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TWELFTH ITEM ON THE AGENDA

Report of the Director-General

Fourth Supplementary Report: Report of the committee set up to examine the representation alleging non-observance by Peru of the Seafarers' Pensions Convention, 1946 (No. 71), made under article 24 of the ILO Constitution by the Autonomous Confederation of Peruvian Workers (CATP)

I. Introduction

1. By a letter received on 17 January 2011 by the International Labour Office, the Autonomous Confederation of Peruvian Workers (CATP), referring to article 24 of the Constitution of the International Labour Organisation (ILO), made a representation to the International Labour Office alleging the non-observance by Peru of the Seafarers' Pensions Convention, 1946 (No. 71), ratified by Peru in 1962. The Convention is in force for Peru.
2. The provisions of the Constitution of the ILO concerning the submission of representations are as follows:

Article 24

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

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.

3. In accordance with articles 1 and 2(1) of the Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the Constitution of the ILO, as revised by the Governing Body at its 291st Session (November 2004), the Director-General communicated the representation to the Government of Peru and brought it before the Officers of the Governing Body.
4. At its 310th Session (March 2011), and on the recommendation of its Officers, the Governing Body decided that the representation was receivable, and at its 311th Session (June 2011) set up a committee to examine it, composed of Ms Cecilia Amero Coutigno (Government member, Mexico), Mr Alberto Echavarría Saldarriaga (Employer member, Colombia) and Mr Julio Roberto Gómez Esguerra (Worker member, Colombia).
5. The Government sent its observations in relation to the allegations contained in the representation in a communication received by the Office on 22 June 2011, the annexes to which were received on 5 July 2011.
6. In accordance with the provisions of article 4(1) of the Standing Orders, the Committee invited the Government and the complainant organization to make additional comments on the representation by 5 October 2011.
7. In a letter dated 5 October 2011, the Government communicated additional information to the Office in reply to the representation made by the CATP.
8. The Committee held its first meeting on 16 November 2011 and decided to request the Government to provide additional information on certain points.
9. The Government submitted additional information in a communication dated 6 February 2012.
10. The Committee met on 22 March 2012 to examine the case and adopt its report.

II. Examination of the representation

The complainant's allegations

11. In its communication, the CATP allege the failure of the Government of Peru to comply with certain provisions of Convention No. 71, in relation to: (i) the fishers affiliated to the Fishers' Benefits and Social Security Fund (CBSSP); and (ii) the seafarers of the Peruvian Steamship Company (CPV) and possibly other enterprises in the same sector.
12. More specifically, with regard to the contributions made by fishers to their benefits and social security fund, the CATP asserts that the social security scheme regulated by Ministerial Decision No. 423-72-TR is in violation of Article 3(2) of Convention No. 71, as fishers are required to contribute more than half of the cost of the pensions payable under the scheme. In practice, fishers contribute 8 per cent of the reference remuneration, while employers contribute 3 per cent, in addition to administrative costs, which are estimated at 1.84 per cent.
13. The CATP adds that, in violation of Articles 2 and 3 of Convention No. 71, the CBSSP owes its pensioners the equivalent of 16 months of benefits in respect of pension entitlements. The CATP also refers to the case brought before the courts by the National Association of Retired Fishers relating to the arrears accumulated during the period between May 2009 and January 2010, which are estimated at 31,200,000 Peruvian nuevos

soles (PEN), that is, approximately US\$11,500,000. The CATP also denounces the fact that the Government is envisaging the dissolution of the CBSSP, which would be a violation of Article 4(1) of the Convention as the dissolution would be carried out without guaranteeing that the entitlements of those who cease to be insured under the scheme are maintained.

