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Report of the Director-General

First Supplementary Report: Report of the Committee set up to examine the representation alleging non-observance by Peru of the Labour Inspection Convention, 1947 (No. 81), made under article 24 of the ILO Constitution by the Autonomous Workers' Confederation of Peru (CATP)

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List of abbreviations

CAS	administrative service contract regime
CATP	Autonomous Workers' Confederation of Peru
CEACR	Committee of Experts on the Application of Conventions and Recommendations
DGDFSST	Office of Human Rights and OSH
DGIT	General Labour Inspectorate
DRTPE/DRTPS	Regional Labour and Employment Promotion Directorates
GEIT	Special labour inspection unit set up to combat forced labour
LGIT	General Labour Inspection Act
MTPE	Ministry of Labour and Employment Promotion
SIIT	Labour inspectorate's integrated computer system
OSH	occupational safety and health
SUNAT	National Superintendency of Tax Administration
SUNAFIL	National Labour Inspection Authority
USAID	United States Agency for International Development

I. Introduction

1. By communication dated 29 August 2011, invoking articles 24 and 25 of the Constitution of the International Labour Organisation (ILO), the Autonomous Workers' Confederation of Peru (CATP) submitted to the ILO a complaint alleging non-observance by Peru of the Labour Inspection Convention, 1947 (No. 81).
2. Convention No. 81 was ratified by Peru on 1 February 1960 and remains in force for the country.
3. The following provisions of the ILO Constitution relate to representations:

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.

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, paragraph 1, of the 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 312th Session (November 2011), based on the report of its Officers, the Governing Body found the representation to be receivable and appointed a Tripartite Committee to examine it, composed of Mr Rafael Leme (Government member, Brazil), Mr Jorge A. De Regil (Employer member, Mexico) and Ms Eulogia Familia (Worker member, Dominican Republic). At its 317th Session in March 2013, the Governing Body appointed Mr Carlos Flores (Government member, Bolivarian Republic of Venezuela) to replace Mr Leme, whose term as a member of the Governing Body ended.
7. The Government of Peru transmitted its observations in two communications dated 1 March and 12 November 2012, respectively.
8. At its meeting of 7 November 2012, in accordance with article 4, paragraph 1(a) and (d), of the Standing Orders, the Committee decided to request the CATP and the Government to provide supplementary information.
9. At the Committee's request, the Government sent a communication dated 6 December 2012.
10. The CATP, for its part, replied to that request in a communication dated 28 December 2012.

11. The CATP sent an additional communication dated 12 August 2013.
12. On 20 November 2013, the Government transmitted its observations on this communication.
13. The Committee met on 27 March 2014 to examine the case. It adopted its report on 27 May 2014.

II. Examination of the representation

A. Allegations of the union dated 29 August 2011

14. *Decentralization.* In a communication dated 29 August 2011, the CATP alleges that decentralization of the labour inspectorate (under which the Regional Labour and Employment Promotion Directorates (DRTPEs) ceased to be part of the organizational and administrative structure of the Ministry of Labour and Employment Promotion (MTPE) and were transferred to the respective regional governments) has resulted in the undermining and dismantling of the system of labour inspection in violation of the Labour Inspection Convention, 1947 (No. 81). It states that assigning responsibilities for labour inspections to the regional governments has removed the central authority's control, cooperation and coordination of the system of labour inspection so that, in practice, it no longer exercises any controls over that system, a fact that is worsening the latter's already difficult situation.
15. *Problems resulting from decentralization of the inspection system.* According to the CATP, the problems that the MTPE is facing in its attempts to decentralize the inspection system are described by the Ministry itself in the Medium-Term Sectoral Transfer Plan for the Labour and Employment Promotion Sector (2010–14). These problems are, in particular: (a) a shortage of human resources to perform the functions transferred; (b) a shortage of logistical resources (computers, furniture and office equipment); (c) inadequate infrastructures to carry out the activities of the DRTPEs, sometimes leading to the office space being insufficient to receive all clients; (d) frequent rotation of regional directors, which makes it difficult to implement plans and programmes and, owing to a lack of institutional memory, delays decision-making; (e) frequent rotation of regional office staff, which requires rescheduling of training and technical assistance activities; (f) lack of a database of staff selected and recruited by the DRTPEs, which could be used to monitor their performance and the training and technical assistance that they receive; (g) lack of a coordinated monitoring and evaluation system shared by the DRTPEs and the regional governments; (h) the regional governments' lack of interest in supporting the requests of the DRTPEs for budgetary resources for the recruitment of staff and acquisition of the logistical resources and infrastructure necessary for their proper functioning; and (i) failure of the regional governments to furnish the DRTPEs with the necessary resources to train staff in the performance of inspection duties.
16. *Status and conditions of service of labour inspectors.* The union maintains that the decentralization process has had an impact on labour inspectors' right of access to the public service and to professional posts and has led some of them to resign. It adds that decentralization could widen the existing variations in the status and conditions of service of labour inspectors, who, although they perform the same duties, are subject to three different recruitment schemes and thus do not all have the same level of pay or stability of employment. These are the public sector regime (governed by the Framework Administration and Public Sector Remuneration Act (Legislative Decree No. 276 (1984)), the private sector regime (regulated by the Employment Promotion Act (Legislative

Decree No. 728 (1991)), and the administrative service contract (CAS) regime (governed by Legislative Decree No. 1057 (2008) on the special regime for the procurement of administrative services).

