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**U.S. DEPARTMENT OF LABOR**

**Bureau of International Labor Affairs**

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**PERU**

**LAWS GOVERNING EXPLOITATIVE CHILD  
LABOR REPORT**

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## **Introduction**

This report on the laws of Peru governing exploitative child labor has been prepared pursuant to section 2102(c)(9) of the Trade Act of 2002 (“Trade Act”) (Pub. L. No. 107-210). Section 2102(c)(9) provides that the President shall:

with respect to any trade agreement which the President seeks to implement under trade authorities procedures, submit to the Congress a report describing the extent to which the country or countries that are parties to the agreement have in effect laws governing exploitative child labor.

The President, by Executive Order 13277 (67 Fed. Reg. 70305 (Nov. 21, 2002)), assigned his responsibilities under section 2102(c)(9) of the Trade Act to the Secretary of Labor, provided that they be carried out in consultation with the Secretary of State and the United States Trade Representative. The Secretary of Labor subsequently provided that such responsibilities would be carried out by the Secretary of State, the United States Trade Representative and the Secretary of Labor (67 Fed. Reg. 77812 (Dec. 19, 2002)). Pursuant to the Trade Act, this report contains information on laws governing exploitative child labor. Please see Sections C and D of the Department of Labor’s *Peru: Labor Rights Report* for information on the incidence and nature of forced labor and child labor.

## **Exploitative Child Labor**

There is no universally accepted definition of the term “exploitative child labor.” Under Article 2(3) of International Labor Organization (ILO) Convention 138, Minimum Age for Admission to Employment, the minimum age of admission into employment or work in any occupation “shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15.” Countries whose economy and educational facilities are insufficiently developed may initially specify a minimum legal working age of 14 when ratifying the convention. Additionally, under Article 7(1), “National laws or regulations may permit the employment or work of persons 13 to 15 years of age on light work which is – (a) not likely to be harmful to their health or development; and (b) not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received.” Countries that have specified a minimum legal working age of 14 may permit persons 12 to 14 years of age to engage in light work, as defined in Article 7(1). Examples of such light work may include work in family business, on a family farm, after school, or in a legitimate apprenticeship opportunity that is not hazardous and that does not affect a child’s attendance at school.

The ILO has defined the “worst forms” of child labor in ILO Convention 182, Worst Forms of Child Labor. Under Article 3 of ILO Convention 182, “the term worst forms of child labour” comprises:

(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;

(b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic purposes;

(c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;

(d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.<sup>1</sup>

According to Convention 182, the types of work referred to under Article 3(d) “shall be determined by national laws or regulations or by the competent authority....”<sup>2</sup> Article 2 of the Convention states that “the term *child* shall apply to all persons under the age of 18.”<sup>3</sup>

This report relies primarily on information from the U.S. Department of State, including from the U.S. Embassy in Peru, and from reports by other U.S. Government sources. It also relies upon a wide variety of reports and materials originating from Peru, international organizations such as the ILO, and nongovernmental organizations (NGOs). In addition, the report draws on consultations held in Peru by U.S. Department of Labor officials and a U.S. interagency team with Peruvian Government officials, representatives of worker and employer organizations, and NGOs.<sup>4</sup> Finally, the report makes use of information submitted in response to Department of Labor requests for public comment published in the *Federal Register*.<sup>5</sup>

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<sup>1</sup> ILO, *C182 Worst Forms of Child Labour Convention, 1999*, Articles 2, 3 and 4; available from <http://www.ilo.org/ilolex/>.

<sup>2</sup> *Ibid.*, Article 4.

<sup>3</sup> *Ibid.*, Articles 2, 3 and 4. ILO Recommendation 190 on the worst forms of child labor provides certain guidelines that countries should consider in determining what constitutes a worst form of child labor under Article 3 (d). See ILO, *R190 Worst Forms of Child Labor Recommendation, 1999*; available from <http://www.ilo.org/ilolex/english/convdisp1.htm>.

<sup>4</sup> The consultations were held in Peru on October 26-27, 2004. Section 2102(c)(7) of the Trade Act requires the Secretary of Labor to consult with any country seeking a trade agreement with the United States concerning that country's labor laws and provide technical assistance if needed.

<sup>5</sup> U.S. Department of Labor, “Request for Information Concerning Labor Rights in Bolivia, Colombia, Ecuador and Peru and Their Laws Governing Exploitative Child Labor,” 69 *Fed. Reg.* 35063 (June 23, 2004). The Department received comments from the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) in response to this notice.