14. The CATP also refers to the recommendations made by the Ombudsperson in 1998 recognizing the responsibility of the Government for the serious economic prejudice suffered by the CBSSP pensioners in view of the failure to transfer at that time the resources to replace the income no longer received following the repeal of Supreme Decree No. 016-88-PE. It further refers to the observations addressed by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) to the Government since 2003, with particular reference to the implications of the new private pensions system (SPP) on the application of the Convention.
15. Finally, with reference to the pensions provided to former employees of the CPV, the CATP argues that the amount used for the calculation of the pensions is lower than that envisaged in Article 3(1) of Convention No. 71, due to the change of scheme resulting from the liquidation of the company. The former employees of the CPV, who were previously covered by the pension scheme for the public service, governed by Legislative Decree No. 20530, were transferred to the general pension scheme governed by Legislative Decree No. 19990 following the liquidation of the CPV in 1991. According to the CATP, under that scheme, pensioners with 30 years of contributions only receive a maximum pension estimated at PEN857 a month, while those with 20 years of contributions receive a minimum pension estimated at PEN450. However, in accordance with Article 3(1)(a) of Convention No. 71, a worker who has paid contributions for 30 years should receive a retirement pension corresponding to at least 45 per cent of the remuneration on the basis of which contributions were paid, while with 20 years of contributions this rate should be at least 30 per cent. In other terms, according to the CATP, if, at the time of retirement, an employee of the CPV received remuneration of PEN5,000, that worker should receive a pension of PEN1,500 following 20 years of contributions, or PEN2,500 following 30 years of contributions.

The Government's response

16. In its communications dated 20 June 2011, 5 October 2011 and 6 February 2012, the Government makes its observations on the representation.
17. With regard to the allegations that the contributions of fishers to the CBSSP are in violation of the obligation set out in Article 3(2) of Convention No. 71, the Government indicates that under the terms of Ministerial Decision No. 423-72-TR, the fund is constituted from contributions equivalent to a percentage of the remuneration received by fishers, which is 3 per cent to be paid by the shipowner and 8 per cent to be paid by the fisher, with a compulsory contribution of US\$0.26 for each metric tonne of fish to be paid by industrial enterprises in the fishing sector. The Government adds that the total contributions to the CBSSP for the first quarter of 2011, setting aside the contribution to the Administration Fund (entirely borne by the shipowners), is distributed in such a manner that 19 per cent comes from the contributions of shipowners, 31 per cent from the industry and 50 per cent from the workers. Consequently, as the workers' contributions do not exceed one half of the cost of the pensions, the Government concludes that this point of the representation is without merit.

