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TWENTIETH ITEM ON THE AGENDA

Report of the Director-General

Fifth Supplementary Report: Report of the Committee set up to examine the representation alleging non-observance by Peru of the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105), under article 24 of the ILO Constitution, by the General Confederation of Workers of Peru (CGTP)

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I. Introduction

1. In a communication received on 26 May 2015, the General Confederation of Workers of Peru (CGTP) submitted a representation to the International Labour Office under article 24 of the ILO Constitution, alleging non-observance by Peru of the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105).
2. Peru ratified the Forced Labour Convention, 1930 (No. 29), on 1 February 1966, and the Abolition of Forced Labour Convention, 1957 (No. 105), on 6 December 1960. Both Conventions are in force in Peru.
3. The following provisions of the Constitution of the International Labour Organisation relate to representations:

Article 24

Representations of non-observance of Conventions

1. In the event of any representation being made to the International Labour Office by an industrial association of employers or of workers that any of the Members has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party, the Governing Body may communicate this representation to the government against which it is made, and may invite that government to make such statement on the subject as it may think fit.

Article 25

Publication of representation

1. If no statement is received within a reasonable time from the government in question, or if the statement when received is not deemed to be satisfactory by the Governing Body, the latter shall have the right to publish the representation and the statement, if any, made in reply to it.

4. The representations procedure is governed by the Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the ILO Constitution, as revised by the Governing Body at its 291st Session (November 2004).
5. In accordance with articles 1 and 2(1) of the above Standing Orders, the Director-General acknowledged receipt of the representation, informed the Government of Peru thereof and brought the matter before the Officers of the Governing Body.
6. At its 325th Session (October–November 2015), the Governing Body decided that the representation was receivable and appointed a tripartite Committee for its examination. This Committee is composed of Mr Carlos Flores (Government member, Venezuela), Mr Juan Mailhos (Employer member, Uruguay) and Ms Silvana Cappuccio (Worker member, Italy).
7. The Government of Peru sent its observations in response to the representation in two communications dated 1 March and 3 May 2016.
8. The Committee held its first meeting on 2 November 2016, in addition to subsequent working meetings on 3 November 2016 and 14 March 2017.

II. Examination of the representation

A. The complainant's allegations

9. The General Confederation of Workers of Peru (CGTP) claims the existence of situations of forced labour at the Pontifical Catholic University of Peru (hereinafter the University) arising from the signing of model contracts which contain provisions that result in debt bondage.
10. The CGTP describes, by way of example, the situation of Professor Fabien Yves Paul Cornillier, who was hired by the University for five consecutive years (from January 2009 to February 2013) as a lecturer and primary researcher in the *Centrum Católica*. The CGTP indicates that when Mr Cornillier wished to leave, the University refused to pay his social benefits and demanded that he repay an alleged debt of 305,181 Peruvian sol (PEN) for failing to meet his obligations in full while under contract. The CGTP adds that, during the five years that he was under contract, the lecturer was not sanctioned and, on the contrary, his contract was renewed five times. The trade union explains that this situation is a consequence of model contracts signed between the University and the lecturers. These contracts cannot be negotiated by the workers and provide that if the lecturers do not fulfil the assigned academic or research duties, they must return the salary paid. In practice, the academic and research workload stated in the contract is heavy, and the University assigns only 30 per cent of the classes called for in the contract. If lecturers no longer wish to renew their contracts, the University requires them to return an amount corresponding to the value of the classes that they did not teach even though the classes were neither scheduled nor assigned by the University, which is the only competent body in this area. In the case of Professor Cornillier, in his contracts the University set out the obligation to teach 464 lectures but in effect only assigned him 132 lectures (which corresponds to 28 per cent of the academic workload).
11. The CGTP considers that this system is illegal and is tantamount to a system of forced labour. In this respect, it refers to the obligations of the Peruvian State arising out of the ratification of the Abolition of Forced Labour Convention, 1957 (No. 105), Article 1(c) of which obliges States to suppress forced or compulsory labour as a means of labour discipline. The CGTP indicates that the case of Professor Cornillier, which amounts to a situation of forced labour, has been pending before the courts since 2013, and states that, as freedom of work is a fundamental right, it should be dealt with promptly and effectively. In addition, the settlement of this case could encourage victims of other forms of forced labour in Peru to lodge complaints. The lengthy judicial proceedings concerning this fundamental right are incompatible with the Convention, which requires “effective measures” to protect freedom of work.
12. The CGTP considers that this practice also amounts to debt bondage. The lecturers are not free to stop working for the University without incurring a heavy penalty in the form of a debt. In the case of Professor Cornillier, the University is demanding an amount equivalent to 32 monthly wages for failing to give lectures and publish research. According to the University, the remuneration received is an advance payment. The CGTP considers that this penalty is illegal given that the worker has not failed to comply with the contract as he carried out the lecturing and research duties assigned to him by the University; he was available to his employer inasmuch as he dedicated himself exclusively and on a full-time basis; and he fulfilled the 40-hour timetable, as indicated in the successive signed employment contracts.