## Child Labor Laws and Enforcement

The Government of Peru ratified ILO Convention 138 on the Minimum Age for Admission to Employment on November 13, 2002, and ILO Convention 182 on the Worst Forms of Child Labor on January 10, 2002.<sup>6</sup>

According to the law, the minimum age for employment in non-industrial agricultural work is 15 years; 16 years for work in the industrial, commercial, and mining sectors (in above ground operations); and 17 years for work in the industrial fishing sector.<sup>7</sup> Children ages 12 to 14 may perform certain jobs, subject to restrictions, only if they obtain legal permission from the Ministry of Labor and Employment Promotion (*Ministerio de Trabajo y Promoción del Empleo*, MTPE) and can certify that they are attending school.<sup>8</sup> The MTPE's Office of Labor Protection for Minors issues permits for children 12 to 17 to work legally.<sup>9</sup> During 2006, the Office issued 1,326 work permits for children 12 to 17, the majority of which (1,086) were issued for children 16 and 17.<sup>10</sup> Children aged 12 to 14 years are prohibited from working more than four hours a day, or over 24 hours a week, and adolescents between 15 and 17 years may not work more than six hours a day, or over 36 hours a week.<sup>11</sup> Adolescents working non-paid jobs for family members or working in domestic service are entitled to a daily 12-hour rest period and must have access to education.<sup>12</sup> Night work or work that might serve as an obstacle to continued school attendance is prohibited for children under 18 years of age,<sup>13</sup> although adolescents 15 to 17 can work for a maximum of four hours at night with a special permit.<sup>14</sup> Underground work or work that involves heavy lifting, toxic substances, or responsibility for the safety of one's self and other workers is prohibited for children under 18 years.<sup>15</sup> Working children must be paid at the same rate as adult workers in similar jobs.<sup>16</sup> In July 2006, the Government of Peru approved a list of Hazardous Occupations for Children, which includes commercial sexual exploitation and activities linked to domestic work.<sup>17</sup>

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<sup>6</sup> ILO, *Ratifications by Country*, accessed June 19, 2007; available from <http://www.ilo.org/ilolex/>.

<sup>7</sup> Government of Peru, *Ley que Modifica el Artículo 51 de la Ley No. 27337, Código de los Niños y Adolescentes*, (2001); available from <http://www.cajpe.org.pe/rij/bases/legisla/peru/27571.htm>. Although the general minimum age for employment in Peru is 14 years, the provisions subsequently described in this paragraph restrict the ability of children of that age or younger to work legally.

<sup>8</sup> U.S. Department of State, "Peru," in *Country Reports on Human Rights Practices- 2004*, Section 6d, Washington, D.C., February 28, 2005; available from <http://www.state.gov/g/drl/rls/hrrpt/2004/41771.htm>. See also *Ley que Modifica el Artículo 51 de la Ley no. 27337, Código de los Niños y Adolescentes*.

<sup>9</sup> U.S. Department of State, "Peru," in *Country Reports on Human Rights Practices- 2006*, Section 6d, Washington, D.C., March 6, 2007; available from <http://www.state.gov/g/drl/rls/hrrpt/2006/78902.htm>.

<sup>10</sup> *Ibid.*, Section 6d.

<sup>11</sup> Government of Peru, *Ley que Aprueba el Nuevo Código de los Niños y Adolescentes, Ley no. 27337*, (2000), Article 56; available from <http://www.cajpe.org.pe/rij/bases/legisla/peru/ley1.html>.

<sup>12</sup> *Ibid.*, Article 63. See also U.S. Embassy-Lima, *reporting*, August 25, 2004.

<sup>13</sup> U.S. Embassy- Lima, *reporting*, August 15, 2003.

<sup>14</sup> *Ley que Aprueba el Nuevo Código de los Niños y Adolescentes*, Article 57.

<sup>15</sup> *Ibid.*, Article 58

<sup>16</sup> *Ibid.*, Articles 59 and 63.

<sup>17</sup> ILO-IPEC, *Prevention and Elimination of Child Domestic Work (CDL) and of Commercial Sexual Exploitation of Children (CSE) in Colombia, Chile, Paraguay and Peru*, technical progress report, September 2006.

Various statutes prohibit the worst forms of child labor in Peru. The Child and Adolescent Code prohibits forced labor, economically exploitative labor, prostitution, and trafficking.<sup>18</sup> Peru's Penal Code, as amended in 2004, provides that a person who forces another to work without payment by means of violence or threat may be punished with imprisonment for up to two years.<sup>19</sup> The Penal Code prohibits the promotion of prostitution of minors, with a penalty of five to 12 years of imprisonment if the victim is under 18 years of age.<sup>20</sup> Peru's Penal Code also prohibits pimping. The penalty for this offense is six to 12 years if the victim is under age 18.<sup>21</sup> The penalty for using, promoting or commercializing pornography that exploits adolescents ages 14 to 18 is four to six years in prison and fines equivalent to 120 to 365 days income. The penalty is six to eight years and fines equal to 150 to 365 days' income if the victim is under 14. In case of involvement of the child's guardian, a government official, or a member of a pornography ring, the penalty is eight to 12 years in prison.<sup>22</sup>

