

**PUBLIC SUBMISSION TO THE OFFICE OF TRADE AND LABOR AFFAIRS  
(OTLA) UNDER CHAPTERS 17 (LABOR) AND 21 (DISPUTE SETTLEMENT) OF  
THE TRADE PROMOTION AGREEMENT BETWEEN THE UNITED STATES  
AND PERU**

**REGARDING THE FAILURE OF THE PERUVIAN GOVERNMENT TO  
COMPLY WITH THE LABOR STANDARDS INCLUDED IN THE UNITED  
STATES-PERU TRADE PROMOTION AGREEMENT**

**SUBMITTED BY:**

**THE INTERNATIONAL LABOR RIGHTS FORUM (ILRF)**

**PERÚ EQUIDAD**

**AND**

**COORDINADORA DE CENTRALES SINDICALES DEL PERÚ [GENERAL  
TRADE UNION COORDINATING BODY OF PERU]  
(CGTP, CATP, CTP, CUT)**

**FEDERACIÓN NACIONAL DE TRABAJADORES TEXTILES DEL PERÚ  
[NATIONAL FEDERATION OF TEXTILE WORKERS OF PERU] (FNTTP)  
FEDERACIÓN DE TRABAJADORES EN TEJIDOS DEL PERÚ [FEDERATION  
OF WORKERS IN THE TEXTILE INDUSTRY IN PERU] (FTTP)  
FEDERACIÓN NACIONAL DE TRABAJADORES DE LA AGROINDUSTRIA Y  
AFINES [NATIONAL FEDERATION OF AGRICULTURAL WORKERS]  
(FENTAGRO)**

**JULY 23, 2015**



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## I. INTRODUCTION

On April 12, 2006, Peru and the United States signed the United States-Peru Trade Promotion Agreement (TPA), which entered into force on February 1, 2009. The Peruvian trade unions mentioned on the cover page, Perú Equidad, and the International Labor Rights Forum (ILRF) jointly submit this petition to the U. S. Department of Labor, alleging that the Government of Peru is not complying with the labor standards contained in the TPA.

The labor rights violations are occurring in numerous sectors of the Peruvian economy. However, this petition focuses on the failure to comply with labor rights in two very important sectors in trade between the United States and Peru: agriculture and textiles & garment manufacturing.

Through eight representative cases, the petition demonstrates that the Government of Peru is not enforcing its own labor laws in the garment, textile and agroexport industries, which together employ hundreds of thousands of male and female workers who produce hundreds of millions of dollars' worth of goods for the U.S. market. The petition also alleges that the State maintains a special labor regime that violates the freedom of association contained in the International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work and its Follow-up.

The allegations in this petition are based on practices that have been in place, with the full knowledge of the Peruvian Government, since the TPA entered into force<sup>1</sup> and that have been amply documented by national and international organizations such as the ILO and the United Nations Office of the High Commissioner for Human Rights (OHCHR) over the last ten years.<sup>2</sup> The systematic abuse of labor rights in the agroexport and textile and

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<sup>1</sup> See, for example, Ministry of Labor and Employment Promotion [Ministerio de Trabajo y Promoción del Empleo] (MTPE) Report No. 111-2008- MTPE/5, dated October 13, 2008, issued by the Ministerial Executive's Office of the Technical Adviser and approved by the MTPE Office of the Legal Adviser in Report No. 232-2009-MTPE/9.110, dated April 21, 2009 (concluding that "in light of the statistical data ... it is evident that temporary contracting has been used repeatedly in order to deter union membership among workers and has had detrimental effects such as the low average monthly pay in the textile-garment sector. . .")

<sup>2</sup> See, for example, the 357<sup>th</sup> Report of the Committee on Freedom of Association, June 2010, Case 2675 (responding to the allegations in the complaint filed against the Peruvian Government on October 16, 2008, concerning the detrimental consequences of short-term contracts for the freedom of association in non-traditional export industrial firms); Cuadros Luque, Fernando and Christian Sánchez Reyes, *La contratación temporal en el Perú: la informalidad escondida* [temporary contracting in Peru: hidden informality], November 2007, available at: [http://www.comunidadandina.org/camtandinos/WebInicial/docs/Lacontrataciomentemporal\\_Final\\_12-11-07.pdf](http://www.comunidadandina.org/camtandinos/WebInicial/docs/Lacontrataciomentemporal_Final_12-11-07.pdf) (which points out that employers in Peru use short-term contracts and threats of non-renewal of contracts to restrict union membership); Matos, Andrea Sánchez, Labor Program for Development [Programa Laboral De Desarrollo] (PLADES), *Implicancias en la Libertad Sindical del Régimen Laboral Especial del Decreto Ley N° 22342 Ley de Promoción de Exportación no Tradicional* {implications for freedom of association of the special labor regime created by Decree Law No. 22342, the Non-Traditional Exports Promotion Act}, June 2010 (illustrating how "the terms of employment resulting from the application of this special regime [of allowing successive and unlimited temporary contracts] and the government's failure to eliminate the

garment industries is frequently pointed out the government, including as recently as the meeting of the Labor Council of the Trade Cooperation Agreement that took place in Lima in October 2014. In spite of that, the Peruvian State has ignored these warnings and persisted in maintaining special labor regimes with limited rights; it continues to run deficient inspections; and it has not responded categorically to put a stop to the systematic labor law violations in these sectors.

Despite the enormous challenges it faces in enforcing its own labor laws, in June 2014 the government approved a package of reforms that have further weakened labor inspections. This law provides that for three years, labor inspections will have a “preventive approach,” imposing very low fines, and only as a last resort. The National Superintendency of Labor Oversight [La Superintendencia Nacional de Fiscalización] (SUNAFIL) has been poorly managed and does not have the necessary resources to enforce labor laws.

This petition is submitted to the OTLA in accordance with the procedures set forth in 71 Fed. Reg. 76,691, Section F. The petitioners are requesting that the U.S. Government, after completing its investigation, invoke the Cooperative Labor Consultations called for in Article 17.7 and demand that the Government of Peru (GoP) take all necessary measures to address the legal and institutional obstacles that prevent enforcement of its labor laws. If the consultations do not produce a satisfactory solution, the petitioners urge the U.S. Government to invoke dispute settlement provisions and continue with the respective procedures until the GoP is in full compliance with its obligations under Chapter 17.

## **II. STATEMENT OF THE PROVISIONS VIOLATED BY THE GOVERNMENT OF PERU**

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discrimination resulting from this special regime prevent and hinder a large number of workers in this sector from exercising their right to form unions and engage in collective bargaining”); Labor Program for Development [Programa Laboral De Desarrollo] (PLADES), *Informe 2009: Empresas Transnacionales y Derechos Laborales Fundamentales en el Perú* {2009 report: transnational companies and fundamental labor rights in Peru}, April 2011 (detailing violations of the freedom of association in the textile sector by means of threats, intimidation, the failure to regularize workers with more than 20 years of service, the failure to pay the textile premium, refusal to reinstate workers after they filed substantial claims, and judicial harassment, among other methods); Office of the UN High Commissioner for Human Rights, “Sumisión de la CSI al RPU concerniente al Perú” {submission of the ITUC [International Trade Union Confederation] to the RPU [expansion not found] concerning Peru}, January 2008, available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/PE/CSI\\_PER\\_UPR\\_S2\\_2008\\_InternationalTradeUnionConfederation\\_uprsubmission.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/PE/CSI_PER_UPR_S2_2008_InternationalTradeUnionConfederation_uprsubmission.pdf) (explaining how the temporary contracting regime and threats of non-renewal of contracts are used by employers to undermine unions); Trade Union Confederation of Worker Commissions, “El conflicto TOPY TOP: un ejemplo de acción sindical internacional” {the TOPY TOP conflict: an example of international trade union action}, June 30, 2007, available at: <http://www.ccoo.cat/noticia/32166/el-conflicto-topy-top-un-ejemplo-de-accion-sindical-internacional> (reporting on the 93 dismissals at TOPY TOP between March and June 2007 for attempting to organize the union).

The Government of Peru has violated the following sections of TPA Chapter 17:

**Article 17.2: Fundamental Labor Rights**

1. Each Party shall adopt and maintain in its statutes and regulations, and practices thereunder, the following rights, as stated in the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998) (ILO Declaration):

- (a) freedom of association;
- (b) the effective recognition of the right to collective bargaining;

**Article 17.3: Enforcement of Labor Laws**

1. (a) A Party shall not fail to effectively enforce its labor laws, including those it adopts or maintains in accordance with Article 17.2.1, through a sustained or recurring course of action or inaction, in a manner affecting trade or investment between the Parties, after the date of entry into force of this Agreement.

**III. STATEMENT OF JURISDICTION**

The Office of Trade and Labor Affairs (OTLA) has jurisdiction to review this proposal, given that it is the point of contact established in Article 17.5(5) of the TPA. This submission refers to violations by the Peruvian Government of TPA Articles 17.2 and 17.3 by maintaining laws and regulations that are incompatible with the ILO Declaration on Fundamental Principles and Rights at Work, and by failing to enforce its labor legislation in a manner affecting trade and investment between the United States and Peru. Moreover, the allegations in this petition contain sufficient facts to establish a continuing or recurring pattern of action or of passivity on the part of the GoP. The failure to effectively enforce labor laws occurred in sectors where there is significant trade between the United States and Peru. These failures are ongoing and have taken place since the trade agreement entered into force.

At the conclusion of its initial investigation and upon issuance of a public report, OTLA should request cooperative labor consultations as provided in Article 17.7(1). If the consulting parties cannot resolve the matter, the United States should convene the Labor Affairs Council under Article 17.7(4). If the provisions of Chapter 17 do not result in a settlement regarding Peru's violations, the United States should make use of the full range of available options, including arbitration, set forth in Chapter 21 on dispute settlement.

**IV. VIOLATIONS OF LABOR COMMITMENTS IN THE TEXTILE AND GARMENT INDUSTRY**

**A. BACKGROUND**

In 1978, under the dictatorship of General Francisco Morales Bermúdez, the Non-Traditional Exports Promotion Act (Decree Law No. 22342) was enacted with the goal of stimulating investment in the textile and garment manufacturing sector for export purposes. At that time the sector was made up of small producers who had limited access to foreign markets, and international demand for their products was weak. The law sought to promote investment in these industries by providing qualifying employers with a special labor regime that allowed them to hire workers through an indefinite series of short-term contracts, even for work that was not temporary by nature.<sup>3</sup>

In the early 1990s the Peruvian garment and textile export industry entered a major growth phase, propelled by the free market reforms adopted by the Fujimori government. It thus gained significant access to the U.S. and European markets through various trade programs. Companies such as TOPY TOP S.A. and HIALPESA became the principal suppliers of famous worldwide brands such as GAP, Abercrombie & Fitch, Tommy Hilfiger and others. By 2010, 12 Peruvian textile and garment companies made the Fortune 500 list for Peru.

Between 1991 and 2011, the use of short-term contracts under Decree Law No. 22342 expanded rapidly, at a rate of 10% per year on average. The largest garment and textile companies are the biggest beneficiaries of the law; the 30 largest companies account for more than 70% of the contracts issued under this system. In some of the large companies, between 90% and 100% of the employees have been hired under short-term contracts pursuant to Decree Law No. 22342.

Although they have temporary contracts, most of the employees in the textile and garment sector work on a permanent basis. Many have worked for years – sometimes decades – under a series of three-month or even shorter contracts, with no job security. The companies employ them in this manner so as to perpetuate their insecurity and thus prevent any union organization.

While the Non-Traditional Exports Act has been a boon to large exporters of textiles and garments in Peru, the workers have suffered a complete lack of job security and low wages, and in effect they have been prevented from exercising their right to organize and bargain collectively. As the representative cases below demonstrate, the employers have abused their unlimited power to renew short-term contracts when their workers have tried to form or join a union, leaving them constantly at risk of being fired for such activity: Between 1991 and 2006, the number of trade unions in the textile and garment sector fell from 85 to 16. Without a significant union presence, employers have been able to unilaterally set the terms and conditions of employment. And thanks to that privilege, they have been able to

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<sup>3</sup> In terms of labor, Article 32 of the law provides that companies “may hire occasional workers in the numbers required (...) to carry out production operations for export.” Strictly speaking, it is not a *special labor regime* but a *special contract*, since the former is characterized by the different or additional labor rights it provides as compared to the regular labor regime, whereas the latter allows the temporary contracting of workers regardless of the work they perform, without any quantitative or time limit, as the five-year limit imposed under the regular regime does not apply.



keep wages in the textile and garment sector among the lowest in the country, while their exports and profits have skyrocketed.

**B. THE GOVERNMENT OF PERU HAS FAILED TO EFFECTIVELY ENFORCE ITS LABOR LEGISLATION, IN VIOLATION OF ARTICLE 17(3).**

**1. TOPY TOP S.A.**

**A) FACTS**

The company TOPY TOP S.A. (hereinafter “TOPY TOP” or “the company”) is one of the largest manufacturers and exporters of textiles and garments in Peru, employing more than 4,700 workers in several factories located in Lima and the surrounding area. The company currently exports more than 70% of its production to the United States, and is a key supplier for brands like Life Is Good, Hugo Boss, GAP, Under Armour, Ambercrombie & Fitch, Ralph Lauren and others.

On February 25, 2007, 22 TOPY TOP employees decided to establish the TOPY TOP Workers Union [ Sindicato de Trabajadores Obreros de TOPY TOP] (SINTOTTSA) in an effort to address the low wages and the requirement to work 12-hour shifts seven days a week, in violation of Peruvian law.