13. The CGTP refers to the definition of forced labour in the Forced Labour Convention, 1930 (No. 29), Article 2, and the three constitutive elements: work or service; menace of a penalty; and lack of voluntary offer. Based on various documents published by the ILO¹ which explain the scope of the definition of forced labour, the CGTP considers that the demand for impossible debts by the employer constitutes a financial threat that prevents lecturers from stopping work. In Professor Cornillier's case, it is impossible for him to pay a debt corresponding to 32 net monthly wages. This restriction on the right to stop work is a flagrant violation of the freedom to work. The CGTP recalls that the "menace of a penalty" can take different forms, including of a financial nature, such as penalties related to a debt, and which oblige the worker to continue working through legal coercion. There is also a risk that the employer might force the lecturer to work for free in payment for the non-existent alleged failure to fulfil his contract. According to the trade union, the mechanism used by the University consists in manipulating the alleged debts which accumulate year on year. In its 2012 General Survey, the Committee of Experts on the Application of Conventions and Recommendations demonstrated that the manipulation of credit and debts, either by employers or recruitment agencies, remains a key factor that traps vulnerable workers in forced labour.
14. The CGTP refers to the third element of the definition of forced labour, voluntary offer, as free and informed consent given by workers as part of the employment relationship. This voluntariness must continue throughout the employment relationship and include the possibility of revoking the freely given consent. In this environment, subtle forms of coercion, including legal forms, can be applied.
15. The CGTP adds that the case of Professor Cornillier is not unique in the University in question, which has demanded payment of alleged debts from most of the national and foreign lecturers. The trade union refers to the case of three other lecturers (Mr Kobylinski Valverde, Mr Tveteras, and Mr Gil) who were ordered by the University to pay a debt (between PEN58,879 and PEN219,606) and whose social benefits they did not pay. There are innumerable cases that have not been reported to the judicial authorities for fear of reprisals. The CGTP submitted a communication of September 2009 in which the University director stated that the entire teaching staff had a teaching workload debt of more than 7,000 lectures and another research workload debt (equivalent to PEN9 million) and that "the lecturers must discuss their schedules with the programme directors with a view to settling their debts".
16. In the light of this information, the CGTP considers the *modus operandi* of the employer to be persistent and the situation described to be especially serious. The Peruvian State should give particular attention to resolving this case, thereby fulfilling its obligation to guarantee the effective application of the Conventions on freedom of work.

B. The Government's reply

17. In its communication dated 1 March 2016, the Government sent information provided by the Pontifical Catholic University of Peru. The University states that the representation is based primarily on the court case under way brought by Mr Cornillier in 2013. It notes that the complainant organization contests the excessive delay in judicial proceedings in Peru to rule on the judicial request, as well as the arguments of the first instance court which declared

¹ General Survey on the fundamental Conventions of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 101st Session, 2012. Global Report on Forced Labour 2009: *The cost of coercion*, International Labour Conference, 98th Session, 2009.

that request unfounded. In addition, it states that the representation refers to two similar cases which are also under examination before the courts.