18. With reference to the allegations that the CBSSP owes its pensioners the equivalent of 16 months of pension payments, the Government indicates that through additional subsidies, granted under Acts Nos 28979 of 15 February 2007, 29255 of 26 August 2008, 29327 of 11 March 2009, 29450 of 19 November 2009 and 29529 of 8 May 2010, the State of Peru has provided support for the payment of benefits to pensioners. The Commission for the Liquidation of the CBSSP published various communications between September 2010 and May 2011, providing information on the payment of retirement pensions, widows' and orphans' pensions, invalidity pensions and legal alimony deductions. In communication No. 005-2011-CBSSP-LIQ of 20 May 2011, it also indicated that these beneficiaries would receive the bonus for the month of December 2010. The Liquidation Commission is now progressively paying the arrears owed by the Fund to its insured persons. In its communication of 5 October 2011, the Government provided information supplied by those responsible for the liquidation of the CBSSP, according to which the pensions due since the month of August 2010 have been paid normally and the amounts owed previously will be settled within the framework of the liquidation process. They emphasize that the existence of arrears is due to the insolvency of the pension fund, caused principally by the abolition of the contribution of US\$0.26 per metric tonne of fish previously borne by industrial enterprises in the fishing sector, and the failure of the Ministry of the Economy and Finance to transfer the corresponding resources; the embargo measures ordered by the judicial authorities; and the massive numbers of fishers taking retirement, who have received a pension, even without having achieved the minimum number of years of contribution, in accordance with decisions by the judicial authorities.
19. The Government explains that, as a result of the insolvency of the CBSSP, the Superintendent Authority of Banks, Insurance and AFP (SBS), by Decision No. 14707-2010 of 16 November 2010, announced the dissolution of the CBSSP, thereby initiating the process of the overall liquidation of the CBSSP and the funds administered by it. The Social Security Commission of the Congress of the Republic issued an Opinion with a draft text to replace Bill No. 4506-2010-PE, regulating the "Special Social Security Scheme for Fishers and establishing exceptional measures for fishers and pensioners affected by the declaration of dissolution and liquidation of the CBSSP", which was approved on 18 May 2011 by Congress in plenary and forwarded to the executive authorities for approval or observations. The Bill provides that the Insurance Standards Office (ONP) shall in future take responsibility for the administration of the pensions fund for fishers, with the State of Peru maintaining and guaranteeing the pension entitlements of fishers. The Government indicates that, although there currently exist pension arrears, these will be settled through the liquidation of the CBSSP, where appropriate from the product of its assets, as such credits will be covered by an order of priority only superseded by labour claims. It adds that, until its dissolution, the CBSSP remains bound by its obligations under the law and regulations and its statutes, including with regard to the payment of pension entitlements. The Government concludes that the CATP's allegation must be disregarded as it is fully demonstrated that the Peruvian State has been adopting specific measures on this issue with a view to ensuring that the beneficiaries of the CBSSP are paid not only the amount of their pensions for the present year, but also their pension claims that are in arrears, which will be paid progressively.
20. With regard to the allegations based on the conclusions contained in the report of the Ombudsperson No. 10-98-DP, according to which the State caused grave financial prejudice to the beneficiaries of the CBSSP, the Government observes that the Ombudsperson considered that this prejudice was a result of the failure to transfer resources to replace the income no longer received as a result of the entry into force of Legislative Decree No. 25988 on the rationalization of the national taxation system and the elimination of privileges and excessive costs. The CBSSP lodged a complaint against the Ministry of the Economy and Finance concerning the obligation to provide financing, which was found to be justified by the Transitional Civil Chamber of the Supreme Court of

Justice of the Republic in Cassation Ruling No. 4852-2007 of 24 November 2009, which ordered the Ministry of the Economy and Finance to pay the CBSSP the sum of US\$5,516,338.10 plus statutory interest. The Government observes that the legal procedure is at the stage of the execution of the ruling, as the determination of the amount of statutory interest to be paid by the Ministry of the Economy and Finance is still to be determined, and that under the terms of Act No. 29529 of 8 May 2010 the transfer of PEN2,500,000 to the CBSSP was already authorized.

21. With regard to the allegations that the level of the pension provided to former employees of the CPV is lower than the level envisaged in Article 3(1)(a) of Convention No. 71, the Government indicates that the pension scheme for seafarers is governed by Legislative Decree No. 19990 respecting the national social security pensions system. Under section 38 of Legislative Decree No. 19990, a more favourable special scheme was established within the pensions system for workers on seagoing, river and lake-based vessels, in view of their specific working conditions. Accordingly, under the terms of Legislative Decree No. 21952 establishing a provisional regime for workers on seagoing, river and lake-based vessels, as amended by Act No. 23370 modifying articles 1 and 2 of Legislative Decree No. 21952, the minimum age at which such workers may benefit from a retirement pension is 55 years, with 20 years of contributions.¹ The Government also observes that, with the exception of the specific provisions referred to above, the other rules that are in force in the context of the national pension system are also applicable to workers on seagoing, river and lake-based vessels.
22. Moreover, the Government indicates that in the case of retirees who are only governed by Legislative Decree No. 19990, the applicable reference remuneration is the average of the remuneration received in the 12, 36 or 60 months preceding the last month of contribution, the most favourable amount being taken into account. For 15 years of contributions, the level of the retirement pension is 50 per cent of the reference remuneration, and this figure is increased by 2 per cent for each additional year of contributions. With regard to retirees to whom Legislative Decree No. 25967 of 7 December 1992 on the modification of pensions administered by the Peruvian Social Security Institute (IPSS) is applicable, the reference remuneration corresponds to the average of remuneration for the 36, 48 or 60 last months according to whether the individual concerned has worked over 30 years, between 25 and 30 years, or between 20 and 25 years. An insured person who has paid contributions for 20 years benefits from a retirement pension equivalent to 50 per cent of the reference remuneration, with this figure rising by 4 per cent for each additional year of contributions. Moreover, the pension payable may not be lower than PEN415, nor may it be higher than PEN857.36. Finally, the Government emphasizes that the pension scheme established under Legislative Decree No. 19990 is a contributory system, which has to remain balanced and viable, taking into account the second transitional and final provision of the Political Constitution of Peru, under the terms of which: "The State shall guarantee the payment on time and the regular readjustment of the pensions that it administers, in accordance with budgetary forecasts and the possibilities of the national economy."
23. In response to the additional request for information made by the Committee, the Government further indicates that, before its liquidation, the CPV employed administrative or clerical staff, seafarers and manual workers. It explains that the former employees of the CPV benefit from a pension under Legislative Decree No. 19990 or, in certain cases, Legislative Decree No. 20530. In both cases, pensions are paid by the ONP, which is currently paying pensions to 1,591 former employees of the CPV or to their survivors. The Government considers that, with its representation, the CATP is seeking to obtain that