On March 5, 2007, SINTOTTSA officially registered with the Ministry of Labor (MTPE) and began signing up members; but rather than recognize the union and begin collective bargaining as the law requires, the company launched an aggressive campaign to destroy the union.<sup>4</sup> In what would become a pattern of behavior, between March and June 2007 TOPY TOP fired (by not renewing their contracts) more than 90 members of SINTOTTSA, including the secretary general and the entire board of directors. Many of them had been working for the company for over five years, and they were fired right after they joined the union.

On June 4, 2007, the MTPE imposed a fine of 103,500 soles on TOPY TOP for various anti-trade union practices. The fine had no effect, as shown by the fact that in the ensuing weeks the company fired the new secretary general and 80 members of SINTOTTSA.

In view of the authorities’ inability to enforce the law, SINTOTTSA appealed to its international allies to put pressure on TOPY TOP’s U.S. and European buyers so they would intervene in the dispute. After three days of meetings in Lima between TOPY TOP,

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<sup>4</sup> To learn more about the history of SINTOTTSA and TOPY TOP, see the report by Professor Wilfredo Sanguinetti of the Center for Research, Training and Legal Counsel (CICAJ), “Empresas Multinacionales, Responsabilidad Social y Derechos Laborales en el Perú: la experiencia de TOPY TOP” {multinational companies, social responsibility and labor rights in Peru: the TOPY TOP experience}, hereinafter CICAJ – Sanguinetti. Available at <http://www.cedla.org/content/42496>

Inditex, GAP and the International Textile, Garment and Leather Workers Federation (ITGLWF), an agreement was signed requiring TOPY TOP to recognize the union, reinstate the workers who had been unjustly fired and implement a series of measures to improve labor relations with the union and its members. Although TOPY TOP initially implemented the agreement, a few months later it began a silent war against the union by not renewing the short-term contracts of its workers in order to weaken the union and avoid negotiating better wages and working conditions.

In January 2008, during the negotiations for the first collective bargaining agreement, the company dismissed 200 workers, 120 of them union members. Many of them had worked for the company for 5 to 10 years without any problems until they joined the union. In response, several members of SINTOTTSA sued the company for anti-trade union discrimination, but it took more than six years for their cases to be resolved. In June 2014, the Constitutional Court ruled in favor of the workers and ordered the company to reinstate them.

In 2009, SINTOTTSA charged that the company was in violation of the requirements of Decree Law No. 22342. And in February 2012, after a complaint was filed by SINTOTTSA, the MTPE inspectors verified that the allegations were true and ordered the company to convert 740 workers (100 of them members of SINTOTTSA) into full-time employees.<sup>5</sup> Unfortunately, TOPY TOP refused to comply with the Ministry of Labor's orders and continued to force workers to sign temporary contracts. Consequently, to date none of the 740 workers involved has become a full-time employee under Peruvian law.

On September 3, 2012, the company announced the dismissal of 44 SINTOTTSA members, among them the secretary general, and only rehired the fired workers after Under Armour and other major buyers informed it that the dismissals were in violation of their codes of social conduct. Even so, just a few months later, on January 15, 2013, TOPY TOP S.A. fired 18 union members, violating an agreement it had signed with SINTOTTSA<sup>6</sup> under which the company could not dismiss workers without prior notice and good cause.

Indeed, in June 2014 TOPY TOP S.A. was fined PES S/. 33,858 (USD 11,286) by the Labor Inspectorate when it determined that the company was committing overt acts against the freedom of association.<sup>7</sup> That same month, once again it fired 27 union members without good cause. This action took place in the middle of negotiations for the 2013-2014 collective bargaining agreement, which had begun when the union submitted its list of complaints in November 2013.

And finally, on March 23, 2015, TOPY TOP S.A. fired the secretary general of SINTOTTSA and the press and public relations secretary of the National Federation of Textile Workers of Peru (FNTTP).

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<sup>5</sup> See Record of Violation No. 552-2012-MTPE/1/20.4

<sup>6</sup> To see the agreement refer to CICAJ – Sanguinetti, pp. 117-118

<sup>7</sup> See Record of Violation No. 2217-2014 of June 26, 2014.

## **B) PERUVIAN LABOR LAWS VIOLATED**

Anti-trade union Discrimination: Private sector workers' right to join unions is regulated in Peru by Supreme Decree No. 010-2003-TR (called "Sole Amended Text of the Collective Labor Relations Act, LRCT") [Ley de Relaciones Colectivas de Trabajo] (LRCT). This decree defines the scope of the rights to join unions, engage in collective bargaining and go on strike that are consecrated in Article 28 of the Peruvian Constitution.

According to Articles 3 and 4 of the LRCT, union membership is free and voluntary and cannot be made a condition of employment, nor can non-membership or disaffiliation. Employees cannot be required to join a particular union, nor can they be prevented from doing so. In addition, both the State and employers must refrain from any type of act that would in any way coerce workers or restrict or infringe upon their right to form unions, or that would interfere in any way with the establishment, administration or maintenance of the union organizations formed by the workers.

In addition, Article 25.10 of Supreme Decree No. 019-2007-TR states that it is a serious violation of labor legislation "*to commit acts that impinge upon workers' freedom of association or upon the organization of workers, including acts that prevent free affiliation with a trade union, encourage workers to discontinue their membership therein, prevent the establishment of trade unions, hinder union representation, make use of limited contracts {contratos de trabajo sujetos a modalidad} for the purpose of obstructing the freedom of association, collective bargaining or the right to strike, (...) or any other act that interferes with the organization of trade unions.*" According to Article 25.12 of the law, this provision encompasses "*discrimination against a worker for freely exercising the right to engage in union activity, whether such worker is hired for an indeterminate time, part-time, or some other term.*"

Organized Labor Rights: According to Articles 30 and 31 of the LRCT, certain workers have the right not to be dismissed or transferred to another location within the same company without duly substantiated good cause or without the worker's consent; among those protected by organized labor rights are members of trade unions in the process of being formed, members of trade unions' boards of directors, delegates of any locals established by trade unions, and those representing workers in collective bargaining.

However, TOPY TOP has completely disregarded these provisions, aggressively combating the existence of the union formed by its workers, systematically stripping union members of their employment or directly dismissing their leaders, while also obstructing their right to collectively bargain for wage increases and better working conditions.

## **C) FAILURE TO ENFORCE NATIONAL LAWS**

The Ministry of Labor has repeatedly substantiated – usually at the instigation of workers rather than in the course of its preventive efforts – consistent, widespread abuse of temporary contracts by this company, especially for the purpose of preventing its workers from organizing a trade union. However, TOPY TOP has refused, also repeatedly and

systematically, to reinstate workers affected by these abuses, or even to pay the fines imposed on it for this reason.

The impunity with which TOPY TOP has carried out these acts in violation of its employees' labor rights has forced the employees to turn to the justice system to restore their rights through lawsuits, but the length of these proceedings exceeds the "reasonable period of time" required by due process.

## **2. HIALPESA**

### **A) FACTS**

Hilandería de Algodón Peruano S.A. (hereinafter "HIALPESA" or "the company") is one of the largest manufacturers and exporters of textiles and garments in Peru, employing more than 3,000 workers in several factories located in the Lima area. The company exports a significant portion of its production to the United States and is a supplier for well-known brands such as J. Jill, Nautica, Guess, The North Face, Life is Good and New Balance.

Like other companies in this sector, HIALPESA has abused its unlimited power of declining to renew short-term contracts in order to prevent the growth of the corresponding trade union. In May 2008, the trade union successfully negotiated a collective bargaining agreement that included a raise of PES S/. 2 (USD 0.66) per workday, and it began recruiting more members. However, in December of that year, the company dismissed 150 workers, including 80 union members, by declining to renew their short-term contracts. Sixty of those workers sued the company in the Constitutional Court, alleging that its failure to renew the contracts was the result of anti-trade union discrimination. In 2013 they won reinstatement after five years of delays and frivolous appeals instituted by HIALPESA in order to draw out the process.

Another tactic used by the company to weaken workers' ability to organize involves the fraudulent use of short-term contracts. In fact, on March 11, 2013, the secretary general of the trade union asked the MTPE to review the approval of more than 1,000 short-term contracts issued between June and November 2012, claiming that the workers had never signed the contracts presented by HIALPESA, and that those contracts should be declared invalid. In September of that year, the MTPE issued two decisions<sup>8</sup> declaring 1,008 short-term contracts invalid and ordering that the workers in question, including all the members of the trade union, be made full-time employees. Nonetheless, the company ignored the MTPE decisions, refusing to make the workers full-time and filing suit against the decision in order to delay the process.

On October 23, 2013, the trade union informed the company that, given the MTPE decisions, its members would no longer sign short-term contracts and that they expected to be made full-time employees. In response, on November 4 the company barred access to

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<sup>8</sup> See Directorate Decision No. 309-2013-MTPE/1/20.2 and Directorate Decision No. 313-2013-MTPE/1/20.2

the factory by 136 union members. The trade union was forced to sign an agreement whereby the company consented to rehire the workers, but only under the terms of Decree Law No. 22342, that is, through short-term contracts.

In March 2014, the company announced to the 136 union members that it intended to close the cotton mill where 90% of the trade union's members worked, claiming it was unprofitable. Without the union's consent, the company management approached the union members individually and privately offered them significant sums of money to quit. The union members were warned that anyone who did not accept the offer as of May 15, 2014 would be left empty-handed when the factory closed. In response, the trade union filed a claim with the Fair Labor Association (FLA) alleging that HIALPESA's plan to close the factory was intended to reduce the number of members in the union. A report issued later by the FLA concluded that HIALPESA discriminated against the trade union by buying the resignations of its members, which it did outside the presence of a union leader and without offering union members the opportunity to be transferred to another job within the company's various departments.

On May 15, 2014, the company sent a notice of dismissal to the secretary general of the trade union, Mr. Pedro Pablo Broncales Baltodano, accusing him of the serious violation of tampering with some security cameras. Mr. Broncales denied the accusations, explaining that he had been cleaning up cotton fibers in the area and did not know the cameras were there, since they were not visible. On June 18, Mr. Broncales was fired for "lack of good faith" and destruction of company property. The trade union contended that the charges were just a pretext, and that he was really fired for alerting the MTPE to the company's fraudulent use of short-term contracts.

## **B) PERUVIAN LABOR LAWS VIOLATED**

Anti-trade union Discrimination: Under Article 4 of Supreme Decree No. 010-2003-TR, Sole Amended Text of the Collective Labor Relations Act, which regulates the freedom of association, the right to engage in collective bargaining and the right to strike that are consecrated in Article 28 of the Peruvian Constitution, "The State, employers and their respective representatives shall refrain from any type of act that would in any way coerce workers or restrict or infringe upon their right to form trade unions, or that would interfere in any way with the establishment, administration or maintenance of the union organizations formed by the workers."

However, HIALPESA has repeatedly invoked its unlimited power to decline to renew short-term contracts under Decree Law No. 22342 so that it can prevent workers from joining the trade union that currently represents the company's employees. Not only has it declined to renew the contracts of those who tried to join the union, but it even committed discrimination by offering better benefits to those who separate from the company, or by buying their resignations. These actions constitute the very serious violations of the labor relations provisions of Supreme Decree No. 019-2007-TR Article 25, paragraphs 10 and 12, which we mentioned earlier.

Similarly, in order to avoid the restrictions imposed by Article 29 of Supreme Decree No. 003-97-TR, which declares invalid any dismissal based on, among other reasons, membership in a trade union or participation in union activities, the company has given fraudulent grounds for dismissing union leaders, falsely charging them with offenses. This practice is evidenced by the case of Mr. Pedro Pablo Broncales Baltodano, who was fired on trumped-up charges to get rid of him and force him to resort to tedious, prolonged court proceedings to defend his job. While waiting for the case to be resolved, he has been without the income provided by that job to support himself.

Fraudulent use of short-term contracts: Articles 72 and 73 of Supreme Decree No. 003-97-TR, which govern short-term labor contracts, provide that they should be in writing and in triplicate, expressly state their duration and the objective reasons for hiring the employee, as well as other conditions of the employment relationship. Copies of these contracts must be submitted to the Labor Administrative Authority within 15 calendar days of their execution so that they can be reviewed and registered. The Authority may order subsequent verification of the accuracy of the information contained in the submitted copy.

The Labor Administrative Authority is responsible for enforcing these rights. For that purpose, Article 25.5 of Supreme Decree No. 017-2007-TR provides that it is a very serious labor relations violation to “fail to comply with the provisions related to fixed-term contracts, regardless of what they are called, to abuse them, to use them fraudulently, and to use them to violate the principle of non-discrimination.”

### **C) FAILURE TO ENFORCE NATIONAL LAWS**

The workers filed a complaint against the company for using fraudulent tactics for that type of hiring, such as the use of contracts not authorized by the workers who supposedly had to sign them. The complaint was upheld, and the Labor Administrative Authority therefore ordered the company to classify more than 1,000 workers on its payroll as indefinite-term employees pursuant to Article 77.d of Supreme Decree No. 003-97-TR. According to that article, “limited contracts shall be considered indefinite-term contracts when the worker proves the existence of deceit or fraud in violation of the established provisions of law.” Nonetheless, the company ignored the MTPE decisions, refusing to make the workers full-time and filing suit against the decision in order to delay the process. According to the union, none of the workers has been reinstated as the law requires.

## **3. INCA TOPS S.A.**

### **A) FACTS**

INCA TOPS S.A. (hereinafter “INCA TOPS” or “the company”) is headquartered in the city of Arequipa and engages in the manufacture of alpaca, wool and mixed yarns. In 2013 it ranked third among textile exporters selling products to the United States, Europe and Asia.

