in November 8, 1945; ILO Convention No. 67 on Hours of Work and Rest Periods in Road Transport in April 4, 1962; and ILO Convention No. 106 on Weekly Rest in Commerce and Offices in July 11, 1988.³²⁹

Peru's Constitution and the Law on Days of Work, Hours, and Overtime set the maximum work day at eight hours and the maximum work week at 48 hours. If, however, a worker has an unusual work schedule, which does not allow for the above requirements, the average number of hours worked during an equivalent time period may not exceed eight hours a day or 48 hours a week.³³⁰ Work conducted between 10:00 p.m. and 6:00 a.m. is considered night work, and workers employed during these hours are to receive a 35 percent increase over the regular wage.³³¹ Employees are guaranteed a 45 minute meal break during each eight hour work day, one day of rest per week, and an annual paid vacation.³³² In 2006, a new law was passed that requires employers to maintain a registry of employee hours to ensure that workers received overtime, to document required lunch breaks, and to allow workers and union representatives access to these documents.³³³

Overtime work is voluntary in Peru. No worker may be obligated to work extra hours, except in special cases defined in law where labor is "indispensable as a consequence of an event or act of nature that puts the public or goods in danger at the worksite or the continuation of productive activity."³³⁴ Employees who work overtime are entitled to a 25 percent increase in hourly pay for the first two extra hours worked and a 35 percent increase for all remaining hours of overtime. Workers and their employers may put into place an agreement allowing the employees to receive time off work in lieu of overtime

http://www.larepublica.com.pe/index.php?option=com_content&task=view&id=98605&Itemid=484&fecha_edicion=2005-12-29.

³²⁵ *Reajustan A S/460.00 Mensuales La Remuneración Mínima Vital*, Article 1.

³²⁶ U.S. Department of State, "Country Reports – 2006: Peru," Section 6e.

³²⁷ U.S. Department of State, "Country Reports – 2005: Peru," Section 6e.

³²⁸ *Ibid.*

³²⁹ ILO, *Ratifications by Country*, accessed June 1, 2007; available from

<http://www.ilo.org/ilolex/english/newratframeE.htm>

³³⁰ *Constitución Política del Perú*, Article 25. See also *Ley de Jornada de Trabajo, Horario y Trabajo en Sobretiempo*, Articles 1-2.

³³¹ *Ley de Jornada de Trabajo, Horario y Trabajo en Sobretiempo*, Article 8.

³³² *Constitución Política del Perú*. See also *Ibid.*, Article 7.

³³³ U.S. Department of State, "Country Reports – 2006: Peru," Section 6e.

³³⁴ *Ley de Jornada de Trabajo, Horario y Trabajo en Sobretiempo*, Article 9.

pay.³³⁵ In 2005 and 2006, the MTPE, labor, and business groups reported that most companies in the formal sector complied with laws regarding hours of work.³³⁶

3. Occupational Safety and Health

In Peru, the law says that employers must maintain a safe and healthy work environment in compliance with occupational safety and health regulations.³³⁷ Employers are obliged to guarantee the safety and health of workers in performing all work-related tasks and while at the worksite.³³⁸ They must provide workers with adequate personal protection equipment and must ensure that exposure to physical, chemical, biological, or ergonomically adverse factors do not cause harm to workers.³³⁹ Additionally, employers must provide workers with information concerning risks in the workplace and with occupational safety and health training when they begin their employment, at appropriate times during the course of their employment, and when any changes in function, job description, or technology occur.³⁴⁰

Employers in Peru must develop an action plan for prevention of workplace accidents, based on an initial risk evaluation of job requirements, the nature of the work activity, equipment, dangerous material and substances, and the work environment.³⁴¹ Employers must conduct a risk evaluation at least once a year or when working conditions change or workers have been harmed. Depending on the results of the risk evaluation, the employer may be required to put in place periodic health screenings and regular controls on the conditions of work in order to detect potentially dangerous situations, as well as precautionary measures that guarantee an increased level of protection.³⁴² When the workplace appears to be adversely affecting workers' health or when preventive measures appear insufficient, employers must conduct investigations and take any necessary corrective measures in accordance with the investigation's findings.³⁴³ Employers are liable for all the economic costs associated with accidents or injuries suffered by workers in the performance of their duties, or as a consequence of them, including legal fees.³⁴⁴

Employers must establish plans in case of imminent danger, providing necessary instructions so that in such cases workers can interrupt their activities and, if necessary, abandon the workplace immediately. Workers may not resume work until the risk is controlled.³⁴⁵ Employer actions and omissions that impede the exercise of the right of workers to stop work in cases of serious and imminent danger are considered to be very

³³⁵ Ibid., Article 10.