17. *Remuneration.* The union emphasizes that labour inspectors are not adequately remunerated and mentions the administrative staff of the MTPE, who earn more than inspection staff. According to the union, decentralization could also widen the existing gaps between the level of pay of labour inspectors – which is, in itself, insufficient – and that of other public servants who perform monitoring duties, such as the staff of the National Superintendency of Tax Administration (SUNAT), who earn twice as much as inspection supervisors.
18. *Recruitment.* In addition, the staff members responsible for penalty procedures who are recruited not by the central authority under the General Labour Inspectorate (DGIT) using merit-based competitive recruitment procedures, but by the regional governments, are often in violation of the principles of legality, impartiality, equity, confidentiality, integrity and honesty.
19. *Penalties effectively enforced.* Furthermore, the staff members responsible for sanctions procedures are not adequately trained for the full performance of their duties and there are no dedicated technicians to address issues relating to administrative procedures for the enforcement of penalties based on non-compliance reports for which fines are due. Since many of these penalties remain without effect, workers and unions are disturbed and have lost confidence, since they consider that the independence and impartiality which should characterize the inspection system are not satisfied. The CATP also draws attention to the non-enforcement or ineffective enforcement of the fines imposed.
20. *Number of inspectors.* With respect to the transfer of inspection staff to the regional governments, the CATP fears that very few inspectors will remain attached to the DGIT and that only a very small number of labour inspectors will be transferred to metropolitan Lima to perform inspection duties in a region with an economically active population of over 4.5 million and 80 per cent of the nation's enterprises.
21. *Material resources, planning of inspections and periodical reports.* The CATP complains that the regional inspection staff also lack the information technology consultation tools (databases) and computer equipment that they need in order to perform their duties and that the labour inspectorate's integrated computer system (SIIT) has not been implemented. It also maintains that the planning and performance of inspections has been hindered by transfer of the inspection service to the regional governments; that the central authority in the MTPE now lacks the capacity to set labour inspection goals, strategies and procedures; and that some regional offices do not transmit information on their activities to the central authority, making it impossible to collect data at the national level.
22. The CATP maintains that decentralization of the labour inspectorate constitutes a violation of Articles 4, 5, 6, 7, 10, 11, 16, 19, 20 and 21 of the Convention. It also requests that the Government be urged to address the issues raised by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) and to remove the identified barriers in order to give effect to the principles and objectives of the Convention.

B. Observations of the Government dated 1 March and 12 November 2012

23. *Decentralization.* In its communications of 1 March and 12 November 2012, the Government states that the representation made by the CATP is unfounded and that the

transfer of responsibilities and functions to the regional governments is being implemented under the Framework Decentralization Act (Act No. 27783 (2002)), which regulates the structure and organization of the State, including the national, regional and local governments.

- 24.** *The central authority.* According to the Government, although the inspection functions are being decentralized, the central authority (the DGIT) is still the lead agency for the system of labour inspection, and which the regional authorities responsible for the inspection procedure technically depend on. The DGIT is charged with setting and implementing national and sectoral labour inspection policies, plans, technical guidelines, directives and procedures; administering and supervising the functional system of labour inspection; monitoring implementation of the relevant inspection procedures and labour standards; and centralizing information gathered at the regional and local levels. The Government states that the regional governments are responsible for performing inspections, implementing penalty procedures, allocating material resources and paying the wages of inspection staff. It attaches a copy of the recommendations made in 2012 by the DGIT to various DRTPEs with respect to the decentralization process and to the material resources furnished to inspectors. Those recommendations include the establishment of labour inspection offices and of improvements in the inspectors' material working conditions, the assignment to them of adequate offices, computers and software, printers and other material and logistical resources, and the reimbursement of travel and incidental expenses incurred in the performance of their duties.
- 25.** *Status and selection of staff.* The Government states that, under article 26(d) of the General Labour Inspection Act (LGIT), the central authority is responsible for establishing the procedures for the selection of inspection staff. In Peru, the Regulations governing the career of labour inspectors were adopted through Supreme Decree No. 021-2007-TR, which covers the rights, obligations, prohibitions, incompatibilities, principles and disciplinary regime applicable to inspection staff. Under article 3.1 of the Regulations governing the career of labour inspectors, labour inspection posts are filled through an open recruitment process for which a professional diploma is required and through which aptitude for the post is assessed. Appointment to the post of inspector gives rise to permanent employment with a right to appeal in the event of wrongful termination (article 3.2 of the Regulations). However, it has been demonstrated that the regional governments have recruited inspectors under the administrative service contract regime (CAS). The Government states that the DGIT, as the central authority for the inspection system, has expressed its opposition to the practice and has refused to incorporate staff hired in this manner into the labour inspectorate.
- 26.** *Principles governing staff conduct.* The Government also states that the principles governing the system of labour inspection and the conduct of inspection staff are set out in article 2 of the LGIT and are reflected in articles 14 and 15(e) of the Regulations governing the career of labour inspectors. In accordance with these provisions, staff members' conduct must be consistent with the principles of legality, equity, impartiality, objectivity, efficiency, confidentiality, loyalty, integrity and honesty. The Government mentions the prohibitions applicable to inspection staff, which are set out in article 16 of the above Regulations and include, among other things, having a direct or indirect interest in the undertakings under the staff member's supervision. The Regulations also establish a disciplinary regime that includes penalties and is applicable to all inspection staff at the national level following disciplinary proceedings
- 27.** *Training and evaluation.* The Government also mentions the training system, which operates under the central authority pursuant to article 5 of the Regulations governing the career of labour inspectors, and the evaluation system, covered by articles 30–34 of the

Regulations, through which staff members' work is monitored and assessed in order to ensure their integrity and efficiency and to implement training plans.