In 2009, INCA TOPS fired the secretary general of the Trade Union of Unity and Solidarity of INCA TOPS, Mr. Pascual Rojas Román and the secretary of defense, Mr. Jorge Vilela Valencia. Both cases amounted to a violation of the rights of organized labor.

The company does not pay the textile premium<sup>9</sup> required by Peruvian law. In March 2010, the company decided to cut pay by 10% to include the payment of the textile premium in that amount. The trade union reports that the fines imposed by the Labor Inspectorate for that reason have not been paid.

In early 2013, with clear anti-trade union intentions, the company granted raises (between PES S/. 2.00 and PES S/. 7.00 per workday) only to non-unionized workers. Although this discriminatory treatment was corroborated by the MTPE,<sup>10</sup> the trade union claims that the company is still in violation to this day. Even worse, the workers say that workers are fired as soon as they join the trade union. In 2012, the company fired 30 workers under these circumstances; in 2013 it fired eight, and in 2014 five. According to a recently published report, the company declined to renew the contracts of workers with more than 20 years of service due to their union membership: Marlene Texi Begaso, with 24 years of service, was told her contract would not be renewed one month after she joined the union; the same thing happened to Francisco Zarate Flores, with 20 years of service, after he played a visible role in the trade union; and Maria Santos Agüero de Torres lost her job after 25 years of service because she made a claim for the textile premium.<sup>11</sup>

On January 31, 2014, the company sent a notice of dismissal to Mr. Jose José Abel López Motta for allegedly making improper use of union-related leave to represent a higher-level organization, the Federation of Workers in the Textile Industry in Peru (FTTP). He presented evidence in his own defense, but the company dismissed him on February 7. He then requested an MTPE inspection, which took place on March 8, 2014 and concluded that the union leader had been refused access to his workplace after being appointed secretary general of the Regional Federation of Textile Workers of the South [Federación Regional de Trabajadores En Tejidos Del Sur] (FERETTEX SUR) and secretary of defense of the Southern Region as a representative of the FTTP, a position he still holds. In Subdirectorate Decision No. 0249-2014-GRA/GRTPE, the MTPE fined the company for violating his freedom of association, in the amount of PES S/. 24,624.00.

Mr. López Motta appealed for relief and filed a complaint with the ILO, which opened case number 3065 to examine the matter.

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<sup>9</sup> The bonus known as the “textile premium” is regulated by the Supreme Decrees of July 10, 1944, July 24, 1944, September 14, 1944, and July 13, 1951. It is given to workers in the private sector labor regime who work in the textile industry as defined by the United Nations International Standard Industrial Classification of All Economic Activities (ISIC).

<sup>10</sup> See Inspection Order No. 0618-2014.

<sup>11</sup> See MENDOZA CHOQUE, Luis Enrique. “Principales incumplimientos de los derechos laborales en el sector textil-confecciones en el Perú” {principal violations of labor rights in the textile-garment sector of Peru}. FNTTP, FTTP, PLADES and Centro de Solidaridad. Lima, September 2014.

## **B) PERUVIAN LABOR LAWS VIOLATED**

Duty to pay workers' wages correctly: Paragraphs a) and b) of Supreme Decree No. 003-97-TR Article 30 provide that the failure to pay wages at the appropriate time, except for reasons of force majeure or acts of God duly substantiated by the employer, and the unjustified reduction in a worker's pay or rank are among the acts that are considered sufficient hostility to constitute a constructive dismissal of the worker. In addition, Article 24.4 of Supreme Decree No. 019-2007-TR defines as a serious labor relations violation "*the failure to pay or grant the entire remuneration or benefits to which workers are entitled for all aspects of their labor (...), and the fraudulent reduction of such remunerations or benefits.*" In spite of that fact, INCA TOPS has refused to pay its workers the "textile premium" that is required under the Supreme Decrees dated July 10, 1944; July 24 and September 14 of that same year; and July 13, 1951. It has been fined by the Ministry of Labor for its refusal.

Anti-trade union Discrimination: In addition, Article 25.10 of Supreme Decree No. 019-2007-TR states that it is a serious violation of labor legislation "*to commit acts that impinge upon workers' freedom of association or upon the organization of workers, including acts that prevent free affiliation with a trade union, encourage workers to discontinue their membership therein, prevent the establishment of trade unions, hinder union representation, make use of limited contracts for the purpose of obstructing the freedom of association, the right to engage in collective bargaining and the right to strike (...) or any other act that interferes with the organization of trade unions.*" INCA TOPS has nevertheless systematically resorted to these prohibited acts to obstruct, if not prevent, its workers' exercise of their right to form unions.

Legal Rights of Organized Labor: According to Articles 30 and 31 of the LRCT, certain workers have the right not to be dismissed or transferred to another location within the same company without duly substantiated good cause or without the worker's consent; among those protected by organized labor rights are members of trade unions in the process of being formed, members of trade unions' boards of directors, delegates of any locals established by trade unions, and those representing workers in collective bargaining.

## **C) FAILURE TO ENFORCE NATIONAL LAWS**

As noted earlier, INCA TOPS has not been paying the textile premium imposed by Peruvian law, and has therefore been fined by the Labor Inspectorate. It has not paid these fines, however. Similarly, the company granted pay raises only to non-unionized workers, and this discriminatory treatment was corroborated by a labor inspection. The company remains in violation of this provision to this day.

In early 2014, the company fired Mr. José Abel López Motta, leader of the FTTP, who requested a labor inspection. That inspection confirmed his improper dismissal and as a result the company was fined for violating the freedom of association. When the measures taken by the labor authorities proved ineffective against this abuse, Mr. López Motta nonetheless felt compelled to file an appeal for relief in court, which has not yet been



resolved, and to file a complaint against the Peruvian Government with the ILO on the same grounds.

#### 4. **CORPORACIÓN TEXPOP S.A.**

##### **A) FACTS**

CORPORACIÓN TEXPOP S.A. (hereinafter “TEXPOP” or “the company”) is located in Lima and is a supplier to well-known brands such as Calvin Klein, Tommy Hilfiger, Polo Ralph Lauren, GAP, Banana, Old Navy, Náutica, BCBG and North Face.

The TEXPOP case shows the impunity with which companies in the textile and garment industry behave when they want to shirk their obligation to respect the freedom of association and to fulfill their financial obligations to their workers. Indeed, in 2009 the Union of CORPORACION TEXPOP S.A. Workers was established to deal with the company’s abusive labor practices, which included mandatory workdays of 12 to 15 hours. The company’s response was to fire 129 workers (including Mr. Orlando Vega and Mr. Oscar Tanta, both union leaders) in an obvious attempt to destroy the union. In turn, the union and the FNTTP filed an appeal for relief, and more than three years later a judge of the Superior Court of Justice of Lima ordered the reinstatement of the 129 dismissed workers on the grounds that TEXPOP had violated the constitutional right to organize trade unions.

In view of the company’s refusal to comply with the court order to reinstate the workers, TEXPOP S.A. was fined and again ordered to reinstate the 129 workers who had been fired four years earlier.<sup>12</sup> However, on June 7, 2013, TEXPOP S.A. informed the FNTTP that it had no intention of reinstating anyone and served notice that it would close the plant for good.

In spite of the court decisions favoring the workers, their problems continue without solution. The 129 men and women who were unjustly fired six years ago have been unable to get their jobs back or to receive compensation for lost wages. Meanwhile, according to the FNTTP, the owner of TEXPOP has resumed production in a new plant under a different name.

##### **B) PERUVIAN LABOR LAWS VIOLATED**

Anti-trade union Discrimination: Article 29 of Supreme Decree No. 003-97-TR declares invalid any dismissal for affiliation with a trade union or participation in union activities, among other grounds. Moreover, Article 25.10 of Supreme Decree No. 019-2007-TR states that it is a serious violation of labor legislation to commit acts that impinge upon workers’ freedom of association or upon the organization of those workers, including dismissing union

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<sup>12</sup> Decision No. 15 of May 21, 2013, issued by the 4th Constitutional Court of the Superior Court of Justice in Lima.

leaders without good cause. However, TEXPOP has systematically resorted to such acts in order to prevent its workers from exercising their right to organize.

Legal Rights of Organized Labor: According to Articles 30 and 31 of the LRCT, certain workers have the right not to be dismissed or transferred to another location within the same company without duly substantiated good cause or without the worker's consent; among those protected by organized labor rights are members of trade unions in the process of being formed, members of trade unions' boards of directors, delegates of any locals established by trade unions, and those representing workers in collective bargaining.

### **C) FAILURE TO ENFORCE NATIONAL LAWS**

Although they were the victims of a clear case of anti-trade union dismissals, the 129 workers had to wait nearly four years to receive a court judgment ordering their reinstatement. In addition to that delay, the company has managed to ignore the order of reinstatement and the 129 men and women who were unjustly fired six years ago have been unable to get their jobs back or to receive compensation for lost wages.

## **5. FÁBRICA DE TEJIDOS PISCO S.A.C. (COTTONIFICIO)**

### **A) FACTS**

Fábrica de Tejidos Pisco S.A.C. - Cottonificio (hereinafter "COTTONIFICIO" or "the company") is a manufacturer of textiles for the production of denim, with headquarters in the Province of Pisco, Department of Ica. In 2013, it ranked 37 out of the top 50 textile and garment companies in Peru.

When the company's workers presented a list of complaints to begin a collective bargaining process in 2011, the two sides were unable to reach an agreement and the Union of Pisco Textile Workers staged a 20-day protest. The Ministry of Labor and Employment Promotion – Regional Directorate of Ica decided to resolve the conflict by issuing Decision No. 065-2011-GORE-ICA, which granted a raise of PES S/. 2.60 (new soles) per day and a bonus of PES S/. 800.00 (new soles) for closure. That decision was later confirmed by Decision No. 079-2011-GORE-ICA.

Even though the amount to be paid was trivial, the company refused to comply with the MTPE order, and on November 28, 2011, it sent dismissal notices to 10 workers and began a series of legal delay tactics. In fact, four years have passed and the company still refuses to recognize the Labor Administrative Decisions.

### **B) PERUVIAN LABOR LAWS VIOLATED**

Obligation to negotiate in good faith and obey the decisions adopted during collective bargaining: Articles 23 and 26 of the Constitution provide that no employment relationship

should limit the worker's exercise of constitutional rights and that in that relationship the inalienable nature of the rights guaranteed by the Constitution or by law must be respected. Consequently, the worker's pay and rank cannot be reduced. The Ministry of Labor's administrative decisions resolving the collective bargaining between the parties have not been overturned by the courts at this point, so the company is required to obey them. It did not do so, however, so in effect its workers have not received the pay to which they are entitled by virtue of having negotiated their list of complaints. This is a violation of the prohibition on failing to pay or reducing the pay of workers, which is set forth in paragraphs a) and b) of Supreme Decree No. 003-97-TR Article 30, and it is also an arbitrary limitation of the scope of the collective bargaining conducted with the employer.

### **C) FAILURE TO ENFORCE NATIONAL LAWS**

The fact that more than four years have gone by as of this date, and the company has still not complied with the Labor Administrative Decisions that were issued to safeguard the COTTONIFICIO workers' rights, highlights the clear ineffectiveness of the relief – both administrative and judicial – that Peruvian law provides for enforcing workers' rights.

#### **C. THE NON-TRADITIONAL EXPORTS PROMOTION ACT (DECREE LAW NO. 22342) UNDERMINES THE FUNDAMENTAL FREEDOM OF ASSOCIATION IN VIOLATION OF ARTICLE 17.2(1).**

As can be seen clearly in the cases detailed above in this petition, the extreme insecurity of employment imposed by the Non-Traditional Exports Promotion Act (Decree Law No. 22342) gives employers a powerful tool to undermine the freedom of association that must be respected under Article 17.2(1) of the United States-Peru Trade Promotion Agreement (TPA). Furthermore, the widespread use of temporary contracts to discriminate against trade unions has proven to be an inherent defect of the law that the GoP has lacked the political will or institutional capacity to address effectively.

#### **1. OBLIGATIONS TO RESPECT THE FREEDOM OF ASSOCIATION UNDER ARTICLE 17.2(1)**

The trade agreement adopted by the United States and Peru requires that “Each Party shall adopt and maintain” in its statutes and regulations, and practices thereunder, the fundamental rights of workers set forth in the ILO Declaration on Fundamental Principles and Rights at Work.<sup>13</sup> The ILO Declaration of 1998 requires all ILO member states to “respect, to promote and to realize, in good faith,” the rights contained in the fundamental conventions of the ILO, including the freedom of association, the right to organize and bargain collectively, and the prohibition of child labor, forced labor and discrimination in employment.<sup>14</sup>

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<sup>13</sup> See Article 17.2(1).

<sup>14</sup> ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labor Conference at its 86<sup>th</sup> meeting, Geneva, June 18, 1998.

Respect for the freedom of association is a fundamental human right, consecrated in the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the American Convention on Human Rights, the ILO Constitution, and ILO Fundamental Conventions Nos. 87 and 98. And within the ILO system, the freedom of association and collective bargaining are considered “enabling rights” that are indispensable for workers to be able to promote decent working conditions in the global economy.

ILO Conventions Nos. 87 and 98 require ILO member states to protect their workers’ right to organize by adopting measures intended to protect those workers against acts of anti-trade union discrimination.<sup>15</sup> Article 1 of Convention No. 98 expressly prohibits acts of anti-trade union discrimination, including subjecting a worker’s employment to the condition that he or she not be a member of a union or cease to be a member of a union. It also prohibits dismissing a worker or harming the worker in any other way due to union membership or participation in union activities.