¹ The obligation to have paid contributions for at least 20 years has been applicable since 19 December 1992, the date of the entry into force of Legislative Decree No. 25967. The number of years of contributions required was previously 15.

those not covered by Legislative Decree No. 20530 get access to benefits under this scheme, whereas they are not entitled to such benefits since they are subject to Legislative Decree No. 19990, as has been confirmed by the Constitutional Court. In addition, the Government alleges that the former employees concerned were administrative personnel and not seafarers, and that they are therefore not covered by Convention No. 71.

III. The Committee's conclusions

24. The Committee notes that the allegations made and the response provided raise the following issues: (i) the rate of fishers' contributions to the CBSSP; (ii) the amount of pension arrears and the economic prejudice caused to pensioners; (iii) the dissolution of the CBSSP; and (iv) the situation of former employees of the CPV.
25. The Committee considers that the issues raised in the representation relate to the application of Articles 2(1), 3 and 4 of the Convention. These provisions of the Convention read as follows:

Article 2

1. Each Member of the International Labour Organisation for which this Convention is in force shall, in accordance with national laws or regulations, establish or secure the establishment of a scheme for the payment of pensions to seafarers on retirement from sea service.

[...]

Article 3

1. The scheme shall comply with one of the following conditions:
- (a) the pensions provided by the scheme:
 - (i) shall be payable to seafarers having completed a prescribed period of sea service on attaining the age of fifty-five or sixty years as may be prescribed by the scheme; and
 - (ii) shall, together with any other social security pension payable simultaneously to the pensioner, be at a rate not less than the total obtained by computing for each year of his sea service 1.5 per cent of the remuneration on the basis of which contributions were paid in respect of him for that year if the scheme provides pensions on attaining the age of fifty-five years or 2 per cent of such remuneration if the scheme provides pensions at the age of sixty years; or
 - (b) the scheme shall provide pensions the financing of which, together with the financing of any other social security pension payable simultaneously to the pensioner and any social security benefits payable to the dependants (as defined by national laws or regulations) of deceased pensioners, requires a premium income from all sources which is not less than 10 per cent of the total remuneration on the basis of which contributions are paid to the scheme.
2. Seafarers collectively shall not contribute more than half the cost of the pensions payable under the scheme.

Article 4

1. The scheme shall make appropriate provision for the maintenance of rights in course of acquisition by persons ceasing to be subject thereto or for the payment to such persons of a benefit representing a return for the contributions credited to their account.

[...]