- 28.** *Sufficient resources.* The Government lists the 15 regions with access to the SIIT and states that, while it is true that some regions have neither SIIT nor computer software, efforts are being made to address the problem, bearing in mind that responsibility has been transferred to the regional governments, which enjoy administrative, economic, financial, tax and fiscal autonomy and are thus directly responsible for handling such matters. With support from the United States Agency for International Development (USAID), a labour inspection improvement project has been implemented; one of its goals is to increase the inspectors' capacity to perform their duties and, specifically, to use the SIIT.
- 29.** *Handling of offences.* The Government indicates also that the law provides for situations in which non-compliance reports remain without effect. Inspection staff who issue non-compliance reports must follow the principles set out in article 2 of the aforementioned LGIT. If they fail to do so, the penalty is not enforceable and the inspector is subject to disciplinary proceedings pursuant to articles 24–29 of the Regulations governing the career of labour inspectors. The Government explains that the MTPE Regulations on Fines, adopted through Supreme Decree No. 012-2012-TR of 14 August 2012, established a procedure for the payment of fines through the Fines Unit and the Enforced Collection Unit.¹
- 30.** *Transmission of information.* With respect to the allegation that some regional authorities do not transmit information on their activities, the Government states that some of these omissions are a consequence of continual changes in the regional labour inspection authorities and that steps are being taken to collect full data throughout the country and to apply the provisions of Articles 20 and 21 of the Convention.
- 31.** *Inspection policies.* The Government mentions, as advances in inspection policies, the MTPE social and labour policy guidelines for the labour and employment promotion sector (2012–16), which seek to strengthen the labour inspection system at the national level. It maintains that, according to the semi-annual report of the DGIT Labour Inspection Operations Office, as of 14 November 2012, 18 training courses on social and labour issues, human rights and occupational safety and health (OSH) were provided² and reiterates that while responsibilities for labour inspection has been transferred from the national Government to the regional governments, they are exercised within the framework of a National Labour Inspection Plan, which was adopted by the DGIT as the central authority.
- 32.** *Legislation.* The Government also explains that, through draft law No. 538/2011-PE,³ it is decided to establish a national body endowed with its own assets and with functional, economic, technical, financial and administrative autonomy – the National Labour Inspection Authority (SUNAFIL) – which would be the central authority for the functional system of labour inspection and would be responsible for all labour inspection functions

¹ The Government has also transmitted a table showing the number of disciplinary proceedings conducted during the first half of 2012, the number of fines imposed and the amount of those fines.

² The Government transmitted in annex: (i) a copy of the social and labour policy guidelines for the labour and employment promotion sector (2012–16); (ii) a copy of the National Labour Inspection Plan (2012); and (iii) a copy of the Annual Training Plan.

³ Now Act No. 29981 establishing the National Labour Inspection Authority (SUNAFIL), published on 15 January 2013.

and responsibilities at the national level. The regional governments' inspection functions and responsibilities would be limited to micro-enterprises only.

33. In light of these arguments, the Government requests that the representation made by the CATP be dismissed and archived.

C. Supplementary information provided at the Committee's request

34. The Committee requested the CATP to give its views on draft law No. 538/2011-PE and, in particular, on the manner in which the latter gives effect to the obligation established in Article 4(1) of Convention No. 81, which states that the labour inspectorate shall be placed under the supervision and control of a central authority. In particular, the Committee asked whether the CATP considered that there was a central supervision and control authority (Article 4(1) of the Convention) and whether it believed that the SUNAFIL, mentioned in the draft law, would constitute a central supervision and control authority within the meaning of Article 4 of the Convention. The Committee asked the CATP to provide relevant explanations in its reply.

35. The Committee requested the Government to send it a copy of the Framework Decentralization Act (Act No. 27783 (2002)); the General Labour Inspectorate Act; Supreme Decree No. 021-2007-TR, adopting the Regulations governing the career of labour inspectors; and draft law No. 538/2011-PE. It also requested the Government to provide information on progress towards the adoption of draft law No. 538/2011-PE; indicate the current supervision and control responsibilities of the DGIT and those of the SUNAFIL under the draft law; and provide information on, among other things, legislation and projects that would make it possible to determine whether there was a central body with the supervision and control functions mentioned in Article 4(1) of the Convention. With respect to paragraph 1 (page 6) of its reply to the allegations made by the CATP, in which the latter states that it has been verified that the regional governments have ordered that inspection staff be recruited under the CAS regime and that the DGIT, as lead agency for the system of labour inspection, has expressed its opposition to this practice, the Committee requested the Government to inform it of the specific steps that the DGIT had taken in that regard (in addition to expressing its opposition). With regard to Article 6 of the Convention, the Committee requested the Government to provide information on the recruitment system for labour inspectors and on the effect given to this Article in the context of the allegations. Concerning Articles 10 and 11 of the Convention, the Committee requested the Government to reply to the allegations made by the CATP, which had cast doubt on the functioning of the labour inspectorate and on the resources allocated to it, and to report on the extent to which the central authority will have supervision and control functions and responsibilities in the decentralized system (Article 4(1) of the Convention) concerning the matters covered by Articles 10 and 11 of the Convention.

1. Supplementary information provided by the Government on 6 December 2012

36. *The central authority.* In its communication of 17 December 2012, the Government reiterates that, under article 19, paragraph 2, of the LGIT, the central authority within the meaning of Article 4(1) of the Convention was at that time the DGIT in the MTPE. With respect to the draft law establishing the SUNAFIL, the Government indicates that the SUNAFIL will become the new central authority for the system of labour inspection and the authority responsible for supervising implementation of the relevant labour norms within its area of responsibility; approving institutional policies in the area of labour inspection; monitoring and ensuring compliance with the social and labour legislation,

regulations, conventions and contractual provisions that refer to the common and special application regimes; and imposing lawful penalties for violation of the relevant social and labour norms, all of which are within its area of responsibility.

- 37. *Working conditions of labour inspectors.*** The Government states that the working conditions of labour inspectors are regulated by articles 26–30 of the LGIT and by the Regulations governing the career of labour inspectors, which include rules on recruitment and the applicable legal regime, education and training guidelines, duties, participation in the drafting of norms and the State’s obligation to furnish inspectors with the material resources and offices necessary for the performance of their duties.
- 38. *Recruitment.*** The Government also maintains that: inspection posts are filled through an open recruitment process on the basis of aptitude; the recruitment of assistant inspectors being governed by article 26(a) of the LGIT; and the posts of inspector and inspection supervisor are filled through competitive internal promotion pursuant to paragraphs (b) and (c) of that article. In both cases, the competitive recruitment process is conducted following the guidelines established by the DGIT. These guidelines are established for each competitive recruitment at the initiative of the central authority or the regional authorities. CAS recruitment is temporary in nature and the executive authority has been drafting legislation to ensure that workers hired under such contracts can be recruited to permanent posts.
- 39. *Material resources.*** The Government reiterates that the DGIT supervises the recruitment of inspection staff on CAS on a schedule and in light of the goals set out in the Institutional Operations Plan and the Protocol on Supervision, as well as the relevant operations of the functional system of labour inspection with respect to the necessary human resources, offices, premises, material resources and equipment. The DGIT has visited the regional offices and made relevant recommendations, urging the regional governments to provide an adequate environment and material resources.