18. The University refers to the principle of independence of the judiciary enshrined in the Constitution, which states that all persons and authorities are obliged to comply with and give effect to legal decisions without qualifying their content or grounds, restricting their effects or interpreting their scope. Similarly, no authority may take over cases that are pending before a jurisdictional body. Therefore, and given that some proceedings are under way before various jurisdictional bodies, the University considers that it cannot provide further comment with respect to the allegations presented to the ILO by the CGTP.
19. In a communication dated 3 May 2016, the Government sent additional information from the Directorate-General of Fundamental Rights and Occupational Safety and Health of the Ministry of Labour and Employment Promotion. The Government indicates that the Directorate has the authority to issue technical opinions relating to the representation filed by the CGTP alleging a violation of the freedom to work. Following a brief summary of the facts, the Government refers to the judicial proceedings launched in August 2013 by Professor Cornillier in which he requests that certain clauses contained in the initial contract and extension contracts be nullified. The Government indicates that the Professor has filed a request to validate his objection to the payment of PEN294,921 ordered by the University as a return of salaries; to pay the defendant compensation for the moral damages suffered throughout four years of debt bondage, coupled with threats which were carried out when he decided to break away from his situation of dependence; and to have the defendant pay the social and employment benefits corresponding to his contract settlements. The proceedings are under way before the Third Permanent Chamber for Labour Issues of the High Court of Justice in Lima. The Government considers that the judiciary, as the final jurisdictional body, should settle the present dispute, taking into account the principle of judicial independence, which prohibits the adoption of cases pending before the jurisdictional body and interference in the exercise of the function entrusted to the judiciary.
20. The Government describes the measures taken to prevent and eradicate all forms of forced labour. It refers in particular to the adoption, in 2007, of the National Plan to Combat Forced Labour, which aimed to build and consolidate structures to ensure the freedom to work, with the concerted participation of public institutions and civil society organizations. This Plan was replaced with the Second National Plan to Combat Forced Labour, which covers the period 2013–17. The Government also refers to the National Commission to Combat Forced Labour, which is one of the main spaces for multisectoral coordination created to address this serious issue. These measures demonstrate that the Peruvian Government is committed to the prevention and eradication of forced labour. The Government concludes that, while it is true that the International Labour Organization has established that, in view of its responsibilities, its competence to examine allegations is not subject to the exhaustion of national procedures, it is important for the ILO to consider the status of the aforementioned court proceedings, in so far as they constitute, in this case, an appropriate means of guaranteeing the rights invoked by the complainant.

III. The Committee's conclusions

21. The Committee notes that the General Confederation of Workers of Peru (CGTP) alleges that the model contracts signed between lecturers and the University contain abusive and illegal clauses that restrict the freedom of lecturers to terminate their contractual relationship with the University. The CGTP mentions, in particular, the case of Professor Cornillier, who worked for the University from 2009 to 2013 under this type of contractual arrangement. According to the CGTP, when Professor Cornillier resigned, the University considered that he had not fulfilled the academic duties stipulated in his contracts, and demanded that he

repay a debt amounting to PEN305,181, equivalent to 32 times the monthly wage, despite the fact that the lecturer had completed the required working hours. The Committee notes the CGTP's consideration that this case involves a forced labour situation in which the lecturer was prevented from exercising his freedom to terminate his contractual relationship under threat of a financial penalty in the form of a debt. The CGTP considers that, by failing to ensure that the legal claim was addressed in a timely and effective manner by the courts, the Peruvian Government did not take the necessary measures to eliminate all forms of forced labour and therefore it did not effectively apply the ILO Conventions on forced labour (the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105)).

- 22.** The Committee observes that the Government's reply (including a communication from the University) contains no specific information on either compliance with the model employment contracts signed between the University and the lecturers, or on the nature of the contractual relationship. The Government indicates that the claim is based on the situation experienced by Professor Cornillier which is being examined by the Third Permanent Chamber for Labour Issues of the High Court of Justice in Lima. It therefore considers that, in accordance with the principle of judicial independence, the judiciary is responsible for taking a final decision on the present case and therefore it cannot issue observations on the matter.
- 23.** The Committee considers that the fact that the case of Professor Cornillier is pending before the courts does not prevent them from examining the labour situation of lecturers that may be created by the model contracts referred to by the complainant, in accordance with Convention No. 29 and the definition of forced labour contained in Article 2(1) thereof. The Committee recalls that, under the definition of forced labour, three elements have to be present for a situation to be classified as forced labour: the exaction of work or service; the fact that the worker has not offered her or himself voluntarily; and the menace of any penalty.
- 24.** The Committee considers that the presence of the first element cannot be questioned, as there is an employment contract in which the worker undertakes to perform work.
- 25.** Regarding the second element of the definition, the "voluntary offer", which refers to the freely given and informed consent of workers to enter into a contractual relationship and to their freedom to leave their employment at any time, the Committee observes that the lecturers gave their consent by signing the initial employment contracts and the extension contracts. Nevertheless, the Committee also observes that, according to the trade union organization, these contracts contained abusive clauses that prevented the lecturers from terminating their contractual relationship.
- 26.** In this regard, the Committee considers that it is necessary to examine the effect of the provisions of the contracts in question which may prevent the termination of employment and therefore turn a contractual relationship based on the will of the parties into work by compulsion of law. The Committee observes that the clause contained in the initial contract signed by Professor Cornillier and in the extension contracts read as follows: ²

In the event that, upon termination of the employment contract, an employee has not fulfilled their outstanding academic duties, they undertake to conduct the outstanding academic duties at no additional cost or to receive reduced social benefits and make the relevant repayment to the University if the amount of the social benefits is insufficient, unless the University agrees to different terms ...