26. On the issue of fishers' contributions to the cost of pensions, the Committee notes the allegation of the complainant organization that, under the terms of Ministerial Decision No. 423-72-TR approving the Rules governing the Fishers' Retirement Fund, fishers contribute more than half the cost of pensions which is a violation of Article 3(2) of Convention No. 71. Under the terms of sections 10(a) and (g) and 13 of the Statutes of the CBSSP, approved by Agreement No. 012-002-2004-CEMR-CBSSP, as amended, the contributions payable by shipowners and fishers are 3 and 8 per cent respectively, and industrial enterprises in the fishing sector are required to pay a contribution of US\$0.26 per metric tonne of fish. This contribution is a result of the conclusion of an agreement between the Federation of Fishers of Peru, the Federation of Fishers for Direct Human Consumption and Artisanal Fishers of Peru, the National Fishing Company Pesca Peru SA and the National Corporation of Fishing Shipowners, which was approved by Supreme Decree No. 016-88-PE of 11 June 1988. Legislative Decree No. 25988 of 7 December 1992, among other measures, repealed the latter Supreme Decree, which was however brought back into force by Act No. 28193 of 18 March 2004.
27. The Committee recalls that, under the terms of Article 3(2) of Convention No. 71, seafarers collectively shall not contribute more than half the cost of the pensions payable under the scheme. Under these circumstances, the Committee needs to assess whether the contributions of shipowners and those of industrial enterprises in the fishing sector (that is, fish processing enterprises, as distinct from shipowners) to the retirement fund does in fact constitute half or more of the contributions to the scheme. In this regard, it should be recalled that, in contrast with the contributions of fishers and shipowners, which are calculated on the basis of the amount of the remuneration received by fishers which is taken into account for contribution purposes, the contribution of industrial enterprises is calculated on the basis of a different variable, namely the volume of fish received for processing. The contribution of industrial enterprises is calculated as US\$0.26 per metric tonne of fish delivered to their processing plants, with the variations in the level of their contributions therefore being directly related to variations in the volume of fish supplied. Accordingly, the statistical data provided by the Government concerning the total contributions to the CBSSP for the first quarter of 2011 does not permit to assess whether the distribution of contributions is in accordance with Article 3(2) of Convention No. 71. The Committee consequently considers that the level of contributions assigned to industrial enterprises in accordance with a variable such as the volume of fish, although it is added to the contributions of shipowners, does not guarantee that in all circumstances the contributions of fishers are equivalent to no more than half of the cost of the pensions payable under the scheme. Consequently, as the legislation that is in force does not guarantee the full application of Article 3(2) of Convention No. 71 in relation to the fishers' pensions scheme, the Committee considers that the Government should take the necessary measures to remedy this situation.
28. In addition, with respect to the possible transfer of CBSSP affiliates to the general pension scheme, public or private, the Committee draws the Government's attention to the observations formulated by the CEACR under the Social Security (Minimum Standards) Convention, 1952 (No. 102). Convention No. 102, which sets out the basic principles with regard to the financing and administration of social security systems, contains provisions similar to those of Convention No. 71 in so far as the principle of collective financing of benefits, and in particular the limitation of the workers' participation in the financing of benefits is concerned. In examining the conformity of the general pension scheme of Peru with Convention No. 102, the CEACR has noted that, except in the case of voluntary contributions which the law allows employers to pay optionally, the obligation to contribute falls entirely on the workers, and has therefore concluded that the general pension scheme of Peru does not give effect to the principle of collective financing of benefits. The Committee accordingly draws the Government's attention to the need to ensure, in the event that CBSSP affiliates are transferred to the general pension scheme,

compliance with the provisions of Article 3(2) of Convention No. 71, and more generally, with the principle of collective financing of social security benefits.