2. *Supplementary information provided by the union on 28 December 2012*

- 40.** In a communication dated 28 December 2012, the CATP states that, although the draft law establishing the SUNAFIL and amending the LGIT and the Basic Regional Governments Organization Act (Act No. 27867) was adopted on 6 December 2012, it had not yet entered into force at the time when the communication was sent. The union points out that, according to article 3 of the Act, the SUNAFIL is responsible for planning and implementing at the national level all the functions and responsibilities mentioned in article 3 of the LGIT and acts as the central authority and lead agency for the system of labour inspection. The Act also states that the regional governments, within the framework of the functions set out in article 48(f) of the Basic Regional Governments Organization Act, plan and implement, within their areas of territorial jurisdiction, all of those functions in respect of micro-enterprises. Article 18 of the Act establishes that the SUNAFIL is the central authority of the system of labour inspection mentioned in the LGIT and that, as lead agency, it sets rules and procedures to ensure implementation of the relevant public policies within its responsibility. In conclusion, the CATP states that the Act includes provisions that give effect to the obligation established in Article 4(1) of the Convention. The establishment of the SUNAFIL as the central supervision and control authority, with the amendments made through articles 3, 13, 18, 19, 35, 39, 41 and 49 of the LGIT, will give effect to Article 4(1) of Convention No. 81 and will facilitate the promotion, supervision and monitoring of compliance with the social, labour and OSH legislation.

**D. Additional communication dated
12 August 2013 from the union**

41. *Act No. 29981 establishing the SUNAFIL, published in the Official Gazette of 15 January 2013, and amending the LGIT (Act No. 28806) and the Basic Regional Governments Organization Act (Act No. 27867).* The CATP attaches a copy of the issue of the *Gazette* in which Act No. 29981 establishing the SUNAFIL was published, and reiterates that the SUNAFIL will plan and implement all the functions and responsibilities set out in article 3 of the LGIT at the national level and will act as central authority and lead agency for the system of labour inspection. The regional governments, for their part, within the framework of the functions established in article 48(f) of Basic Act No. 27867, will plan and implement, within the areas of their territorial jurisdiction, all the functions and responsibilities listed in article 3 of the LGIT in respect of micro-enterprises, including those that are part of the informal economy, as described in the regulations and in a manner consistent with the national and sectoral policies and plans and the rules issued by the lead agency of the inspection system. The CATP indicates that, at the time when the communication was sent, the SUNAFIL was not yet in operation.
42. *The regional governments.* The CATP states that it endorses some of the provisions of the Act that established the SUNAFIL with a view to its becoming the central authority of the system of labour inspection in accordance with the Convention. However, it does not agree that the regional governments should be given responsibility for inspection functions in respect of micro-enterprises since, in its opinion, that situation would lead to further political interference and to a lack of autonomy in the inspectors' work. The union notes the regional governments' lack of interest in the labour inspectorate; they have not recruited inspectors or followed the technical guidelines issued by the central authority, the DGIT, nor have they coordinated with it. Inspections in the provinces have been minimal and, owing to the technical standards adopted, the labour laws have not been applied uniformly; there have been no interventions in the jungle, where forced labour is known to exist; and there has been little activity in the provincial agro-industrial sector.
43. *Responsibility for public sector OSH inspections.* The CATP maintains that article 123 of the implementing regulations for the Occupational Safety and Health Act (Act No. 29783), adopted through Supreme Decree No. 005-2012-TR, is unlawful because it limits the authority of the MTPE to monitor compliance with the labour laws on OSH by public sector entities that employ workers recruited under the private sector regime whereas, under article 95 of the Occupational Safety and Health Act, the MTPE is responsible for the system of labour inspection, for monitoring compliance with the OSH norms and performance of the resulting administrative duties, providing relevant technical guidance and advice, and applying the penalties established in the LGIT. The union stresses that the implementing regulations are also inconsistent with article 4 of the Occupational Safety and Health Act, which states that the Act applies to all sectors and covers all employers and workers in the private sector, public servants and other public sector employees, employees of the Peruvian armed forces and police, and self-employed workers.
44. *Lack of support staff.* The CATP indicates that inspection supervisors have been assigned administrative tasks that make it difficult for them to perform inspections as such since most of them have not been assigned administrative support staff.
45. *Collaboration with other bodies.* The complainant organization also considers that collaboration with the SUNAT could be made more effective and that agreements should be signed with the police, so that the latter could provide necessary assistance to the inspectors (who are often subject to verbal and physical assault), and with the Public Prosecution Service and the public prosecutors, so that industrial accidents will be reported

immediately to the labour inspectorate and the prosecutor on duty with a view to the realization of joint activities.