The ILO oversight bodies have recognized the special problems of workers hired under short-term contracts when they try to exercise their freedom of association and collective bargaining rights in practice. Both the Committee of Experts on the Application of Conventions and Recommendations (CEACR) and the Committee on Freedom of Association (CFA) of the ILO have determined that declining to renew contracts for anti-trade union reasons is a violation of Article 1 of Convention No. 98.<sup>16</sup>

## **2. THE NON-TRADITIONAL EXPORTS PROMOTION ACT (DECREE LAW NO. 22342) AND ITS ABUSE FOR PURPOSES OF VIOLATING THE FREEDOM OF ASSOCIATION**

In fact, the Non-Traditional Exports Promotion Act violates the principle of causality in temporary hiring<sup>17</sup> that protects workers in other industries in Peru,<sup>18</sup> as it allows workers in the textile and garment sectors to be hired under short-term contracts (for two weeks or three to six months) that can be renewed an unlimited number of times by employers at their discretion. This facilitates widespread discrimination against union members and their supporters.<sup>19</sup>

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<sup>15</sup> See Article 11 of ILO Convention No. 87 and Article 1 of Convention No. 98.

<sup>16</sup> See the CEACR Annual Report, Observation on Belarus under C.98 (2011) and Committee on Freedom of Association, Report 368, Case No. 2884 (Chile).

<sup>17</sup> The purpose of the causality principle is to ensure that the employment relationship lasts as long as the source that gave rise to it, provided the worker meets his labor obligations. According to this principle, ongoing business needs should be covered with indefinite contracts, while temporary needs should be covered with fixed-term contracts.

<sup>18</sup> Fixed-term contracts or those of a specific duration in the rest of Peru’s economic sectors are regulated by Title II of the Sole Amended Text of Supreme Decree No. 003-97-TR, known as the “Productivity and Labor Competitiveness Act.”

<sup>19</sup> Article 32 of Decree Law No. 22342 indicates that contracting will depend on: (i) an export contract, purchase order or documents giving rise to the exportation, and (ii) Export Production Program to satisfy the contract, purchase order or document giving rise to the exportation. Companies may hire occasional personnel

In the general labor regime of Peru, which is regulated by Decree Law No. 728, employment contracts are by definition for indefinite terms, and defined- or fixed-term contracts are allowed only by default. It means that employers must demonstrate a good legal cause for signing such contracts, and that once the term has expired the employment relationship is terminated. In the regular regime, fixed-term temporary contracts are allowed, but they are considered exceptional and must meet a series of special requirements. Furthermore, they are limited to terms of five years, after which an employee must be given a contract for an indefinite term. The law provides that temporary contracts that do not meet the relevant requirements automatically become indefinite contracts.

Under the Non-Traditional Exports Promotion Act, however, textile and garment manufacturers that export a minimum of 40% of their production are allowed to enter into an unlimited number of fixed- and short-term contracts. Workers hired under this law have none of the protections provided by regular labor legislation, including the right to become permanent employees after five years. At the same time, employers are not required to give any reason for declining to renew a short-term contract with an employee, regardless of the employee's performance or seniority.

Thus, Decree Law No. 22342 has created an extreme version of insecure employment in which employers have unlimited power to fire workers (by not renewing their contracts) for any reason. As has been emphasized previously in this petition, there are many cases in which the largest textile and garment producers in Peru have abused their power systematically by declining to renew the contracts of workers who belong to or support trade unions.

The authorization granted to employers by the Non-Traditional Exports Promotion Act is so broad that it effectively weakens Peruvian laws prohibiting discrimination in employment on the basis of union membership. Given that the decision not to renew a contract requires no justification and leaves no paper trail, in practice it is almost impossible to mount an effective challenge to these non-renewals on grounds of anti-trade union discrimination. Employers can always justify dismissing these workers by claiming that their contracts are temporary and they are no longer needed.

The constant threat not to renew their contracts has had a dampening effect on workers' ability to exercise the freedom of association in the garment and textile industry of Peru. As a result, this sector has one of the lowest rates of unionization in the national workforce. In a survey of textile workers, 88% responded that they knew of cases of coworkers not having their contracts renewed because they belonged to a union, had filed a legitimate complaint, had reached an advanced age or had become pregnant.<sup>20</sup>

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in the number required, and the corresponding contracts must be signed for a specific job in terms of the entire program and/or the partial tasks that make up the program, and may be executed by the parties as many times as necessary.

<sup>20</sup> See Labor Program for Development (PLADES), "Implicancias en la Libertad Sindical del Régimen Laboral Especial del Decreto Ley N° 22342 Ley de Promoción de Exportación no Tradicional," (2010), p. 29-30.

Several of the latest reports from the U.S. Department of State have expressed concern about how workers in the textile and garment industry are effectively prevented from joining a union because they fear not having their short-term contracts renewed.<sup>21</sup> Some of them have also mentioned a few of the cases highlighted in this petition, including those of CAMPOSOL S.A. and TOPY TOP.

Even the Peruvian Government has acknowledged the clear relationship between Decree Law No. 22342 and the low rates of union membership in the garment and textile industry. In Report No. 111-2008-MTPE/5, the Peruvian Ministry of Labor and Employment Promotion<sup>22</sup> found that “in light of the statistical data (...) it has become clear that temporary hiring has been used repeatedly to discourage workers from joining unions and has had detrimental effects such as low average monthly wages in the textile-garment sector...” And in another report, the MTPE stated that “there is an urgent need to reform the system” because it affects (among others) the constitutional freedom of association for workers employed under this law.<sup>23</sup>

In 2010, the ILO Committee on Freedom of Association examined<sup>24</sup> the regime established by Decree Law No. 22342 and indicated that “The Committee cannot help but observe in this regard that in practice, as the Government points out, the labour inspections carried out in some of the companies mentioned by the complainant led to fines for anti-trade union practices. The Government also states in general, in the sector in question that ‘temporary contracts have been used repeatedly as a means of discouraging trade union membership’ and that it had generated ‘negative effects on the level of social protection.’”<sup>25</sup> Taking into account the foregoing, the Committee invited the government to examine “with the most representative workers’ and employers’ organizations, a way of ensuring that the systematic use of short-term temporary contracts in the non-traditional export sector does not become in practice an obstacle to the exercise of trade union rights.”<sup>26</sup> The Committee reiterated this stance in March and June 2015, declaring that in the Peruvian employment regime “the employment of workers through repeated renewals of fixed-term contracts for several years can be an obstacle to the exercise of trade union rights.”<sup>27</sup>

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<sup>21</sup> See the Human Rights Report 2013 – Peru, U.S. Department of State, February 27, p. 35. Also the 2011 Report, pp. 27-28.

<sup>22</sup> Ministry of Labor and Employment Promotion (MTPE) Report No. 111-2008- MTPE/5, dated October 13, 2008, issued by the Ministerial Executive’s Office of the Technical Adviser and approved by the MTPE Office of the Legal Adviser in Report No. 232-2009-MTPE/9.110, dated April 21, 2009.

<sup>23</sup> See Report No. 23-2011-MTPE/2/14, p. 6-7.

<sup>24</sup> Case 2675 - Complaint against the Government of Peru dated October 16, 2008, presented by the General Confederation of Workers of Peru (CGTP) alleging prejudicial consequences of short-term contracts on trade union rights in industrial companies subject to the non-traditional exports scheme.

<sup>25</sup> 357<sup>th</sup> Report of the Committee on Freedom of Association, Geneva, June 2010, pp. 213-222. Available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_142023.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_142023.pdf)

<sup>26</sup> Ibid.

<sup>27</sup> 374<sup>th</sup> Report of the Committee on Freedom of Association, Geneva, March 2015, p. 69. Available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_357170.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_357170.pdf); 357<sup>th</sup> Report of the Committee on Freedom of Association, Geneva, June 2015, p. 118. Available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_375794.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_375794.pdf).

The role that Decree Law No. 22342 plays in undermining workers' fundamental rights has even been recognized by the principal brands and retailers supplied with garments made in Peru. On March 3, 2013, Nike, New Balance, PVH, VF, Life is Good and 47 Brand wrote a joint letter to President Ollanta Humala expressing their concern that the use of short-term contracts based on Decree Law No. 22342 violates their business codes of conduct by denying the workers involved the right to exercise their fundamental labor rights.<sup>28</sup> After conducting its own investigation, the Fair Labor Association (FLA) also found that the repeated use of short-term contracts in the Peruvian garment and textile industry violated the FLA Labor Code of Contract by depriving workers of their fundamental rights.<sup>29</sup>

### **3. THE LACK OF EFFECTIVE MECHANISMS FOR GUARDING AGAINST THE ABUSE OF DECREE LAW NO. 22342**

Considering that the ability to impose unlimited short-term contracts on workers places them in an ongoing vulnerable situation and makes it easy for Peruvian employers to carry out anti-trade union dismissals, the framework of abuse set up by the Non-Traditional Exports Promotion Act poses an insurmountable challenge for monitoring the situation and preventing discriminatory practices. Faced with this challenge, even though it is aware of the inherent risks to workers' fundamental rights posed by the Non-Traditional Exports Promotion Act, the GoP has shown that it lacks the political will and the institutional capacity to guard against anti-trade union discrimination in an effective manner.

In 2007, before the TPA was approved, the GoP agreed to take measures to address the concerns expressed by members of the U.S. Congress<sup>30</sup> that employers might use short-term contracts to discriminate against union members and undermine the right to organize. However, according to the Peruvian trade unions, the government never fulfilled its promise to create a national program to oversee temporary labor contracts in those sectors where abuse has been the most common, including textiles, garment manufacturing and agriculture. Through this program, the Ministry of Labor was supposedly going to review temporary contracts each year to ensure compliance with the law and publish an annual report, but it never did so. It also failed to establish expeditious and special administrative and judicial channels for workers with short-term contracts to challenge anti-trade union dismissals.

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<sup>28</sup> Letter from Crean, Kevin (47 Brand), Christine Kelley (The Life is Good Company), Monica Gorman (New Balance), Sharla Settlemier (Nike), Melanie Steiner (PVH Corp) and Phil Marsom (VF Corporation) to President Ollanta Humala Tasso, March 4, 2013, available at: <https://wilfredosanguineti.files.wordpress.com/2013/03/carta-presidente-ollanta-humala-4-marzo-20131.pdf>

<sup>29</sup> Fair Labor Association, Final Report: *Queja de Terceros* {third-party complaint} – HIALPESA (Peru), October 2014, available at:

[http://www.fairlabor.org/sites/default/files/documents/reports/hialpesa\\_final\\_report\\_october\\_2014\\_spanish.pdf](http://www.fairlabor.org/sites/default/files/documents/reports/hialpesa_final_report_october_2014_spanish.pdf)

<sup>30</sup> See Labor Program for Development (PLADES), "Derechos Laborales y Comercio en América Latina: Análisis de las Cláusulas Laborales en el TLC con EE.UU. y en los Acuerdos Comerciales con la Unión Europea" {labor rights and trade in Latin America: analyses of the labor clauses in the FTA with the United States and in the Trade Agreements with the European Union}, November 2007, pp. 79-82.

Although the workers and their unions are authorized to challenge illegal dismissals in Peruvian courts, the judicial system has proven to be quite ineffective for workers subject to anti-trade union dismissals under Decree Law No. 22342. Much of the problem lies in the inherent difficulty of proving that an employer's decision not to renew a short-term contract was made for anti-trade union reasons, because since the contracts are temporary, the employers can usually hide their anti-trade union discrimination by claiming that they decided not to renew a worker's contract simply because of economic or market conditions.

However, even if an anti-trade union attitude could be proven, cases can take years to wend their way through the courts and yield retroactive payment and reinstatement of workers. Because of the differences inherent in their financial situation, employers tend to enjoy an advantage over workers in long judicial processes.

In addition to the illegal anti-trade union dismissals, the GoP has not demonstrated its ability to fight effectively against widespread fraud in employers' use of short-term contracts. To be considered valid under Decree Law No. 22342, this type of contract must be drawn up in writing, be linked to a specific purchase order or export contract, and be subject to the approval of the respective department of the Ministry of Labor within 15 days of its execution. Even when the MTPE does detect fraud in violation of these rules, employers have usually been able to ignore the fines and court orders to give workers indefinite contracts.

Labor inspections are conducted by the National Superintendency of Labor Oversight (SUNAFIL), which is underfunded, weak and erratically managed. The number of inspectors available to enforce labor law is still disproportionately small compared with the total universe of workers whose rights must be guaranteed (400 inspectors for a wage-earning population of more than 7 million people), and even compared with the number of inspectors available to other government enforcement agencies (fewer than 400 inspectors at SUNAFIL versus 3,000 at the National Superintendency of the Tax Administration). Furthermore, the number of inspectors is insufficient in regions where there are many workers or a high frequency of labor rights violations.

Added to that is the fact that under the reform package recently adopted to stimulate the Peruvian economy, SUNAFIL labor inspectors are required to focus their efforts on preventing violations rather than penalizing the ones that occur with great frequency. Law No. 30222 (of July 11, 2014) provides that within three years counting from July 12, 2014 (that is, as of July 11, 2017), SUNAFIL must limit itself primarily to interventions oriented towards prevention rather than the correction of illegal conduct. Further eroding its oversight capacities, the government has proposed to Congress a bill, the ironically-named "Law Promoting the Improved Performance of the Labor Market," Bill No. 4008-2014-PE,<sup>31</sup> which limits the scope of labor inspections. Under this law, inspections would no longer be possible while alleged violations and disputes were being litigated in the courts.