³³⁶ U.S. Department of State, "Country Reports – 2005: Peru," Section 6e and U.S. Department of State, "Country Reports – 2006: Peru," Section 6e.

³³⁷ *Aprueben Reglamento de Seguridad y Salud en el Trabajo, Decreto Supremo No. 009-2005-TR*, Article 37.

³³⁸ Ibid., Article 39.

³³⁹ Ibid., Articles 45 and 50.

³⁴⁰ Ibid., Article 43.

³⁴¹ Ibid., Article 46.

³⁴² Ibid., Article 47.

³⁴³ Ibid., Article 48.

³⁴⁴ Ibid., Principio III.

³⁴⁵ Ibid., Article 53.

serious infractions of the law, for which the employer may be sanctioned in accordance to the schedule of fines for each sector.³⁴⁶

Employers must conduct investigations of work accidents, occupational injuries, and dangerous incidents and must report any adopted preventative measures to the MTPE.³⁴⁷ All employers must notify the MTPE of all fatal accidents within 24 hours of their occurrence.³⁴⁸ Additionally, employers must notify the MTPE within 24 hours in the case of dangerous accidents that put at risk the health and physical well-being of the workers and/or the population.³⁴⁹

Employers must maintain records that indicate for up to the five previous years: work-related accidents; occupational illnesses; monitoring of physical, chemical and biological agents and risk of exposure to ergonomic hazards; internal health and safety inspections; statistics on health and safety; inventory of equipment for emergencies; and efforts to provide for training and capacity building to handle health and safety emergencies.³⁵⁰

In Peru, workers are required to comply with occupational safety and health regulations and instructions given by their supervisors. They must use protective equipment effectively and may not operate or handle equipment, machinery, or tools, for which they are not authorized or trained. Employees must participate in training programs and other preventive activities that are organized by the MTPE or the employer.³⁵¹ They also must submit to medical exams that are required by company regulations. Additionally, workers must report to the employer all events that could put the safety and health of workers or physical facilities at risk and must cooperate in investigations concerning work accidents and occupational injuries.³⁵² Companies with 25 or more workers are required to maintain an occupational safety and health committee composed in equal parts of worker and employer representatives.³⁵³ Workers, their representatives, and members of occupational safety and health committees are protected against acts of hostility and other coercive measures undertaken by the employer in response to fulfilling their safety and health responsibilities.³⁵⁴

Occupational safety and health inspectors are authorized by law to conduct workplace inspections, and workers are guaranteed the right to communicate freely with them.³⁵⁵ An inspector has the authority to enter a workplace for inspection at any time, take

³⁴⁶ Ibid., Articles 105 and 107.

³⁴⁷ Ibid., Article 87.

³⁴⁸ Ibid., Article 75.

³⁴⁹ Ibid., Article 77.

³⁵⁰ Government of Peru, *Modifican Artículos del D.S. No. 009-2005-TR, Reglamento de Seguridad y Salud en el Trabajo, Decreto Supremo No. 007-2007-TR*, (2007), Article 17; available from http://www.ila.org.pe/publicaciones/docs/modificacion_ds_009_2005_tr.pdf.

³⁵¹ *Aprueben Reglamento de Seguridad y Salud en el Trabajo*, Article 72.

³⁵² Ibid.

³⁵³ Ibid., Article 18. Article 19 indicates that companies with less than 25 workers are supposed to have occupational safety and health representatives, but need not have full committees. *Decreto Supremo No. 007-2007-TR*, revision to Article 3, alters this requirement. From October 1, 2007, all companies are meant to have fully constituted committees.

³⁵⁴ Ibid., Article 65.

³⁵⁵ Ibid., Articles 64 and 92.

samples and measurements that he/she considers necessary, examine books, and solicit information in relation to safety and health in the workplace.³⁵⁶ When the occupational safety and health inspector observes a serious and imminent risk to workers, he/she can order an immediate work stoppage.³⁵⁷ It is considered a very serious infraction of the law if an employer does not suspend work immediately after an inspector warns of imminent danger or to renew work without having remedied the situation that prompted the closure.³⁵⁸ In such cases, the employer may be sanctioned by the MTPE in accordance with the scale of fines for each sector.³⁵⁹ Employers who, through threat or violence, force employees to work in an environment without adequate occupational safety and health conditions determined by the authorities may be penalized with up to two years imprisonment.³⁶⁰