46. *Coexistence of regimes.* The union alleges that there is a draft supreme decree providing for the coexistence of various labour regimes within the SUNAFIL, despite the fact that the Act clearly and expressly provides that its workers must be subject to the private sector regime regulated by Legislative Decree No. 728.
47. *Termination of functions.* The CATP also considers that the Public Service Act (Act No. 30057 of 4 July 2013) is in violation of the Convention because, by establishing evaluations as the basis for continuing public service employment, it opens the possibility of termination of employment with the public service on that basis. It also considers that the Act's wording, "staff members with demonstrated inefficiency", is subjective and represents an attempt to dismiss staff; article 26 of the Act states: "A public servant who has received job training and, for the second time, been evaluated and placed under observation shall be deemed to be a staff member with demonstrated inefficiency." The union also considers that potential termination of employment with the public service on the grounds of the public servant's ability, following a negative evaluation; elimination of the post for technological, structural or organizational reasons; or elimination of the entity by express legal mandate (article 49, paragraphs (i), (k) and (l) of the Act) should be eliminated. It maintains that the list of disciplinary grounds should be reviewed because it is vague and arbitrary.
48. *Remuneration.* The CATP requests the introduction of a pay scale for labour inspectors that is just, equitable and consistent with their functions and responsibilities in order to assure the stability of employment of inspection staff and to address the comments that the CEACR has referred to the Government on this matter.
49. *Training.* The CATP also mentions the 2010 CEACR comments on the training of labour inspectors and regrets that no special inspection training plan is being implemented and that measures have not been ordered with a view to the cooperation of duly qualified technical experts and specialists.
50. *Number of inspectors.* The union stresses that the current number of inspectors is insufficient and expresses the hope that the situation will change with the establishment of the SUNAFIL and that an adequate number of inspectors will be recruited, as will be possible if a sufficient budget is allocated.
51. *Material resources.* The CATP also alludes to the 2010 CEACR comments on the inspection services' lack of material means and, specifically, the shortage of adequate offices and transport facilities. It notes that, under the SUNAFIL, the office space for labour inspectors will continue to be inefficient. The union also mentions the 2012 CEACR comments concerning the Forced Labour Convention, 1930 (No. 29), in which it notes the need to provide the special labour inspection unit set up to combat forced labour (GEIT) with adequate staff and material resources and, in particular, to strengthen its capacity for mobility so that it can accomplish its missions throughout the country.
52. *Complaints.* The CATP also mentions the 2010 CEACR comments on Articles 12(1)(a) and (c), and 15(c) of the present Convention and states that the situation in that regard has not changed; the inspectors receive inspection orders with the complaint attached to the cover of the file. The union also maintains that Article 15(c) of the Convention is being violated in the case of complaints which are lodged by former workers or concern violation of the provisions of an employment contract since, under a DGIT directive, the

complainant must waive confidentiality before such a complaint can be accepted, the inspection order can be issued and appropriate action can be taken.

53. *Notification.* According to the CATP, the system for notification to the inspectorate of industrial accidents and cases of occupational disease is seriously flawed since accidents and cases of occupational disease in the informal sector or under non-compliant employers may not be reported owing to the reporting requirements. Therefore, the statistics do not reflect the reality and the labour inspectorate cannot take the necessary preventive measures.
54. *Inspections.* The union also alleges that there is still no planning of inspections and that they are contingent on the receipt of complaints. It notes that the CEACR, in its comments on Convention No. 29, “expresses its concern ... at the fact that no offences have been reported, despite surveys having identified some regions where forced labour exists and the processes whereby such practices are imposed”.
55. *Non-compliance reports and sanctions.* The complainant organization states that, although the amount of the fines was increased with the establishment of the SUNAFIL, violations are often removed without explanation during penalty procedures and that, where they are not removed, fines go unpaid; thus, the penalties are not effectively enforced.
56. *Annual reports.* The CATP stresses that although the labour inspectors submit monthly reports as required, the DGIT does not submit annual reports or provide statistics.

E. Additional communication dated 20 November 2013 from the Government

57. *Decentralization process.* The Government states that, although the SUNAFIL was established in order to address problems with the current decentralized system of labour inspection, to completely disengage the regional governments from this function would be contrary to the decentralization process that the Government has been implementing for years. While the regional governments will continue to be responsible for labour inspection, the SUNAFIL will play a supervisory role.
58. *Cooperation between labour inspectors and other public bodies.* With regard to collaboration with public entities, the Government indicates that there is a specific cooperation agreement between the MTPE and the SUNAT and that various working meetings have been held with a view to its implementation.
59. *Posts.* The Government indicates that the post of labour inspector is regulated by Supreme Decree No. 021-2007-TR, which establishes the procedures for recruitment and the conditions for promotion. Opportunities for internal promotion arise annually. All MTPE post recruitment processes are public and any staff member who fits the post profile may apply.
60. *Training.* The Government states that the MTPE, through the DGIT, implements the annual Labour Inspection Staff Training Programme. It has also transmitted a detailed table showing the training activities (74) organized in 2012, in which staff from Lima and the other regions participated.⁴ It also reports that the DGIT has received technical

⁴ The table shows that these activities cover, among other things, matters such as ergonomics, OSH, labour intermediation, the DGIT regulatory guidelines, administrative penalty procedures, child labour, forced labour and personal protection equipment, etc.

assistance and advice from the Office of Human Rights and Occupational Safety and Health (DGDFSST) on matters relating to child and forced labour. All GEIT inspectors have a specialization in human rights – in fact, most have degrees in that field – and have received training in the supply of advice and technical assistance, including in the area of child and forced labour. In addition, at the three macro-regional inspection meetings held in the northern, central and southern regions of the country in 2013, inspection criteria reflecting the problems faced by each region were discussed and established.

- 61.** *Collaboration between technical experts and specialists.* In response to the allegation that no measures have been taken to ensure the collaboration of technical experts and specialists, the Government indicates that a draft supreme decree adopting regulations on OSH supervision, inspection and penalties for the mining, electricity and hydrocarbon sub-sectors is under consideration. The draft decree covers, among other things, a register of OSH experts. The Government also indicates that, according to the implementing regulations for the SUNAFIL, the National Inspection Intelligence Department is responsible for appointing experts and specialists.
- 62.** *Material resources.* The Government mentions the information submitted by the Labour Inspection Authority in the DRTPE for Metropolitan Lima, which lists the equipment furnished to inspectors for the performance of their duties (mobile phones and computer software). Their office area measures approximately 800 m² and is for their exclusive use. Inspectors are reimbursed for transport costs (for a maximum of 37 Peruvian nuevo sols (PEN) and a minimum of PEN10 per day, depending on the region) and ten vehicles are allocated to the inspectors.
- 63.** *Notification.* The system for notification of industrial accidents through the web page has been put in place so that enterprises themselves can meet the obligation to report industrial accidents. According to the Government, by its very nature, an enterprise in the informal economy will not report a situation that would result in a verification inspection. Accidents occurring in informal economy enterprises are handled through reports on inspection investigations performed at the request of the interested party or, where the accident is in some way brought to the knowledge of the DGIT, at its own initiative.
- 64.** *Planned inspections.* The Government denies the CATP allegation that there is no planning of operations and maintains that the DGIT prepares an annual National Labour Inspection Plan, which sets out in detail the activities to be carried out during the year. The Plan is drawn up on the basis of information from the system of labour inspection, through which vulnerable groups and economic sectors are identified and maps of the areas on which the State should focus are prepared. Special attention is also paid to the verification of compliance with OSH norms in the mining and energy sectors, for which the MTPE recently assumed responsibility.
- 65.** *Annual reports.* The Government maintains that the CATP allegation that the DGIT does not submit reports or provide statistics is baseless since the Statistical Bulletin is submitted to the Office of the Deputy Minister of Labour on a monthly basis. The Bulletin contains a monthly summary of inspection and advisory activities and is aimed at facilitating decision-making. The statistics in the Bulletin reflect the reports of the SIIT, a centralized information registration system, which is currently in use in 15 regional labour and employment promotion offices and departments, which account for some 70 per cent of all inspections in the country. As for the allegations concerning the annual report, the Government states that the annual report is prepared and will be sent to the Office.