29. On the issue of pension arrears and the economic prejudice suffered by CBSSP pensioners, the Committee notes the allegation of the complainant organization, which is not challenged by the Government, that the CBSSP owes its pensioners the equivalent of 16 months of pension benefits, as the Fund does not have the necessary resources for that purpose. The Government indicates that the arrears in respect of pension entitlements will be paid by the CBSSP using the product from the liquidation of its assets and that the Commission for the Liquidation of the CBSSP has been progressively paying off the arrears owed to insured persons. In this regard, the Committee observes that the existence of unpaid arrears is not disputed. In view of the above, as the CBSSP is in arrears and in view of the recent dissolution of the Fund and the beginning of the process of the liquidation of the Fund and of the resources that it administers, the Committee trusts that the Government will take time-bound measures to ensure the repayment of pension arrears in the very near future.
30. Moreover, the Committee notes the allegation of the complainant organization that, based on the conclusions of the report of the Ombudsperson No. 10-98-DE, the Government is responsible for the serious economic prejudice caused to CBSSP pensioners on the grounds that it did not make good the loss of resources suffered by the CBSSP under the terms of Legislative Decree No. 25988 on the rationalization of the national taxation system and the elimination of privileges and excessive costs. This Act provided in its first supplementary provision that the institutions benefiting from the contributions repealed by the present Legislative Decree may request the Ministry of the Economy and Finance, within a period not exceeding 30 days from the date of the entry into force of the present legal text, for the allocation of an amount equivalent to the resources that they no longer receive for that purpose.
31. Based on the information available, the Committee understands that initially the Government did not transfer the resources envisaged by Legislative Decree No. 25988. The loss of resources and its impact on the retirement benefits paid resulting from the repeal of the text referred to above gave rise to the lodging of complaints by the Association of Retired Fishers of Callao and the Federation of Fishers of Peru with the Office of the Ombudsperson and to charges being brought by the CBSSP, both against the Ministry of the Economy and Finance. The Ombudsperson concluded in Report No. 10-98-DE that there exists a responsibility of the State in relation to the pensioners of the Retirement Fund administered by the CBSSP, who have been caused serious economic prejudice by the non-availability up to now of the transfer of resources to replace the income that they ceased to receive due to the repeal of Supreme Decree No. 016-88-PE.
32. The Committee notes the information from the Government that the judicial authorities have already resolved this matter, and that it is currently in the process of giving effect to the ruling, although the amount of the statutory interest to be paid by the Ministry of the Economy and Finance is still to be determined. The Committee notes that the situation which gave rise to the lodging of complaints by the Association of Retired Fishers of Callao and the Federation of Fishers of Peru with the Office of the Ombudsperson, and the charges brought by the CBSSP, both against the Ministry of the Economy and Finance, were resolved by the adoption of Act No. 28193 of 18 March 2004, which brought Supreme Decree No. 016-88-PE back into force, and the Cassation Ruling of the Transitional Civil Chamber of the Supreme Court of Justice of 24 November 2009, which recognized the obligation of the Ministry of the Economy and Finance to pay the contributions that were not received by the CBSSP during the period between 1 January 1998 and 1 December 2000 and ordered the payment of US\$5,516,338.10. In light of the information available, and noting the Government's indication that it has already made a

partial payment of the amounts that are owed to the CBSSP, the Committee trusts that the Government will ensure that appropriate action is taken without delay to effectively implement the ruling of the Transitional Civil Chamber of the Supreme Court of Justice of 24 November 2009.