The amended Penal Code states that anyone who promotes or facilitates the entry into or exit from the country of a person for the purpose of practicing prostitution or any other form of sexual exploitation involving a minor may be punished by imprisonment for ten to 12 years.<sup>23</sup> In 2007, Congress passed Law No. 28950, which further defines trafficking in persons, provides protection to victims and witnesses, and strengthens sentencing guidelines.<sup>24</sup> Under the new law, the penalty for trafficking in persons, including for forced labor, is 12 to 20 years of imprisonment if the victim is age 14 to 18. The penalty is no less than 25 years in prison if the victim is under age 14.<sup>25</sup> Regulations required to implement Law No. 28950 had not been finalized as of this writing.<sup>26</sup> The penalty for promoting sexual tourism exploiting adolescents ages 14 to 18 is two to six years in prison. The penalty is six to eight years of imprisonment if the victim is under age 14, and, in case of involvement by a government official or child's guardian, the penalty is eight to ten years in prison.<sup>27</sup> The minimum age for voluntary recruitment in the military is 18 years and the Law on Military Service prohibits forced recruitment.<sup>28</sup>

The MTPE is responsible for enforcing child labor laws and its inspectors have legal authority to investigate reports of illegal child labor practices. As of June 1, 2007, there were 316 labor inspectors, whose responsibilities include conducting inspections in areas where child labor problems have been reported. The MTPE may levy fines on firms

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<sup>18</sup> *Ley que Aprueba el Nuevo Código de los Niños y Adolescentes*, Article 4.

<sup>19</sup> *Código Penal del Peru*, (1991), Article 168; available from <http://www.devida.gob.pe/documentacion/Decreto%20Legislativo%20635-CODIGO%20PENAL.doc>. See also Government of Peru, *Ley que modifica los artículos 170, 171, 172... del Código Penal*, Ley No. 28251, (2004), available from <http://www.congreso.gob.pe/ntley/Imagenes/Leyes/28251.pdf>.

<sup>20</sup> *Código Penal del Peru* and Ley No. 28251, Article 179.

<sup>21</sup> *Ibid.*, Article 181.

<sup>22</sup> *Ibid.*, Article 183-A.

<sup>23</sup> *Ibid.*, Article 182.

<sup>24</sup> U.S. Embassy- Lima, *reporting*, February 5, 2007.

<sup>25</sup> Government of Peru, *Ley Contra la Trata de Personas y el Tráfico Ilícito de Migrantes*, Ley No. 28950, (2007), available from <http://www.congreso.gob.pe/ntley/Imagenes/Leyes/28950.pdf>.

<sup>26</sup> U.S. Embassy- Lima, *reporting*, March 8, 2007.

<sup>27</sup> *Código Penal del Peru* and Ley No. 28251, Article 181A.

<sup>28</sup> Coalition to Stop the Use of Child Soldiers, "Peru," in *Child Soldiers Global Report 2004*; available from [http://www.child-soldiers.org/document\\_get.php?id=966](http://www.child-soldiers.org/document_get.php?id=966).

found violating child labor laws and suspend their operations.<sup>29</sup> Although more than one-half of the economically active population in Peru works in the informal sector, inspections are primarily conducted in the formal sector.<sup>30</sup> The majority of the inspectors (222) work in Lima and neighboring Callao.<sup>31</sup>

The National Police and local prosecutors also have law enforcement authority over child labor violations,<sup>32</sup> and the National Police operates a Division for Matters Concerning Children and Adolescents to address cases concerning the rights of children and adolescents.<sup>33</sup> The Municipal Child and Adolescent Defender Centers (*Defensoría Municipal del Niño y el Adolescente*, DEMUNA) work with local governments to supervise investigations, apply punishments, and monitor compliance of child labor laws. DEMUNA operates through more than 1,000 offices around the country.<sup>34</sup>

The Ministry of the Interior and the National Police are the entities responsible for addressing domestic trafficking, while the Ministry of Foreign Relations and Immigration authorities work on international trafficking issues.<sup>35</sup> For information on Trafficking in Persons enforcement, please see Section C of the Department of Labor's *Peru: Labor Rights Report*.

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<sup>29</sup> U.S. Department of State, "Country Reports- 2006: Peru."

<sup>30</sup> U.S. Embassy-Lima, *reporting*, August 25, 2004. For a discussion of the informal sector, please see page 8 of the Department of Labor's *Peru: Labor Rights Report*.

<sup>31</sup> U.S. Department of State, "Country Reports- 2006: Peru."

<sup>32</sup> U.S. Embassy- Lima, *reporting*, October 7, 2002.

<sup>33</sup> Government of Peru, *Directiva No. 19-95-DIVIPOLNA Sobre Atención y Intervención Policial con Niños y Adolescentes (25 de abril de 1995)*, [online] [cited July 1, 2005]; available from <http://www.asesor.com.pe/teleley/direc-19-95.htm>.

<sup>34</sup> U.S. Department of State, "Country Reports- 2006: Peru," Section 6d.

<sup>35</sup> U.S. Department of State, "Country Reports- 2004: Peru," Section 5.