III. Conclusions of the Committee

66. The Committee has based its conclusions on the review of the allegations of the CATP, the observations transmitted by the Government, the replies of the complainant organization and the Government to the Committee's questions, the information previously communicated by the Government in its reports on the application of ratified Conventions, due under article 22 of the ILO Constitution (article 22 reports), and the comments of the CEACR.
67. The Committee notes that, since the submission of the claim, new legislation relating to the organization and functioning of the labour inspectorate has been adopted. The relevant legislation currently comprises essentially: (1) Act No. 29981, published on 15 January 2013, establishing SUNAFIL and amending the LGIT (Act No. 28806) and the Basic Regional Governments Organization Act (Act No. 27867); (2) Supreme Decree No. 007-2013-TR, of 6 August 2013, adopting the Regulations on the Organization and Functions of the National Labour Inspection Authority (SUNAFIL); (3) Supreme Decree No. 009-2013-TR, of 24 October 2013, amending the Regulations on the Organization and Functions of the National Labour Inspection Authority (SUNAFIL); and (4) Supreme Decree No. 015-2013-TR, of 26 December 2013, which specifies that the labour inspection function should be exercised by regional governments. It also takes note of the recent Ministerial Decision No. 0037-2014-TR of 28 February 2014, approving the transfer of responsibility from the MTPE to the SUNAFIL.

A. Preliminary observations

68. At the outset, in light of the allegations made by the CATP, the Committee must consider whether, in decentralizing the system of labour inspection, the Peruvian Government has violated the provisions of Convention No. 81 concerning: the supervision and control of the system of labour inspection by a central authority (Article 4(1)); the legal status and conditions of service of labour inspectors (Article 6); the recruitment of inspectors on the basis of their qualifications (Article 7(1)); the adequate training of labour inspectors (Article 7(3)); the number of labour inspectors (Article 10); the material resources provided to labour inspectors (Article 11); the preparation of periodic reports on inspection activities (Article 19); and the preparation and submission to the Office of an annual inspection report (Articles 20 and 21).
69. The Committee must then consider the other allegations made by the CATP with respect to: the scope of application of labour inspections (Article 2); the additional duties of labour inspectors (Article 3(2)); cooperation between the inspection services and other public institutions (Article 5(a)); the right free access to, and control of, workplaces and the principle of the confidentiality of complaints (Articles 12(1)(a) and (c), and 15(c)); the frequency and thoroughness of inspections (Article 16); and the enforcement of penalties (Article 18).

B. Application of the Convention in the process of decentralization of the system of labour inspection

1. *Placement of the system of labour inspection under the supervision and control of a central authority*

70. The Committee recalls that Article 4(1) of the Convention states:

1. So far as is compatible with the administrative practice of the Member, labour inspection shall be placed under the supervision and control of a central authority.

- 71.** It is the Committee's understanding that the present complaint essentially casts doubt on the effective functioning of the system of labour inspection under the supervision and control of a central authority under Peru's ongoing decentralization process. It notes that since the submission of the complaint the relevant legislation has changed and that the information contained in the preceding paragraphs shows that this process is still under way. The Committee is therefore of the view that consideration of this situation is complicated given its changing nature.

Situation prior to the establishment of the SUNAFIL

- 72.** The CATP alleges that decentralization of the labour inspectorate has led to a lack of control, cooperation and coordination by the current central authority of the system of labour inspection with respect to the inspection responsibilities assigned to the regional governments and has ended control by the central authority. It stresses that the decentralization of inspections in the context of the already difficult situation of the labour inspectorate together with the regional governments' lack of interest in, and commitment to, the activities and objectives of the Regional Labour and Social Promotion Offices (DRTPS), which are responsible for, among other issues, labour inspections, has worsened that situation.
- 73.** The union considers that assigning responsibility for labour inspections to the regional governments has caused problems, particularly with regard to: the application of uniform criteria throughout the country; allocation of financial, human and material resources to the labour inspection services; labour regimes and conditions of service of labour inspectors; recruitment and training of inspectors; planning and performance of inspections; and preparation of periodical reports. The Government, for its part, maintains that decentralization has not hindered the supervision and control of the inspection system by the DGIT in its role as the central authority.
- 74.** The Committee notes from the statement of reasons for draft law No. 538/2011-PE establishing the SUNAFIL that, as part of the decentralization process initiated in 1998, the then DRTPS are no longer an integral and administrative part of the Ministry of Labour; they were incorporated into the respective regional governments by, at the latest, 1 January 2003.
- 75.** It notes, on the one hand, that, under article 48 of the Basic Regional Governments Organization Act (Act No. 27867) of 2002, those governments were assigned, among other specific functions relating to labour, employment promotion and small and micro-sized enterprises, responsibility: for the planning and implementation of procedures for the supervision, control and inspection of labour norms; for actions in the area of OSH and social welfare; and for ensuring compliance with the norms governing prevention of, and protection from, occupational hazards.
- 76.** It also observes that, pursuant to article 19.1, read in conjunction with article 35(c), of Basic Act No. 27867, the annual budget of the Republic has been decentralized and the regional and local governments adopt their internal arrangements and institutional budgets under the State Budget Act and the annual budget acts. Pursuant to article 72 of the Act (as amended by Act No. 27902 of 2003), the regional governments regulate their resources, property and assets and administer them in accordance with the law. Consequently, the State's budgetary allocation to the labour inspectorate has been decentralized and decisions on such matters are taken by the individual regional governments.
- 77.** On the basis of the documents provided by the Government, especially those concerning the recommendations made in 2012 to various regional governments with regard to the problems identified by the DGIT – that the regional governments should, among other