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Available

at

[http://www2.congreso.gob.pe/Sicr/TraDocEstProc/Contdoc02\\_2011\\_2.nsf/d99575da99ebf305256f2e006d1cf0/0997d265c1fbd21105257da4000253c3/\\$FILE/04008DC09MAY031214.pdf](http://www2.congreso.gob.pe/Sicr/TraDocEstProc/Contdoc02_2011_2.nsf/d99575da99ebf305256f2e006d1cf0/0997d265c1fbd21105257da4000253c3/$FILE/04008DC09MAY031214.pdf)



In addition, the Peruvian Government has not given priority to funding SUNAFIL in its budget, and restrictions such as those prohibiting the creation of new inspector positions in the Annual Budget Act<sup>32</sup> have led to frequent strikes by the inspectors themselves in an effort to defend their wages and benefits.<sup>33</sup>

The institution faces tremendous problems in forcing employers to pay fines for violating their labor obligations. The majority of fines are never paid, as can be seen in the TOPY TOP and INCA TOPS cases detailed in this petition. Worse yet, SUNAFIL is subjected to erratic leadership and constant instability, to the extent that in its first year of existence it has had three superintendents. The most recent one, Mr. Gorki Yuri Gonzales Mantilla, resigned his post as superintendent of SUNAFIL in protest over the approval of a new system for employing minors promoted by the government, which affords them fewer rights than those enjoyed by adults under the regular system.<sup>34</sup>

The institution also lacks transparency: it does not produce or publish an annual report on its activities, which it is required to do under Convention No. 81 of the ILO; its web page does not make relevant information available to the public; it does not have a registry of employers that have violated the law or of repeat offenders; and most significantly, it has not undertaken any diagnoses or established any guidelines so that it can set priorities.

The weaknesses of Peru's oversight system make it clear not only that the GoP lacks effective mechanisms for dealing with violations of the freedom of association under Decree Law No. 22342, but also that an oversight system cannot be used to fix what is really an inherent defect in the employment regime the law has set up. To protect and respect the freedom of association under Article 17.2(1) of the TPA, the current regime of extreme employment insecurity in the textile sector must be replaced with one that allows workers to exercise their fundamental rights more effectively.

## **V. VIOLATION OF LABOR COMMITMENTS IN THE AGROEXPORT SECTOR**

### **A. BACKGROUND**

The main labor legislation applicable in the agriculture sector of Peru dates back to 1964, when Supreme Decision No. 117 recognized that agricultural workers had the right to receive compensation based on their time of service and to receive paid vacations. That law

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<sup>32</sup> Annual Budget Act No. 30281, Article 8. Available at [http://www.minedu.gob.pe/p/cdd/pdf/ley\\_30281\\_Ppto\\_Publico\\_2015.pdf](http://www.minedu.gob.pe/p/cdd/pdf/ley_30281_Ppto_Publico_2015.pdf)

<sup>33</sup> See, for example: *Inspectores de trabajo anuncian huelga para el lunes 29 de diciembre* {labor inspectors announce strike for Monday December 29}, RPP Noticias Lima, December 27, 2014, available at [http://www.rpp.com.pe/2014-12-27-inspectores-de-trabajo-anuncian-huelga-para-el-lunes-29-de-diciembre-noticia\\_754514.html](http://www.rpp.com.pe/2014-12-27-inspectores-de-trabajo-anuncian-huelga-para-el-lunes-29-de-diciembre-noticia_754514.html).

<sup>34</sup> See, for example: *Sunafil se queda sin cabeza tras renuncia del superintendente Gorki Gonzales* {Sunafil leaderless after Superintendent Gorki Gonzales resigns}, Gestión, December 24, 2014, available at: <http://gestion.pe/economia/sunafil-se-queda-sin-cabeza-renuncia-superintendente-gorki-gonzales-2118503>.

also regulates the payment of social benefits to these workers.<sup>35</sup> Subsequent laws provided that agricultural workers are subject to the general labor regime,<sup>36</sup> that farm products priced at 50 Peruvian Tax Units [Unidad Impositiva Tirbutaria] (UIT) or less are exempt from taxes,<sup>37</sup> and that employers in this sector must make a monthly contribution to Health Insurance equivalent to 4% of the minimum living wage per employee (in the regular regime, the contribution is 9%).<sup>38</sup> In 2000, however, the Agriculture Sector Promotion Act, Law No. 27360, excluded farmworkers from the benefits of the general labor regime and placed them in a new regime with fewer rights.

In October 2006, Article 7 of Law No. 27360 was challenged as unconstitutional because it violated the principle of equality and non-discrimination under Article 2.2 of the Peruvian Constitution. A year later, the Constitutional Court [Tribunal Constitucional] (TC) affirmed that the law amounted to a legislative measure that differentiated but did not discriminate. It emphasized three key issues, however: the temporary nature of the regime, the State's responsibility – in the form of labor inspections – to enforce socio-labor standards, and the fact that the minimum conditions established by Law No. 27360 could be improved through collective bargaining agreements between agricultural employers and their workers. As will be shown below, none of these three issues was acknowledged when the special agricultural regime was implemented: its duration was extended disproportionately until 2021; government authorities do not enforce labor laws in agroindustry; and the unions face extraordinary barriers to collective bargaining.

After the TC decision the special regime was still subject to criticism, so the Peruvian Congress considered a number of bills intended to amend or repeal it. Bill No. 141/2011-CR of September 2011 proposed giving workers in this sector benefits similar to those provided in the regular regime. In this regard, the Ministry of Labor indicated that the bill “achieve[d] the objective of *restoring* to agricultural workers rights *whose scope has been curtailed by the so-called economic promotion legislation that they are subject to*” (emphasis added).<sup>39</sup> A second bill, No. 282/2011-CR of November 2011, called for giving agricultural workers the same bonuses and compensation for time of service that workers in the regular labor regime receive in addition to their daily remuneration, but at a lower rate. The Ministry of Labor stated that this “legislative initiative *does not satisfactorily meet* the objective of restoring to agricultural workers rights that have been curtailed ...” (emphasis added).<sup>40</sup>

All of this has been taking place in a sector that has been booming in the last decade. According to information from the Ministry of Foreign Trade and Tourism [Ministerio de Comercio Exterior y Turismo (MCET)], trade between Peru and the United States

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<sup>35</sup> Supreme Decree No. 269-69-AG (December 19, 1969) and Supreme Decree No. 0784-74-AG (August 14, 1974).

<sup>36</sup> Legislative Decree No. 653, Agriculture Sector Investment Promotion Act (August 1, 1991).

<sup>37</sup> Law No. 26564 (December 31, 1995). Law No. 27445 extended the benefit to December 31, 2002.

<sup>38</sup> Legislative Decree No. 885, Agriculture Sector Promotion Act (November 10, 1996). Under Law No. 26865, the duration of the benefits granted under Legislative Decree No. 885 was extended until December 31, 2006.

<sup>39</sup> Ministry of Labor, Report No. 010-2011-MTPE/2/2014, October 2011, p. 9.

<sup>40</sup> Ministry of Labor, Report No. 016-2011-MTPE/2/2014, November 2011, p. 13.

amounted to USD 16.091 billion in 2013, with exports climbing to USD 7.3 billion, a rise of 15.4%. During the first five years of the trade agreement signed by the two countries, non-traditional exports to the United States grew by 40%.<sup>41</sup> The farm products that benefited the most were avocados, asparagus, table grapes and mangos. According to the MCET, in 2014 the value of Peru's non-traditional exports amounted to USD 11.618 billion, an increase of 5.8% over the previous year.<sup>42</sup> The most growth was seen in agriculture and livestock (USD 772 million), followed by the fishing sector (USD 123 million), metalworking (USD 38 million) and chemicals (USD 6 million).<sup>43</sup>

Agroindustrial companies in Peru employ hundreds of thousands of workers, mainly on the coast, and they boost local economies in regions such as Piura, la Libertad, San Martín and Ica. Although the wages paid by these companies do allow their workers to earn a living, the prevalence of short-term contracts allowed by the special employment regime creates tremendous uncertainty for workers, who have no way of knowing who will keep their jobs at the end of the contract.<sup>44</sup> That is added to the other insecure terms of employment they face: inadequate pay, unsafe working conditions and frequent discrimination in the workplace. These conditions must be seen against the backdrop of countless practical barriers to their ability to exercise their freedom of association and collective bargaining, which seriously undermines the rights of these workers and their families.

When the TPA was signed with the United States, Peru made an explicit commitment to recognizing and enforcing both freedoms, but after Argentina, Peru is the subject of the most complaints filed with the ILO Committee on the Freedom of Association.<sup>45</sup> Moreover, the GoP, despite its signed commitments, has not amended the laws on collective bargaining rights in keeping with all of the recommendations the ILO made to it when it examined the Collective Labor Relations Act.<sup>46</sup>

It comes as no surprise, therefore, that companies in Peru's agroindustry tend to erode the freedom of association in many ways. Examples abound of these companies preventing or discouraging the establishment of trade unions and the full exercise of the freedom of association at work by threatening reprisals against organizers and intimidating them in

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<sup>41</sup> Ministry of Foreign Trade and Tourism Press Bulletin No. 024-2014. Available at: [http://www.mincetur.gob.pe/newweb/Portals/0/prensa/2014/noticia\\_024\\_2014.html](http://www.mincetur.gob.pe/newweb/Portals/0/prensa/2014/noticia_024_2014.html)

<sup>42</sup> Ministry of Foreign Trade and Tourism Press Bulletin No. 053-2015. Available at: [http://www.mincetur.gob.pe/newweb/Portals/0/prensa/2015/noticia\\_053\\_2015.html](http://www.mincetur.gob.pe/newweb/Portals/0/prensa/2015/noticia_053_2015.html)

<sup>43</sup> *Exportaciones no tradicionales alcanzaron los US\$ 11,618 millones en el 2014* {non-traditional exports total USD 11.618 billion in 2014}, Gestión, February 13, 2015, available at <http://gestion.pe/economia/exportaciones-no-tradicionales-alcanzan-us-11618-millones-y-crecen-58-2014-2123357>.

<sup>44</sup> Under the law establishing the special labor regime in agroindustry, employers can hire an unlimited number of workers under fixed-term contracts, which can be renewed successively for no more than five years. However, this limit is not always respected. In addition, the companies are not required to give any reason at all for declining to renew an employee's fixed-term contract, regardless of the employee's performance or seniority.

<sup>45</sup> In this connection, see the ILO's QVILIS database at [http://white.lim.ilo.org/qvilis\\_mundial/](http://white.lim.ilo.org/qvilis_mundial/)

<sup>46</sup> Under Law No. 27912, enacted in January 2003, the Collective Labor Relations Act was amended and 12 of the 16 recommendations made by the ILO Committee on Freedom of Association were codified in November of 1993, leaving four recommendations unresolved. The observations can be seen in the 291<sup>st</sup> Report of the Committee on Freedom of Association, November 1993, Cases 1648 and 1650, para. 474.

different ways: for example, declining to renew the contracts of employees or directly dismissing them for participating in union activities, perpetrating dismissals disguised as “temporary layoffs,” employing judicial harassment,<sup>47</sup> issuing “blacklists” for the purpose of keeping union leaders out of the labor market,<sup>48</sup> or even threatening violence. The multitude of labor regimes in Peruvian law (at least 12 in the private sector and 15 in the public sector) also facilitates these violations by supporting the prevalence of insecure terms of employment.<sup>49</sup> This regime makes possible the extreme situation of only about 180,500 workers with permanent employment<sup>50</sup> and a mere 2,594 unionized workers, out of a total of more than 14 million workers in the Peruvian agriculture and livestock sector.<sup>51</sup>

After a recent investigative mission conducted by the International Commission of Jurists in Peru, the commission noted the clear link between the extreme insecurity of employment and the suppression of unionization: “For the Observation Mission, it is evident that the low rate of unionisation [in the agroindustrial sector] in general terms responds to the intermittent nature of the contracts, as although over 80% of the workers are employed in companies that have more than 20 workers, a requirement for forming a trade union, most workers do not have the necessary stability that would enable them to join trade unions.”<sup>52</sup>

Consequently, their terms of employment are especially deplorable. The legal minimum wage (RML), for example, which is the minimum amount a worker earns in a month for regular eight-hour workdays, is a uniform amount all across the country. For the agroindustrial sector, it is regulated by Law No. 27360, which has set the amount at PES S/. 23.41 (USD 7.80) per day. This amount includes two social benefits that other workers in the country receive separately: compensation for time of service [Compensación por Tiempo de Servicios] (CTS) and two legal bonuses that are paid on Independence Day and Christmas. Including them in the daily wage means that in practice agroindustrial workers do not receive a minimum wage equivalent to that earned by workers in other sectors, but rather earn a lesser amount.

In addition, these workers tend to be subjected to long hours of work at low wages, without overtime pay. The reason for this is that regulations governing workdays and schedules in Peru state that the normal workday is eight hours, with a maximum of 48 hours per week

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<sup>47</sup> For example, 36 workers at the CAMPOSOL company, including union leaders, face criminal charges as a result of exercising their right to strike. The employers often use these accusations as grounds for dismissing workers who belong to unions. See United States Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014*, p. 33, available at: <http://www.state.gov/documents/organization/236922.pdf>.