33. On the issue of the dissolution of the CBSSP envisaged by the Government, the Committee notes the allegation of the complainant organization that such dissolution would be a violation of Article 4(1) of Convention No. 71, as the maintenance of the rights acquired by insured persons would not be guaranteed. Referring to the recent dissolution of the Fund, the Government indicates that the draft text to replace Bill No. 4506-2010-PE, under the terms of which the ONP would administer the fishers' pension fund has been forwarded to the executive authorities for approval or observations. The Government adds that the State of Peru will ensure the maintenance of the pension entitlements of fishers.
34. The Committee notes that the CBSSP, established by Supreme Decree No. 01 of 22 January 1965, was declared under emergency administration by Act No. 27766 of 26 June 2002, which provided, among other measures, for its overall restructuring and the establishment of a Special Multisectoral Committee for the Restructuring of the CBSSP (CEMR-CBSSP). The period for the restructuring of the CBSSP, determined by Act No. 27766, was extended by Act No. 28193 of 18 March 2004. Under the terms of Decision SBS No. 14707-2010 of 15 November 2010, the dissolution of the CBSSP was declared and its overall liquidation procedure was initiated.
35. The Committee recalls that, under the terms of Article 2(1) of Convention No. 71, each Member which has ratified the Convention and for which it is in force shall, in accordance with national laws or regulations, establish or secure the establishment of a scheme for the payment of pensions to seafarers on retirement from sea service. Furthermore, under the terms of Article 4(1) of the Convention, the scheme shall make appropriate provision for the maintenance of rights in course of acquisition by persons ceasing to be subject thereto or for the payment to such persons of a benefit representing a return for the contributions credited to their account. In light of the foregoing, although the dissolution of the CBSSP and the transfer to the ONP of responsibility for fishers' pensions is not in itself a violation of the provisions of the Convention, the Government is under the obligation to secure the establishment of a pension scheme which complies with the requirements of Articles 2 and 3 of the Convention and to ensure the maintenance of rights in course of acquisition pursuant to Article 4(1) of the Convention. The Committee therefore considers it necessary for the Government to provide information on the measures adopted or envisaged with a view to continuing to give effect to Article 4(1) of the Convention, when the liquidation of the CBSSP and the transfer of responsibility to the ONP take effect.
36. Finally, on the issue of the situation of former employees of the CPV, the Committee notes that the CPV, a public company, was declared dissolved and liquidated by Supreme Resolution No. 488-92-PCM. Extraordinary Supreme Decree No. 057-PCM-93 authorized the Ministry of the Economy and Finance to cover and effect the payments owed to those dismissed from the CPV and of the retirees of the CPV, which was being liquidated, and who were governed by Legislative Decree No. 20530 on the public service pension scheme, as from the month of October 1992.
37. The Committee notes that, in its most recent communication, dated 6 February 2012, the Government maintains that the 1,591 former employees of the CPV receiving pension benefits from the ONP are not covered by the provisions of Convention No. 71 since they were administrative employees and not seafarers. The Committee notes, however, that this argument is put forward for the first time and also that the Government does not provide any evidence to substantiate it. The Committee also notes that, in reply to the numerous comments formulated by the CEACR since 1996 with regard to the payment of pensions to

the former employees of the CPV, the Government had never called into question the fact that the persons concerned were covered by this Convention. Under these circumstances and subject to any additional information that the Government might wish to provide in future reports on the application of Convention No. 71, the Committee feels obliged to continue its examination of the representation on the understanding that some of the over 1,500 former employees of the CPV who currently receive a pension paid by the ONP were seafarers and are therefore covered by the Convention.

38. The Committee further notes that the Government argues that most former employees of the CPV are covered by Legislative Decree No. 19990 on the general pension scheme and not by Legislative Decree No. 20530 on the public service pension scheme. It notes, however, that the CATP's representation does not address the issue of whether or not Legislative Decree No. 19990 applies to these former employees, but that it concerns the amount of the retirement pensions to which they are entitled in the framework of this scheme.
39. The Committee notes that workers on seagoing, river and lake-based vessels, including the former employees of the CPV who were seafarers and have completed a prescribed period of sea service, benefit from a retirement age (55 years) that is lower than the age set out in the context of the general pension scheme. Under the terms of Article 3(1)(a)(ii) of Convention No. 71, if pension is provided upon attaining the age of 55 years, seafarers are entitled to a retirement pension at a rate that may not be less than the total obtained by computing for each year of sea service 1.5 per cent of the remuneration on the basis of which contributions were paid in respect of them for that year. With regard to the retirees to whom only Legislative Decree No. 19990 is applicable, the rate of the pension is 50 per cent of the reference remuneration for 15 years of contributions, with this amount being increased by 2 per cent per year of additional contributions. Under the terms of Article 3(1)(a) of Convention No. 71, this rate shall be not less than 22.5 per cent for 15 years of contributions. The Committee therefore considers that the applicable rate is in accordance with the requirements of the Convention. In the case of retirees to whom Legislative Decree No. 25967 is applicable,² the pension corresponds to 50 per cent of the reference remuneration for 20 years of contributions, with this rate being increased by 4 per cent per year of additional contributions. In accordance with Article 3(1)(a) of the Convention, this rate must be not less than 30 per cent for 20 years of contributions. The Committee therefore considers that the rate applicable in this case is in conformity with the Convention.
40. However, the Committee considers that the rules respecting the replacement rate for retirement pensions have to be combined with those respecting the maximum rate of the pensions payable. As the Government itself recognizes, under the terms of section 5 of Emergency Decree No. 105-2001, the maximum monthly amount of pensions paid by the ONP under the terms of Legislative Decree No. 19990 is PEN857.36. Taking into account the minimum replacement rate set out in Convention No. 71, this maximum amount is achieved with a reference remuneration of PEN3,810 for 15 years of contributions (a minimum replacement rate of 22.5 per cent), PEN2,858 for 20 years of contributions (a minimum replacement rate of 30 per cent) and PEN1,906 for 30 years of contributions (a minimum replacement rate of 45 per cent). Further to the Committee's request, the Government has provided, in its communication of 6 February 2012, an example of calculation of the pension paid to one former employee of the CPV under Legislative Decree No. 19990. In this specific case, the amount that the person concerned should normally have received on the basis of his last remuneration was raised to reach the minimum pension of PEN415. The Committee considers, however, that this single