things, prepare their inspection plans, appoint public servants to fill labour inspection supervisor posts, allocate material and logistical resources and establish labour inspectorate offices – the Committee concludes that assigning responsibilities to the regional governments in this area has significantly reduced the responsibilities of the DGIT. It appears that the DGIT plays no role in determining the financial and material resources that the labour inspection services require in order to properly perform their inspection duties and that even the establishment of regional inspection offices now lies with the local governments. Thus, the central authority has apparently lost a significant portion of its competences concerning coordination, supervision and control.

78. The Committee recalls that, as the CEACR stated in its General Survey on Labour Inspection, 2006: “Attaching the labour inspectorate to a central authority facilitates the establishment and application of a single policy throughout the territory covered, and makes it possible to use available resources in a rational way by, for example, eliminating duplication of effort.” In that case, the CEACR considered that an initiative adopted in a country – decentralization of the labour inspectorate without also requiring the decentralized regional and local administrative authorities to set up a system for its functioning and to allocate sufficient budgetary resources to it – constituted a violation of the Convention.⁵

79. The Committee considers that the application of a consistent and coordinated labour inspection policy requires that the central labour inspection authority ensure the proper functioning of the entire inspection system and exercise effective supervision and control over the system as a whole and over its functions at the national and local levels. This is confirmed by the requirement that the labour inspectors or local inspection offices, as the case may be, submit to the central inspection authority periodical reports on the results of their inspection activities pursuant to Article 19 of the Convention, which states:

1. Labour inspectors or local inspection offices, as the case may be, shall be required to submit to the central inspection authority periodical reports on the results of their inspection activities.

2. These reports shall be drawn up in such manner and deal with such subjects as may from time to time be prescribed by the central authority; they shall be submitted at least as frequently as may be prescribed by that authority and in any case not less frequently than once a year.

80. **The Committee is of the view that, as a result of decentralization, the organization and functioning of the labour inspectorate are no longer fully consistent with Article 4(1) of the Convention since, in practice, the role of the DGIT as central authority has been significantly reduced. It notes, nevertheless, that with the entry into force of Act No. 29981 and its implementing regulations, the situation is changing for the better as regards a part of enterprises being subject to the supervision and control of a central authority.**

Changes in the situation since the establishment of the SUNAFIL

81. The Committee observes that Act No. 29981, published on 15 January 2013, established the SUNAFIL. Supreme Decree No. 007-2013-TR as amended by Supreme Decree No. 009-2013-TR approves the Regulations on the Organization and Functioning of the National Labour Inspection Authority (SUNAFIL); and Ministerial Decision No. 0037-2014-TR of 28 February 2014, approving the transfer of responsibility from the MTPE to

⁵ ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations* (hereinafter: “2006 General Survey on labour inspection”), Report III (Part 1B), International Labour Conference, 95th Session, Geneva, 2006, para. 140.

the SUNAFIL, establishes 1 April 2014 as the date of the SUNAFIL's commencement of operations as the central authority of the labour inspection system at the national level, and of the exercise of its inspection and sanction-related responsibilities in Metropolitan Lima. It also notes that the Public Sector Budget Law for the tax year 2014 states that the progressive implementation of the SUNAFIL is extended until 31 December 2014.

- 82.** The Committee notes that article 1 of the above Act No. 29981 established the SUNAFIL as a specialized technical body, attached to the MTPE, to be responsible for promoting, supervising and monitoring compliance with the legislation on social, labour and OSH matters and for providing technical advice, performing controls and proposing the adoption of norms in those areas.
- 83.** Article 3 of the Act provides that the SUNAFIL shall plan and implement all the activities set out in article 3 of the LGIT at the national level and shall act as central authority and lead agency for the system of labour inspection. Article 3 also provides, however, that the regional governments, within the framework of the functions set out in article 48(f) of Basic Act No. 27867 (The Regional Governments Organization Act), shall plan and implement, within their respective areas of territorial jurisdiction, all of the functions and responsibilities listed in article 3 of the LGIT in respect of formal- and informal-sector micro-enterprises in accordance with the regulations, national and sectoral policies and plans, and the norms issued by the lead agency of the functional system.
- 84.** The second supplementary modification provision of the above Act amends article 48(f) of the Regional Governments Organization Act and provides that the regional governments shall be responsible for: planning and implementing the procedures for employment and the promotion of small enterprises and micro-enterprises; the supervision, control and verification of compliance with the labour norms concerning micro-enterprises and the application of relevant penalties within their area of responsibility. The fifth supplementary modification provision provides that a supreme decree shall define "micro-enterprise" for the purposes of article 3.
- 85.** The Committee takes note of Supreme Decree No. 015-2013-TR, of 26 December 2013, which specifies that the regional governments are responsible for exercising labour inspection functions. It notes that article 2 of this Decree defines a micro-enterprise, for the sole purposes of specifying that the regional governments are responsible for exercising labour inspection functions, as an employer with between one and ten workers registered in the electronic register created by Supreme Decree No. 018-2007-TR and its amending and supplementary norms. In accordance with the supplementary temporary provision of the above Decree, the MTPE will approve, by means of a decision, the list of micro-enterprises which lie within the sphere of the regional governments for the tax year 2014.
- 86.** According to articles 4(h) and 6 of Act No. 29981, the SUNAFIL is empowered to impose the relevant penalties as established in article 4(f) of the Act and to ensure enforcement of the relevant fines, within its area of responsibility. According to article 7 of the Act, the SUNAFIL comprises: (a) an executive (consisting of the Governing Board and the Superintendent); (b) the Labour Inspection Court; (c) subsidiary bodies; (d) support bodies; and (e) decentralized bodies.
- 87.** According to article 18 of Act No. 29981, "the SUNAFIL is the central authority of the system of labour inspection mentioned in the LGIT (Act No. 28806) ...; and, as the lead agency of this functional system, it shall issue regulations and establish procedures to ensure compliance with the relevant public policies, while ensuring the functioning of the system with the participation of the regional governments ...". According to article 19 of the Act, the SUNAFIL must establish mechanisms for linkages and coordination with other governmental and intergovernmental entities and with the regional and local governments