<sup>48</sup> International Commission of Jurists (ICJ). “Los derechos sociales y regímenes especiales de promoción a la exportación: El caso de la agricultura de exportación en el Perú” {social rights and special export promotion systems: the case of export agriculture in Peru}. Switzerland, 2014, p. 18.

<sup>49</sup> *Ibid* p. 7.

<sup>50</sup> Ministry of Agriculture and Irrigation of Peru, *Resultados Definidos: IV Censo Nacional, Agropecuario 2012* {defined results: IV National Census, Agriculture and Livestock 2012} Lima, July 2013, available at: <http://proyectos.inei.gob.pe/web/DocumentosPublicos/ResultadosFinalesIVCENAGRO.pdf>

<sup>51</sup> International Commission of Jurists (ICJ). “Los derechos sociales y regímenes especiales de promoción a la exportación: El caso de la agricultura de exportación en el Perú” {social rights and special export promotion systems: the case of export agriculture in Peru}. Switzerland, 2014, p. 18.

<sup>52</sup> *Ibid*.

(although by law or collective bargaining agreement shorter periods can be established), but in practice, because workers in agroindustry tend to be paid at a piece rate,<sup>53</sup> they usually have to work 12 hours a day six days a week.<sup>54</sup> To the grueling work schedules is added a reduced vacation calendar, which under the special regime governing agroindustry is only half as long as the vacation periods provided for other industries in Peru.<sup>55</sup>

A variety of studies have shown how vulnerable agroindustrial workers are, pointing out in particular the many problems they face when they try to exercise their freedom of association, the constant violations of collective bargaining agreements or the “blacklisting” of unionized workers. In this connection, the National Federation of Agricultural Workers [Federación Nacional de Trabajadores de la Agroindustria y Afines] (FENTAGRO) has reported on numerous occasions the systematic violations of the freedom of association in the agroindustry sector.<sup>56</sup> In particular, it has noted that the absence of trade unions in the sector due to reprisals by employers has meant that these companies can “take refuge [in the special system] to continue imposing workdays that exceed the eight-hour limit set by law, making no record of when workers enter and leave work as required by law, [and] also requiring piecework, in what amounts to slave labor. Furthermore, modern agriculture, as it is now called, has created the illegal regime of “hooking,” or signing up or recruiting workers on the coast and in the mountains on false promises, only to send them to work in the jungle.”<sup>57</sup>

Among the poor working conditions, there is also no culture of prevention to ensure occupational safety and health. In interviews, agroindustrial workers in Ica and La Libertad reveal difficult conditions in which they lack government protection and encounter serious problems when their unions attempt to guarantee their rights. As a result, many men and women in agroindustry continue working under conditions that not only cause illnesses and ailments that prevent them from doing their jobs well, but also threaten their personal safety and their very survival.

Above all, it must be noted that in the agroexport sector the GoP has made clear its lack of capacity and of political will to enforce its labor laws, especially those protecting the freedom of association and the right to health and safety on the job. At the most basic level, agroexport firms are inconsistent and irregular in registering the workers they hire with the proper authorities, and in fact the International Commission of Jurists recently pointed out the apparent lack of basic information on the number of workers in the sector and the

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<sup>53</sup> In this type of contract, the wages are tied to meeting production targets (quantity/weight) unilaterally determined by employers.

<sup>54</sup> According to a letter sent by FENTAGRO to the ILO Regional Director on May 6, 2014, failure to observe the maximum workday and the existence of involuntary work are among the side-effects of the labor regime in agroindustry: “(...) companies take refuge [in this regime] to continue requiring workdays that exceed the legal limit of eight hours per day; there is generally no record of arrival and departure at work as the law requires; [and] the piece-rate system is also imposed: this system results in slave labor.”

<sup>55</sup> According to Article 10 of Legislative Decree No. 713, which regulates paid time off for workers in the private sector labor system, workers have a right to thirty calendar years of vacation time for each complete year of service. In the special regime prevailing in agroindustry, this entitlement is cut in half (Article 7.2.b of Law No. 27360).

<sup>56</sup> FENTAGRO letter of May 6, 2014, to the ILO Director for the Andean Countries.

<sup>57</sup> *Ibid.*

number of occupational health and safety incidents.<sup>58</sup> The companies frequently obstruct MTPE investigations, which has severely limited the ministry's ability to enforce basic labor rights.<sup>59</sup>

Nor have the forms of relief and penalties resulting from cases brought before labor and judicial authorities been of much benefit. In a number of cases, agroexport employers have ignored court orders to reinstate workers, or they have continued their persecution of these workers by subjecting them to adverse conditions.<sup>60</sup> According to the latest annual statistics available (from 2010), in only two cases did the government succeed in imposing strict penalties that were carried out.<sup>61</sup>

**B. THE GOVERNMENT OF PERU HAS FAILED TO EFFECTIVELY ENFORCE ITS LABOR LEGISLATION, IN VIOLATION OF ARTICLE 17(3).**

**1. CAMPOSOL**

**A) FACTS**

CAMPOSOL S.A is a leading company in the agroindustrial sector. It is part of the CHAVIMOCHIC irrigation project in the district of Chao and in the province of Virú, in La Libertad Department in northern Peru.

In 2013, CAMPOSOL S.A. claimed more than 14,000 employees and annual sales of USD 2.1 billion. In August 2007, the workers of CAMPOSOL S.A. formed the Union of CAMPOSOL S.A. Workers [Sindicato de Trabajadores de la Empresa CAMPOSOL S.A.] (SITECASA), affiliated with the Federation of Agroindustrial Workers – La Libertad Region of the General Confederation of Workers of Peru (CGTP). The company then began a systematic practice of putting union members on “temporary unpaid layoff” on the pretext that there was no work to give them, while at the same time it continued hiring new workers.<sup>62</sup>

In January 2008, the company informed the Ministry of Labor of its decision not to renew the contracts of 321 workers, most of them members of SITECASA. CAMPOSOL S.A. has

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<sup>58</sup> International Commission of Jurists (ICJ). “Los derechos sociales y regímenes especiales de promoción a la exportación: El caso de la agricultura de exportación en el Perú” {social rights and special export promotion systems: the case of export agriculture in Peru}. Switzerland, 2014, pp. 17, 20.

<sup>59</sup> *Ibid* 26.

<sup>60</sup> *Ibid* 24.

<sup>61</sup> *Ibid* 31-32.

<sup>62</sup> Regional Government of La Libertad, Deputy Administrator Decision No. 031-2014-GR-LLGGR/GRSTPE-SGIT.

been accused several times of instigating resignations from the union that the company itself has notarized. These accusations have been confirmed by the local justice of the peace, who in a letter to SITECASA dated October 21, 2014, stated that “these letters (of resignation from the union) have been delivered by representatives of the company CAMPOSOL S.A. for notarization of their presentation, and the company’s own representatives have withdrawn the charges once they were processed...”

From December 1 to December 7, 2012, SITECASA staged a strike in an attempt to resolve the collective bargaining it was carrying out with CAMPOSOL S.A. In reprisal, according to the union, members of SITECASA were harassed, bullied, coerced and threatened with dismissal. The incidents culminated on December 10, 2012, when more than 250 layoff notices were issued<sup>63</sup> (for temporary unpaid leave), and then the workers were surreptitiously dismissed on the pretext that the terms of the contracts of union members and leaders had expired. Most of these workers had been employed by the company for more than four years, meaning that Article 69 of Decree Law No. 728 and its regulations applied to them. According to this law, “if the worker was hired by the same employer for two consecutive seasons or three alternating seasons, the worker is entitled to be hired in subsequent seasons.” However, CAMPOSOL S.A. refused to hire the members and leaders of SITECASA, but instead hired new people.<sup>64</sup>

On January 16, 2013, in response to the establishment of a trade union committee in the CAMPOSOL S.A. subsidiary located at Huangala, Piura, the company dismissed all the workers involved by not renewing their contracts, and rehiring only those workers who had been with the company for more than four years. An MTPE investigation found no violation or infringement of the freedom of association, although the ministry did confirm in an informal comment that the dismissals appeared to be violations of the freedom of association.<sup>65</sup>

Throughout 2013, the company employed judicial harassment to threaten the freedom of association, filing criminal charges against workers participating in the strike and then dismissing them based on those charges. In 2013, for example, 36 CAMPOSOL S.A. workers faced criminal charges for alleged property damage resulting from the strike.<sup>66</sup>

On March 12 and 13, 2014, the workers belonging to SITECASA exercised their right to strike in response to several violations of the collective bargaining agreements signed

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<sup>63</sup> See United States Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2013*, March 11, 2014, p. 34, available at: <http://www.state.gov/documents/organization/220675.pdf>.

<sup>64</sup> SITECASA, *Nota de Prensa: Atentado a Libertad Sindical en la Empresa CAMPOSOL S.A.*, {press release: assault on freedom of association at CAMPOSOL S.A.}, June 17, 2013, available at: <http://www.comunicandes.org/pdf/2013/NOTA%20DE%20PRENSA%20%20HUELGA%20JULIO%202013.pdf>

<sup>65</sup> Oxfam Deutschland, *Mangos with Blemishes: The Market Power of German Supermarket Chains and Unfair Working Conditions in Peru*, June 2013, p. 13, available at: [http://www.oxfam.de/sites/www.oxfam.de/files/130705\\_oxfam\\_mangostudie\\_englisch\\_web\\_0.pdf](http://www.oxfam.de/sites/www.oxfam.de/files/130705_oxfam_mangostudie_englisch_web_0.pdf).

<sup>66</sup> United States Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2014*, p. 33, available at: <http://www.state.gov/documents/organization/236922.pdf>.

between 2012 and 2015. Among the violations was the fact that the company had ignored its commitment to hire workers with more than four years' service on a permanent and indefinite basis and had stated it would not rehire workers who had voluntarily quit if they were unionized.<sup>67</sup> As a result of the events of March 12 and 13, the company dismissed 18 of the workers who had joined the strike, including the secretary general of SITECASA, Mr. Felipe Arteaga Saavedra, who had worked for the company for 14 years. Mr. Arteaga Saavedra was also prosecuted for calling the strike, and in addition 400 workers were temporarily laid off.<sup>68</sup>

The company's anti-trade union behavior was the grounds for SUNAFIL Record of Violation No. 24-2014 (May 16, 2014), which was confirmed by Deputy Administrator Decision No. 031-2014-GR-LLGGR/GRSTPE-SGIT of December 31, 2014. The following violations are listed in the Record of Violation: anti-trade union acts against 569 individuals; failure to comply with the collective bargaining agreements 2012-2015, affecting 569 workers; and failure to list 14 employees on the payroll.

On May 9, 2014, SITECASA sent a letter to the Peruvian Congress reporting 75 workers who had been subjected to anti-trade union actions, including 13 notices of dismissal sent to union leaders, 7 dismissals of union leaders, 19 acts of intimidation intended to force resignation from the trade union, 5 resignations under threat, and 33 cases of non-renewal of workers' contracts because of union membership. That same month, after the union filed a complaint, a labor inspection<sup>69</sup> verified that the company was not providing proper uniforms to its workers, had no bathrooms for male and female workers in the fields, and operated sub-standard dining facilities for the workers. The inspection also revealed that the company had laid off all of the union leaders, even though it was still hiring new personnel, which constituted an anti-trade union act. Similarly, the labor inspection found that 40 workers had been dismissed by not having their temporary contracts renewed in an act of reprisal for union membership.

In October 2014, a study of labor violations in the agroexport sector reported that the freedom of association of 6,328 workers had been infringed upon, mainly due to non-compliance with valid collective bargaining agreements, threats to union leaders' freedom of speech, obstruction of union dues deposits, failure to pay in full for leaves for union activities, "blacklisting" to prevent workers from being hired at other companies, and the use of temporary contracts for anti-trade union purposes.<sup>70</sup>

According to information provided by SITECASA, 64 members of this union are currently involved in legal actions against CAMPOSOL S.A. for dismissals related to trade union activities.

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<sup>67</sup> Sitag-Perú, *Estudio de Caso: Huelga en la Empresa CAMPOSOL S.A.* {case study: strike at CAMPOSOL S.A.}, April 2014, p. 5.

<sup>68</sup> *Ibid* p. 11.

<sup>69</sup> SUNAFIL, Record of Violation No. 24-2014-SUNAFIL, May 16, 2014.

<sup>70</sup> Mendoza Choque, Luis Enrique. Investigación sobre las condiciones de incumplimiento de los derechos laborales en el sector agro-industrial en el Perú. {Investigation of Non-Compliance with freedom of association in the agroindustrial sector in Peru} CGTP, Centro de Solidaridad y FENTAGRO {CGTP, Centro de Solidaridad and FENTAGRO investigation}. Lima, October 2014.



## B) PERUVIAN LABOR LAWS VIOLATED

Anti-Union Discrimination: Article 28 of the Constitution protects workers' right to organize trade unions and to engage in collective bargaining. According to Articles 3 and 4 of the LRCT, union membership is free and voluntary and cannot be made a condition of employment, nor can non-membership or disaffiliation. Employees cannot be required to join a particular union, nor can they be prevented from doing so. In addition, both the State and employers must refrain from any type of act that would in any way coerce workers or restrict or infringe upon their right to form unions, or that would interfere in any way with the establishment, administration or maintenance of the union organizations formed by the workers.