² Legislative Decree No. 25967 applies to workers who had not met the conditions for pension entitlement at the date of its entry into force (19 December 1992).

example is not sufficient to demonstrate that the pensions paid to all former employees of the CPV who were seafarers are in conformity with Article 3(1)(a) of the Convention. In particular, the Committee is not in a position to establish with any degree of certainty whether the provisions of section 5 of Emergency Decree No. 105-2001 establishing a ceiling to pension benefits has in practice an impact on the amount of the pensions paid to them. The Committee cannot therefore conclude that the amount of the pensions paid to all former employees of the CPV who were seafarers and have completed a prescribed period of sea service is in conformity with the requirement of Article 3(1)(a) of the Convention.

IV. The Committee's recommendations

41. *In light of the conclusions set out in paragraphs 24 to 40 above concerning the issues raised in the representation, the Committee recommends that the Governing Body:*

- (a) approve the present report;***
- (b) request the Government to:***
 - (i) take the necessary measures to ensure that the contributions of fishers are effectively equivalent to no more than half of the cost of the pensions payable under the scheme, in any circumstances, in accordance with Article 3(2) of Convention No. 71;***
 - (ii) proceed to the payment of the benefits owed that are still awaiting payment by the CBSSP as soon as possible;***
 - (iii) continue, once the process of the dissolution and liquidation of the CBSSP has been completed, to secure the maintenance of a scheme for the payment of pensions that is in compliance with the requirements of the Convention both in terms of the collective financing and the guaranteed rate of pension benefits and, in this regard, keep the Office informed of any further developments regarding the adoption of the draft text to replace Bill No. 4506-2010-PE;***
 - (iv) ensure that full effect is given to the ruling of the Transitional Civil Chamber of the Supreme Court of Justice of 24 November 2009; and***
 - (v) take all necessary measures to ensure that the rate of the pensions paid to any of the former employees of the CPV who were seafarers and have completed a prescribed period of sea service is in all cases at least equal to the rate resulting from the application of the minimum replacement rate determined by Article 3(1)(a) of Convention No. 71, if necessary by revising the ceiling applicable to such pensions;***
- (c) invite the Government to provide, in a report to be submitted for examination by the Committee of Experts on the Application of Conventions and Recommendations at its next session, detailed information on measures adopted to give effect to the above recommendations; and***

(d) declare closed the procedure initiated by the representation of the CATP alleging non-observance by Peru of Convention No. 71.

(Signed) Ms C. Amero Coutigno (Chairperson)

Mr A. Echavarría Saldarriaga

Mr J. Gómez Esguerra

Point for decision: Paragraph 41