² Fourth clause of the initial contract and fifth clause of the first and second extension contracts.

- 27.** The Committee notes the trade union organization's indication that, while the academic or research workload allocated in the contract is heavy, in practice the University assigns only 30 per cent of the classes called for in the contract.³ The Committee observes that, according to the documents provided, on the one hand, the class scheduling officer⁴ is responsible for planning the academic workload and, on the other hand, the lecturers have an obligation to respect the working hours and ensure their availability at the University.⁵ Furthermore, it is not clear from the information provided by the parties that the University had given notification that academic duties must be fulfilled, or that it had imposed disciplinary measures on Professor Cornillier for undue absence or failure to carry out academic and/or research duties during the course of the contractual relationship. The Committee observes that the only reference to outstanding academic and research duties is contained in the third and fourth extension contracts.
- 28.** The Committee considers, according to the information available, that the extension of the lecturers' contracts, when there is a build-up of uncompleted lectures and the number of lectures established in the contract has not been assigned, may result in the accumulation of debt and therefore the dependency of the lecturers on the University. The Committee notes that, in this case, when Professor Cornillier ended his 50-month contractual relationship,⁶ he found himself in a situation in which not only did he receive reduced social benefits, but also he owed a number of lectures equivalent to 32 times the monthly wage. This situation occurred even though, according to the information provided, the lecturer worked the 40 hours per week stipulated in the various employment contracts. The Committee observes that, in order to pay his debt, the lecturer would have to repay over half of the wages that he had earned during his contractual relationship, or continue working for free for a long period of time. The accumulation of uncompleted lectures and consequently of a debt, and the lack of visible action taken by the University to reduce or settle that debt, can be regarded as a threat that has an impact on the freedom of workers to terminate a contractual relationship (third element of the definition of forced labour).
- 29.** In conclusion, the Committee observes that the clauses that establish the aforementioned obligation do not in themselves constitute forced labour, as defined in Article 2 of the Forced Labour Convention, No. 29 (1930).
- 30.** The Committee understands, however, the concern expressed by the complainant in relation to the harmful effects that the misuse of said clauses may have on the enjoyment of their labour rights and on their freedom to terminate an employment relationship.
- 31.** The Committee also observes that, according to the information provided by the trade union organization, the issue of outstanding lectures appears to affect several lecturers at the University. The Committee therefore suggests that the Government should ensure that the issue of model contracts and the clause mentioned in paragraph 26 be examined by the

³ In the case of Professor Cornillier, the CGTP indicates that the University required 464 lectures to be given but in practice only assigned 132 lectures (28 per cent) to the lecturer.

⁴ See the eighth clause of the third extension contract: "The parties agree that employees shall perform their academic duties in accordance with the schedule of lectures in place, and that the employer has the authority to establish and/or change the working days, hours and place of work, both inside and outside of the country."

⁵ See for example the third clauses of the initial contract and the two first extension contracts: "Employees shall work on a full-time basis for 40 hours per week, from Monday to Friday from 8.30 a.m. to 5.30 p.m., with one hour for lunch. This schedule may be modified, as needed."

⁶ From January 2009 to February 2013.

University and the competent authorities, in order to avoid a situation where the repeated use of said clauses leads to an accumulation of debt that places workers in a situation of dependency affecting their freedom to terminate an employment relationship. As part of this examination, the National Commission to Combat Forced Labour could be consulted.

32. Regarding the alleged non-compliance with Convention No. 105, the Committee considers that the events in question do not fall under the application of Article 1(c) which refers to forced or compulsory labour as a means of labour discipline.

IV. The Committee's recommendations

33. *In light of the conclusions set out in paragraphs 21–32 above concerning the issues raised in the representation, the Committee recommends that the Governing Body:*

- (a) approve the present report;*
- (b) invite the Government to ensure that the competent authorities hold discussions with the University to examine the content of and the terms and conditions for the implementation of the model contracts signed between the University and the contractual lecturers with a view to ensuring that the performance of the contracts does not restrict the freedom of workers to terminate their contractual relationship, while taking into account the points raised in paragraphs 28–31;*
- (c) invite the Government to provide information in this regard to the Office; and*
- (d) make this report publicly available and close the procedure initiated by the representation.*

Geneva, 15 March 2017

(Signed) Mr Carlos Flores

Mr Juan Mailhos

Ms Silvana Cappuccio

Point for decision: Paragraph 33