The LRCT also guarantees that certain workers cannot be dismissed or transferred to other facilities in the same company without duly substantiated good cause or without their consent, if they fall under the protection of organized labor rights. Among those protected by organized labor rights are members of trade unions in the process of being formed, members of trade unions' boards of directors, delegates of any locals established by trade unions, and those representing workers in collective bargaining

In addition, Peruvian labor law states that it is a very serious violation "to commit acts that impinge upon workers' freedom to form trade unions or upon the organization of workers, including acts that prevent free affiliation with a trade union, encourage workers to discontinue their membership therein, prevent the establishment of trade unions, hinder union representation, make use of limited contracts for the purpose of obstructing union rights, collective bargaining or the right to strike, ... or any other act that interferes with the organization of trade unions."<sup>71</sup> According to Article 25.12 of the law, this provision encompasses "discrimination against a worker for freely exercising the right to engage in union activity, whether such worker is hired for an indeterminate time, part-time, or some other term."

These rights are violated when, as in this case, there are systematic anti-trade union practices consisting of the use of temporary contracts for anti-trade union purposes, the imposition of "unpaid layoffs" on union members, the purchase of union members' resignations *a peste* {translator's note: this appears to be a typographical error}, the violation of signed collective bargaining agreements, the issuance of notices of dismissal to union leaders followed by their actual dismissal, acts of intimidation to force workers to resign from the union, threats to union leaders' freedom of speech, obstruction of efforts to deposit union dues, failure to pay in full for union-related leaves, "blacklisting" dismissed union members to prevent them from being hired at other companies, and mass prosecutions of union members.

Obligations concerning occupational health and safety: The Occupational Health and Safety Act (Law No. 29783) requires that "[the] employer guarantee that conditions and procedures in the workplace protect the lives, health and well-being of the workers" and

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<sup>71</sup> See Article 25.10 of Supreme Decree No. 019-2007-TR.

that the workers “[have] the right to enjoy proper working conditions guaranteed by the State and by employers to ensure that they are able to remain in good physical, mental and social health at all times.”<sup>72</sup> When workers’ health is harmed, Law No. 29783 requires the employer to “conduct an investigation ... for the purpose of determining the causes of such harm and taking the appropriate corrective measures.” Should an employer fail to prevent an accident at work, the employer must “pay compensation to the victims or to their beneficiaries.”<sup>73</sup>

The company has failed to meet its obligations to provide conditions that protect the lives, health and well-being of the workers and to observe due process after workplace accidents occur. The workers at CAMPOSOL S.A. suffer from various health problems, including lumbago, fleshy eyes (due to exposure to heat and dust), gastritis (due to poor nutrition), urinary tract infections and poisoning from strong fertilizers and chemicals. The company’s response to these problems has been inadequate, and by firing workers who have health problems it has created an atmosphere in which workers are afraid to report their illnesses or accidents. For example, when a worker suffered an accident in 2011 and SITECASA filed a claim on his behalf, the company responded by firing the injured worker, who died at home two years later.<sup>74</sup> In another case, the company dismissed a female worker after she began having problems with her eyes from handling strong fertilizers.<sup>75</sup>

Workplaces may also lack basic sanitation facilities such as bathrooms for men and women in the fields. According to the statement given by one worker, throughout her workday of 12 or 13 hours, the company only allows her to use the bathroom during a two-hour period around noon.<sup>76</sup>

### C) FAILURE TO ENFORCE NATIONAL LAWS

As in the previous case, MTPE’s reponse with respect to occupational health and safety has not been effective enough to bring about the necessary corrective measures. There has not been a single case of compensation paid to a victim of a workplace accident caused by the employer’s breach of its duties.<sup>77</sup>

As far as anti-trade union discrimination is concerned, the company’s anti-trade union behavior has been documented by authorities in the labor sector. After conducting the respective labor inspections and making reports of the violations, they have verified CAMPOSOL S.A.’s systematic anti-trade union practices. However, the intervention of labor inspectors has not succeeded in preventing the same violations from recurring. On the

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<sup>72</sup> Preliminary Title, Principles I (Prevention) and XI (Protection).

<sup>73</sup> Articles 53 and 58.

<sup>74</sup> Sitag-Perú, Estudio de Caso: *Huelga en la Empresa CAMPOSOL S.A.* April 2014, p. 6.

<sup>75</sup> Complaint filed by the CGTP, Ethical Tribunal of Peru, Lima, April 20, 2015, available at: [http://comunicandes.org/pdf/2015/mayo/Demanda%20Tribunal%20Etico\\_seccion%20peru.pdf](http://comunicandes.org/pdf/2015/mayo/Demanda%20Tribunal%20Etico_seccion%20peru.pdf).

<sup>76</sup> Sitag-Perú, Estudio de Caso: *Huelga en la Empresa CAMPOSOL S.A.*, April 2014, p. 5-6.

<sup>77</sup> Institute of Trade Union Studies, *La agenda laboral pendiente del TLC Perú-Estados Unidos: Cuando la competitividad se basa en la reducción de los derechos laborales* {the pending labor agenda of the Peru-U.S. Free Trade Agreement (FTA): when competitiveness is based on the reduction of labor rights} October 2014, available at: <https://www.iesiperu.org.pe/documentos/publicaciones/TLC%20EEUU%20PERU.pdf>.

contrary, the company aggravates those practices with a deliberate strategy of intimidation aimed at threatening the very existence of the trade union by criminally prosecuting workers who dare to join the union or accept a position of responsibility within the union.

The investigation conducted by MPTE after the mass firings in Huanguala, Piura in 2013 is a typical case. When it investigated the dismissal (in the form of declining to renew their contracts) of all workers involved in the establishment of a trade union, MTPE informally confirmed that there appeared to be violations of the freedom of association, but it did not officially substantiate a single violation or infringement of that freedom.<sup>78</sup>

## 2. SOCIEDAD AGRÍCOLA VIRÚ

### A) FACTS

Sociedad Agrícola Virú S.A. is a company founded in 1994 within the Nicolini conglomerate. It operates primarily in the food industry. At present it exports asparagus, artichokes and various kinds of pepper to the United States, and it has more than 8,000 employees.<sup>79</sup>

The Union of Sociedad Agrícola Virú Workers [Sindicato de Trabajadores de la Sociedad Agrícola Virú] (SITESAV) was founded in 2009, and at its peak it had between 600 and 700 members.

In April 2009, the SITESAV board of directors complained that the company was giving higher salary bonuses to non-union workers than to union members.

Three months later, in July 2009, the company discharged the union's secretary general, Isidro Gamarra Quiroz. In January 2010, an inspection by the Regional Labor Authority found that the company was making fraudulent use of temporary contracts to discriminate against union members, and it was once again fined.

In July 2010, the workers accused the company of systematically undermining the workers' organizing efforts by lodging criminal complaints against union leaders, dismissing union leaders and workers,<sup>80</sup> discriminating against union members and declining to hire them because of their affiliation with the union.

In June 2011, as part of its practice of intimidation, the company filed criminal complaints against eight union members (five of them leaders and three regular members), alleging that

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<sup>78</sup> Oxfam Deutschland, *Mangos with Blemishes: The Market Power of German Supermarket Chains and Unfair Working Conditions in Peru*, June 2013, p. 13, available at: [http://www.oxfam.de/sites/www.oxfam.de/files/130705\\_oxfam\\_mangostudie\\_englisch\\_web\\_0.pdf](http://www.oxfam.de/sites/www.oxfam.de/files/130705_oxfam_mangostudie_englisch_web_0.pdf).

<sup>79</sup> There are two types of labor contract at Sociedad Agrícola Virú S.A., one with full-time workers and the other, under a different business name (Agrícola Trillum) imposed on agricultural workers and regulated by Law No. 27360.

<sup>80</sup> In fact, in 2010 the company dismissed two labor leaders who were in the middle of negotiating a new collective bargaining agreement.

they used threats and physical force to prevent more than 4,800 workers from beginning their work. It demanded that the union pay more than USD 80,000 for the loss of unharvested asparagus crops over a period of up to six years. After a year of legal proceedings, the union's leaders were completely exonerated.

In August of that same year, after two years of legal proceedings, the court ordered the company to reinstate the union's secretary general, Mr. Isidro Gamarra Quiroz, who had been dismissed in 2009. The company refused to obey the court order until April 2014, however, until it finally rehired Mr. Gamarra Quiroz but in a different position and at a lower pay rate than he had when he was elected to the union leadership in his earlier period of employment. As a result, Mr. Gamarra quit his job.

In June 2012, the SITESAV secretary of defense, Mr. Fidel Polo, was dismissed, and the company filed a private complaint against him for making a statement to a television station about the situation of agroindustrial workers, a situation that had been verified by labor inspectors in recent years. The court sentenced him to a year in prison, a fine of 365 days {of the prevailing minimum wage} and restitution to the company in the amount of PES S/. 10,000 (new soles) for civil damages. The judgment was appealed, and it has not yet been resolved.

The systematic threat of criminal charges, the repeated use of temporary contracts under Law No. 27360, and constant judicial harassment have eroded the possibility of exercising the freedom of association to the extent that SITESAV has seen its membership drop from 700 to a mere 225 individuals.

## **B) PERUVIAN LABOR LAWS VIOLATED**

Anti-Union Discrimination: Under Article 4 of Supreme Decree No. 010-2003-TR, Sole Amended Text of the Collective Labor Relations Act, which regulates the rights to join unions, engage in collective bargaining and go on strike that are consecrated in Article 28 of the Peruvian Constitution, the State, employers and their respective representatives "shall refrain from any type of act that would in any way coerce workers or restrict or infringe upon their right to form unions, or that would interfere in any way with the establishment, administration or maintenance of the union organizations formed by the workers."

In spite of that, CAMPOSOL S.A. has systematically refused to renew the short-term contracts of its workers, signed under the auspices of Law No. 27306, in order to prevent them from joining the union currently established in the company. Not only has it declined to renew the contracts of those who tried to join the union, but it has also discriminated by offering better benefits to those who do not join the union, threatening not to renew the contract of anyone who joins the union, or continually victimizing union leaders by filing legal actions that are later dismissed.

These actions constitute very serious violations of labor relations under paragraphs 10 and 12 of Supreme Decree No. 019-2007-TR, the regulations for Law No. 28806 (the General Law on Inspection).

### **C) FAILURE TO ENFORCE NATIONAL LAWS**

The company has been fined repeatedly for substantiated violations of its obligations to its workers, and especially for its anti-trade union practices. However, these fines have not been a great enough deterrent to prevent it from repeating these practices time and time again. Furthermore, the government has not taken steps to restrict the company's practice of using the court system to arbitrarily criminalize the activities of union leaders through lawsuits that in most cases end up being dismissed after several years of proceedings.

The company has also defied final court orders to restore the union rights it has violated. When the court ordered it to reinstate the secretary general of the union who had been arbitrarily dismissed in 2009, it refused to obey for nearly five years. Then it "complied" with the order of reinstatement only by offering him a position that was different from the one he had before being dismissed, and at a lower pay rate. In that way, he was forced to resign from the company.

## **3. GRUPO PALMAS**

### **A) FACTS**

An inspection conducted in 2010 by the authorities of the San Martín Regional Labor Sector at GRUPO PALMAS, one of the most important agroindustrial business groups, found that it had no internal occupational health and safety regulations, had failed to meet its obligation to establish an occupational health and safety committee, and had not obtained a policy for supplemental occupational risk insurance as required by labor law. All of its workers, at the time a total of 452, were affected by these violations.<sup>81</sup> The consequences would become apparent a few years later.

In July 2014, the CGTP and trade unions in the sector denounced a series of fatal accidents that occurred at GRUPO PALMAS because of improper conditions and poor occupational health and safety practices.<sup>82</sup> Cases were documented at Palmas del Espino S.A., a member of GRUPO PALMAS, involving Mr. Manuel Rengifo Lavi (who was killed while riding a bicycle on company premises in December 2013), Mr. Mayer David Tamani Huaycama (killed in February 2014 as he was hauling oil palm fruit and the company truck he was

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<sup>81</sup> Record of Violation No. 008-2010-SDI-OZTT-DRTPE-SM

<sup>82</sup>In none of the cases mentioned here has any criminal investigation been launched to assign responsibility for the deaths. According to the Union of Industrias del Espino Workers, the company has not reported the results of its internal investigations. On the contrary, it has merely blamed the deceased workers themselves for what happened, without any basis in fact. In addition, even though the San Martín Regional Directorate of Labor was apprised in a timely manner of the accidents in question, it has not undertaken any criminal proceedings.

driving overturned), and Mr. Ely Mermao Barneo (who died in February 2014 after being ordered to cut branches, a job for which he had received no training).

These are not the only accidents that have been recorded. At another company in the group called Industrias del Espino S.A., more fatal accidents were reported: that of Mr. Carlos Borda Alvarado (crushed to death by a malfunctioning conveyor belt in July 2014),<sup>83</sup> and that of Miguel Salinas Rodríguez (who died as he was using chemicals to clean a tank in August 2014).

Oil palm and cacao are grown at Palmas del Espino S.A. and then processed into other products such as biofuels. In November 2010, the Ministry of Labor reported that this company misused temporary contracts for 311 workers.<sup>84</sup> In 2012, an investigation carried out by the former vice-minister of labor, Mr. Julio Gamero,<sup>85</sup> revealed that Palmas del Espino S.A. was abusing intermittent or temporary contracts under Law No. 27360 to lower its costs, improperly hiring personnel under this type of contract. Two years later, in May 2014, the CGTP complained that the company had misused temporary contracts in more than 1,900 cases and was in violation of the collective bargaining agreements concluded with the workers. According to information provided by the union, the company avoids hiring workers under permanent contracts and systematically refuses to renew many of their contracts. For this reason, they say, there are hardly any union members left on the company's payroll because employees are afraid of not having their contracts renewed and losing their only livelihood.