In 2006, 346 workplace accidents were reported to the MTPE. Of these, 28 resulted in fatalities, 31 caused permanent disability, and 237 caused temporary disability. More than ten accidents were reported in the following industries: mines, 126; manufacturing, 101; construction, 49; transportation, 18; vehicular repair, 12; and sales, 12.³⁶¹

In addition to conducting random inspections, the MTPE receives and responds to workers' complaints regarding occupational safety and health. If companies are determined to be in violation of the law, they are subject to fines and/or closure.³⁶² In 2005, MTPE health and safety inspectors conducted 9,183 site visits throughout Peru, and in the Lima metropolitan area levied 312 fines totaling 1,147,088 Peruvian soles (USD 361,294).³⁶³

According to the U.S. Department of State, Government of Peru officials lack the resources, ability and authority to effectively monitor enterprises, enforce compliance with, and even collect fines for violations of occupational safety and health regulations.³⁶⁴

³⁵⁶ Ibid., Article 94.

³⁵⁷ Ibid., Article 95.

³⁵⁸ Ibid., Article 105.

³⁵⁹ Ibid., Article 107.

³⁶⁰ *Código Penal del Perú*, Article 168.

³⁶¹ U.S. Embassy- Lima, *reporting*, May 9, 2007.

³⁶² U.S. Department of State, "Country Reports – 2005: Peru," Section 6e.

³⁶³ U.S. Embassy-Lima, E-mail communication, June 21, 2006. The most complete recent data (including both number of inspections and fines generated) covers 2005.

³⁶⁴ U.S. Department of State, "Country Reports – 2006: Peru," Section 6e.

LIST OF ACRONYMS

AFL-CIO	American Federation of Labor and Congress of Industrial Organizations
APRA	American Popular Revolution Party <i>Alianza Popular Revolucionaria Americana</i>
CATP	Autonomous Workers' Central of Peru <i>Central Autónoma de Trabajadores del Perú</i>
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CFA	Committee on Freedom of Association
CGTP	General Confederation of Peruvian Workers <i>Confederación General de Trabajadores del Perú</i>
CNTPE	National Labor and Employment Promotion Council <i>Consejo Nacional de Trabajo y Promoción del Empleo</i>
CONADIS	National Council for the Integration of Persons with Disabilities <i>Consejo Nacional para la Integración de la Persona con Discapacidad</i>
CPETI	National Committee to Prevent and Eradicate Child Labor <i>Comité Directivo Nacional para la Prevención y Erradicación del Trabajo Infantil</i>
CTP	Peruvian Workers' Confederation <i>Confederación de Trabajadores del Perú</i>
CUT	Unitary Confederation of Workers <i>Central Unitaria de Trabajadores del Perú</i>
DEMUNA	Municipal Child and Adolescent Defender Centers <i>Defensoría Municipal del Niño y el Adolescente</i>
EPZ	Export Processing Zone
ICFTU	International Confederation of Free Trade Unions
IDB	Inter-American Development Bank
ILO	International Labor Organization
INBF	National Institute of Family Welfare <i>Instituto Nacional de Bienestar Familiar</i>
IPEC	International Program on the Elimination of Child Labor
ITUC	International Trade Union Confederation
MCET	Ministry of Commerce and Tourism <i>Ministerio de Comercio Exterior y Turismo</i>
MIMDES	Ministry of Women and Social Development <i>Ministerio de la Mujer y Desarrollo Social</i>
MININTER	Ministry of Interior <i>Ministerio del Interior</i>
MRE	Ministry of Foreign Relations <i>Ministerio de Relaciones Exteriores</i>

MTPE	Ministry of Labor and Employment Promotion <i>Ministerio de Trabajo y Promoción del Empleo</i>
NGO	Non-governmental Organization
ORIT	Inter-American Regional Organization of Workers <i>Organización Regional Interamericana de Trabajadores</i>
PMT	Office of Labor Protection for Minors <i>Dirección de Protección del Menor y de la Seguridad y Salud en el Trabajo</i>
PNP	National Police <i>Policía Nacional</i>
PROFECE	Women's Employment Consolidation Program <i>Programa Femenino de Consolidación de Empleo</i>
PROMUDEH	Ministry of the Promotion of Women and Human Development <i>Ministerio de Promoción de la Mujer y del Desarrollo Humano</i>
SUTEP	Unitary Trade Union of Education Workers <i>Sindicato Unitario de Trabajadores en la Educación del Perú</i>
UIT	Peruvian tax levy unit <i>Unidad Impositiva Tributaria</i>
URP	Procedural Reference Unit <i>Unidad de Referencia Procesal</i>
USDOL	United States Department of Labor