In October 2013, when 290 workers at Palmas del Espino S.A. went on strike during collective bargaining, the company lodged criminal complaints against five union leaders, despite the fact that the Ministry of Labor had declared that it was legal for them to exercise this right. In September 2014, the criminal complaint was found to be groundless.<sup>86</sup>

This is a persistent situation, as demonstrated by a mission sent for the purpose of verifying compliance with labor rights in August 2014 by the CGTP, FENTAGRO and the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO). The members of that mission were able to substantiate repeated acts of anti-trade union discrimination. A

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<sup>83</sup> According to Record of Violation No. 007-2014-SDI-OZTPE-T of September 9, 2014, among the causes of Mr. Borda's death is a work environment "without a warning system or non-existent or inadequate signaling (...) Inconclusive adjustment or assembly of the cover for the fiber conveyor duct. Inadequate supervision during maintenance of the conveyor equipment, for lack of a warning and signaling system in the area where the maintenance of the fiber conveyor (...) Absence of supervision or a health and safety officer on duty during the maintenance operation involving the fiber conveyor equipment. The company does not adhere to health and safety standards in its operations and related services."

<sup>84</sup> Record of Violation No. 008-2010-SDI-OZTT-DRTPEM

<sup>85</sup> Gamero Requena, Julio. Red Globalización con Equidad {globalization with equity network} (Red GE). "Derechos laborales y empleo en la agroexportación" {labor rights and employment in agroexport}. Available at

[http://www.redge.org.pe/sites/default/files/estudio\\_derechos%20laborales\\_Gamero.pdf](http://www.redge.org.pe/sites/default/files/estudio_derechos%20laborales_Gamero.pdf)

<sup>86</sup> Mixed Provincial Prosecutor's Office of Uchiza, Decision No. 02 of September 4, 2014.

subsequent investigative mission reported additionally that the company was continually violating the freedom of association.<sup>87</sup>

## B) PERUVIAN LABOR LAWS VIOLATED

Obligations concerning occupational health and safety: Enacted on August 19, 2011, the Occupational Health and Safety Act (Law No. 29783) requires that “[the] employer guarantee that conditions and procedures in the workplace protect the lives, health and well-being of the workers” and that the workers “[have] the right to enjoy proper working conditions guaranteed by the State and by employers to ensure that they are able to remain in good physical, mental and social health at all times.”<sup>88</sup> The employer’s duty to prevent accidents “also applies to any activity carried out while executing the employer’s orders, or while performing a task under his authority, or while traveling to perform such tasks, even off the premises and outside of working hours.”<sup>89</sup>

To protect worker health and safety, employers are required to provide “timely and appropriate training and instruction on health and safety at the workplace and on the job or for the specific task, such as ... [at] the time of hiring, regardless of the type of contract or duration of the work[,] [w]hile performing the work [and] [w]hen changes are made in the task, in the position or in the technology.”<sup>90</sup> When workers’ health is harmed, Law No. 29783 requires the employer to “conduct an investigation ... for the purpose of determining the causes of such harm and taking the appropriate corrective measures.” Should an employer fail to prevent an accident at work, the employer must “pay compensation to the victims or to their beneficiaries.”<sup>91</sup>

The fact that several employees of GRUPO PALMAS companies have died, including those mentioned in this petition, demonstrates the failure of these employers to fulfill their duties to prevent and protect under the Occupational Health and Safety Act (Law No. 29783). The employers in GRUPO PALMAS have ignored the specific obligations established by that law, for example by requiring workers to perform tasks for which they do not have the necessary training, and by refusing to create the mandatory bodies specified in the law.<sup>92</sup> According to the Union of Industrias del Espino Workers, the company has not reported the results of its internal investigations. On the contrary, it has merely blamed the deceased workers for what happened, without any basis in fact, reflecting the employer’s unwillingness to determine the actual causes of these accidents, take corrective measures and pay the corresponding compensation.

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<sup>87</sup> Mendoza Choque, Luis Enrique. “Investigación sobre las condiciones de incumplimiento de los derechos laborales en el sector agro-industrial en el Perú” {investigation of situations of labor rights violations in the agroindustrial sector of Peru}. CGTP, Centro de Solidaridad and FENTAGRO. Lima, October 2014.

<sup>88</sup> Preliminary Title, Principles I (Prevention) and XI (Protection).

<sup>89</sup> Article 54.

<sup>90</sup> Article 49(g).

<sup>91</sup> Articles 53 and 58.

<sup>92</sup> Article 49(f) establishes employers’ obligation to “[g]uarantee the real and effective work of the joint committee on occupational health and safety by allocating the necessary resources.” Notwithstanding, in 2010 an inspection by authorities of the San Martín Regional Labor Sector found that GRUPO PALMAS had not even formed such a committee.

Anti-Union Discrimination: Article 28 of the Constitution protects workers' right to organize trade unions and to engage in collective bargaining. According to Articles 3 and 4 of the LRCT, union membership is free and voluntary and cannot be made a condition of employment, nor can non-membership or disaffiliation. Employees cannot be required to join a particular union, nor can they be prevented from doing so. In addition, both the State and employers must refrain from any type of act that would in any way coerce workers or restrict or infringe upon their right to form unions, or that would interfere in any way with the establishment, administration or maintenance of the union organizations formed by the workers.

Nevertheless, Palmas del Espino S.A. has systematically abused its authority to hire workers on a temporary basis in order to prevent its employees from exercising the freedom of association and thereby to place extreme limits on the union's ability to promote decent working conditions at the company.

### **C) FAILURE TO ENFORCE NATIONAL LAWS**

In response to the absence of a policy of prevention with respect to occupational health and safety and the multiple violations of the relevant laws, MTPE's actions have been insufficient to bring about the necessary corrective measures. Also in the area of occupational health and safety, follow-up on reported cases and the imposition of penalties have been weak or non-existent. For example, although Law No. 29783 requires employers to pay compensation to victims of workplace accidents caused by the employer's failure to fulfill its duties, to date not a single order for compensation has been issued.<sup>93</sup> Even in the cases of fatal accidents mentioned above, which were acknowledged by the San Martín Regional Directorate of Labor, there has been no criminal investigation to assign responsibility for the deaths, nor have the corresponding criminal prosecutions been launched.

As for the abuse of temporary contracts to prevent union organization, the Ministry of Labor has adopted the practice of merely registering short-term labor contracts without thoroughly corroborating their justification. What happened at Palmas del Espino S.A. is a clear manifestation of this practice. The workers accused the company of making fraudulent and excessive use of this type of contract, and their accusations were proven. As a result, the administrative labor authorities ordered the workers to be rehired under indefinite contracts and imposed a fine. Notwithstanding, the company has continued its practices with total impunity.

Furthermore, the government has not taken steps to restrict the company's practice of using the court system to arbitrarily criminalize the activities of union leaders through lawsuits that in most cases end up being dismissed after several years of proceedings. Such was the

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<sup>93</sup> Institute of Trade Union Studies, *La agenda laboral pendiente del TLC Perú-Estados Unidos: Cuando la competitividad se basa en la reducción de los derechos laborales* {the pending labor agenda of the Peru-U.S. FTA: when competitiveness is based on the reduction of labor rights} October 2014, available at: <https://www.iesiperu.org.pe/documentos/publicaciones/TLC%20EEUU%20PERU.pdf>.



case with five union leaders at Palmas del Espino S.A. who faced criminal charges instigated by the company and were then exonerated in September 2014, when the case was ruled groundless.

## **VI. CONCLUSIONS**

The cases described in this petition provide substantial evidence that the Government of Peru has consistently and in a recurrent pattern of action or inaction failed to meet its commitments under Chapter 17 of the Trade Cooperation Agreement signed with the United States of America. In each case, as a whole and separately, the facts described are more than sufficient to establish recurrent actions (or the lack thereof) on the part of the GoP, revealing a failure to effectively enforce Peru's labor laws in a manner that clearly affects trade between the United States and Peru by violating rights in export sectors such as textiles, garments and agroindustry.

The United States Government should accept this petition and conduct a meticulous investigation of all of these cases, which we believe completely support the claims we are making. The petitioners can provide numerous additional cases during the investigative phase. Before completing the investigation, the U.S. Government should immediately invoke the "Consultations" phase and require the GoP to take all necessary measures to address the legal and institutional obstacles that prevent enforcement of its labor laws, to redress to the extent possible the violations of labor rights substantiated in the individual cases mentioned herein, and to adopt measures to prevent their repetition. If the aforementioned consultations do not achieve a satisfactory resolution, the U.S. Government should invoke the dispute settlement mechanism and proceed until such time as the GoP fulfills its commitments under Chapter 17 of the trade agreement between the parties.

## **VII. ADDITIONAL RECOMMENDATIONS AND CONSULTATIONS**

Pursuant to Article 17.7 of the TPA, a party may request consultations with the other party regarding any issue related to the chapter on labor (Chapter 17). The petitioners request that the U.S. Government consult with the GoP regarding the following issues in connection with the failure of the Peruvian government to "reaffirm" its obligations under the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998) and its commitment to "not failing to effectively enforce" its labor legislation.

### **A. THE REPEAL OF ARTICLES 32, 33 AND 34 OF DECREE LAW NO. 22342 AND, CONSEQUENTLY, THE REPEAL OF ARTICLE 80 OF SUPREME DECREE NO. 003-97-TR.**

The above-mentioned laws establish a temporary contracting regime that, unlike the regular labor regime, imposes no time or quantitative limit on such contracts. There is a consensus that this type of contract does not fulfill the causality requirements for temporary contracting, that the conditions justifying it no longer exist, and also that it undermines fundamental labor rights such as the rights to work, to freedom of association, and to earn a

decent living. The Peruvian Ministry of Labor itself has stated that “there is an urgent need to reform this system.”<sup>94</sup> The repeal of these provisions would make workers hired in this manner part of the regular system for labor contracting, subject to the limit of five years for temporary contracts, and would allow them to exercise their freedom of association without hindrance so that they can defend and promote their labor rights.

## **B. THE REPEAL OF LAW NO. 27360, THE AGRICULTURAL SECTOR PROMOTION ACT.**

This law, in force since 2000, sets up a special labor regime that gives workers lesser benefits than those enjoyed by workers in the regular regime. The justifications for this special regime no longer exist, so maintaining it amounts to discrimination against workers in the sector and an unjustified subsidy to employers’ earnings in the sector, who abuse short-term contracts to prevent their workers from organizing unions and negotiating for better terms of employment. There is a consensus that this special regime therefore also undermines the workers’ right to a decent wage. The Peruvian Ministry of Labor itself has emphasized the importance of recognizing agroindustrial workers’ labor benefits without limitations.<sup>95</sup>

## **C. REINFORCEMENT OF THE ADMINISTRATIVE AND JUDICIAL SYSTEMS TO ENSURE ENFORCEMENT OF LABOR LAWS AND COMPLIANCE WITH PENALTIES IMPOSED ON BUSINESS FIRMS.**

The cases described herein demonstrate the inability of the Peruvian State to enforce its labor legislation and effectively punish violators. The judicial system is very slow, and it fails to grant motions for immediate measures to protect workers’ rights. In addition, in many cases, despite administrative sanctions, companies refuse to restore workers’ rights and pay fines. This requires the State to create effective judicial mechanisms, including amending the Penal Code and other relevant laws to make sure administrative sanctions are enforced.

## **D. OVERSIGHT OF TEMPORARY CONTRACTING AND EFFECTIVE ENFORCEMENT OF PENALTIES IMPOSED FOR ABUSES.**

The Ministry of Labor, where temporary contracts are registered, must play an active role in reviewing contracts submitted by companies to prevent the registration of fraudulent contracts. It must verify that good cause is shown for temporary contracting, that the purchase order accompanies the submission, that the contract complies with the maximum terms established, and that the company in fact enjoys the benefits offered by this type of contracting. Although employers have a legal obligation to give workers a copy of their contracts, it is routinely flouted. For this reason, the Ministry of Labor should monitor the delivery of these copies and facilitate trade unions’ access to copies of the contracts of their

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<sup>94</sup> Report No. 23-2011-MTPE/2/14 of November 2011.

<sup>95</sup> Report No. 010-2011-MTPE/2/2011 of October 2011.

members. The abuse of temporary contracts should be punished severely, and government authorities should guarantee effective and timely compliance with the penalties imposed.

**E. FULFILLMENT OF THE DUTY TO GUARANTEE THE FREEDOM OF ASSOCIATION AND TO PROMOTE COLLECTIVE BARGAINING.**

Although the Constitution consecrates the right to freely associate in trade unions, the Peruvian State does not offer real protection for workers who try to exercise the freedom of association in the textile and garment industry. Non-renewal of contracts is the method used by employers to dismiss workers who organize unions. Likewise, violations of collective bargaining agreements and repeated anti-trade union acts in this sector infringe on the right to engage in collective bargaining. The government should remove the de facto obstacles that prevent the effective exercise of the freedom of association by ensuring that the recommendations of the entities in ILO's special and regular monitoring systems are implemented in a timely and effective manner.

**F. COMPLIANCE WITH THE PAYMENT OF THE TEXTILE PREMIUM AS AN ADDITIONAL BENEFIT TO REGULAR COMPENSATION.**

Through its administrative and judicial bodies, the Peruvian State should make sure the companies in the sector comply with the payment of the textile premium, which they have owed workers in the textile and garment industry for over a decade. Penalties should be imposed on those who do not fulfill their obligation to pay the premium and those who improperly include it in regular paychecks of the employees entitled to receive it. In addition, Supreme Decree No. 014-2012-TR should be amended to include garment workers in its purview.