in order, among other things, to coordinate implementation of the relevant national and sectoral policies, sign inter-agency technical assistance agreements and implement mutual cooperation and collaboration activities.

88. The first supplementary modification provision of Act No. 29981, amending article 19 of the LGIT, establishes that the system of labour inspection comprises: (a) the SUNAFIL, which is the lead agency and central authority of the system of labour inspection; and (b) the organizational units of the regional governments that operate functionally and technically under the central authority in matters relating to labour inspection.
89. The last paragraph of the first supplementary modification provision of the Act states that the SUNAFIL and the regional governments and public or private entities responsible for ensuring compliance with labour norms may sign agreements empowering it to monitor compliance with those norms.
90. According to the second temporary supplementary provision of Act No. 29981, the MTPE shall retain responsibility for administration of the functional labour inspection system pending adoption of the Regulations on the Organization and Functions of the National Labour Inspection Authority (SUNAFIL) and other management instruments of the SUNAFIL. Ministerial Decision No. 0037-2014-TR extends progressive implementation of the SUNAFIL until 31 December 2014.
91. The Committee notes that the SUNAFIL Regulations, adopted through Supreme Decree No. 007-2013-TR of 6 August 2013, establish the organizational structure and functions of the various SUNAFIL bodies. According to article 4 of the Regulations, the functions of the SUNAFIL include, among other things: supervising compliance with social and labour norms; performing the relevant inspection functions (paragraph (a)); adopting inter-agency labour inspection policies consistent with national and sectoral policies (paragraph (b)); and signing relevant management agreements with the regional governments (paragraph (i)).
92. Article 37 of the SUNAFIL Regulations states that the regional office is the decentralized body responsible for leading and supervising the programming, planning and implementation of inspection and supervision activities, the supply of advice and technical assistance and the supervision of penalty procedures. Article 50 of the Regulations states that the SUNAFIL may have 25 regional offices, one for each region.
93. The Committee observes that with the adoption and implementation of Act No. 29981 and of the SUNAFIL Regulations, the inspection system operates under a central authority (the SUNAFIL) and will perform its functions at the regional and local levels through its decentralized bodies except in matters relating to micro-enterprises (which, according to the CATP, account for the majority of enterprises in the country), for which the regional governments retain responsibility and over which the SUNAFIL has no jurisdiction. It is the Committee's understanding that the SUNAFIL is not empowered to supervise and control labour inspections of micro-enterprises. Furthermore, although it understands that decentralization of the labour inspectorate is part of the process of decentralizing the administration that the Government has been pursuing for years and that, as the Government itself maintains, it therefore appears impossible to remove all inspection functions from the regional governments, **the Committee recalls that obligations arising from the ratification of a Convention are the responsibility of the Government, which is responsible for ensuring the conditions for its applications throughout the country.**
94. Despite the positive changes as regards part of the enterprises being subject to a central authority, the Committee cannot for the time being pass judgment on the way in which the central authority will exercise its functions with respect to those enterprises since the

SUNAFIL implementation process is not yet complete and the performance of those functions will need to be observed in practice. **This evolving process also allows for the possibility that the Government will take the necessary corrective measures. The Committee trusts that this process will comply fully with the provisions of the Convention and requests the Government to keep the CEACR informed of how the situation evolves.**

95. With respect to labour inspection in micro-enterprises, which continues to fall within the competence of regional governments that enjoy administrative and financial autonomy and are not covered by the legislation relating to the SUNAFIL, the Committee notes that the problems indicated in paragraphs 72 ff. still appear to exist. In this context, it recalls the observations made in paragraph 78, according to which the CEACR has indicated that, in order to comply with the requirements of the Convention, the decentralization of labour inspection should be accompanied by the obligation placed on decentralized regional or local administrative authorities, to introduce a system for its functioning and to assign sufficient budgetary resources to it.

96. Noting the efforts made by the Government, the Committee requests it to adopt, on a regular basis, both the necessary legal and practical measures to ensure that the entire system of labour inspection is placed under the supervision and control of a central authority pursuant to Article 4 of the Convention.

2. *Obligation to submit periodic reports to the central authority and to publish and submit to the ILO an annual inspection report*

97. The Committee also recalls that, according to Article 19(1) of the Convention:

1. Labour inspectors or local inspection offices, as the case may be, shall be required to submit to the central inspection authority periodical reports on the results of their inspection activities.

According to Article 20:

1. The central inspection authority shall publish an annual general report on the work of the inspection services under its control.
2. ...
3. Copies of the annual reports shall be transmitted to the Director-General of the International Labour Office within a reasonable period after their publication and in any case within three months.

And according to Article 21:

The annual report published by the central inspection authority shall deal with the following and other relevant subjects in so far as they are under the control of the said authority:

- (a) laws and regulations relevant to the work of the inspection service;
- (b) staff of the labour inspection service;
- (c) statistics of workplaces liable to inspection and the number of workers employed therein;
- (d) statistics of inspection visits;
- (e) statistics of violations and penalties imposed;
- (f) statistics of industrial accidents;
- (g) statistics of occupational diseases.

98. The Committee notes the allegation by the CATP that some regions do not transmit information on their activities, making it impossible to collect data at the national level.
99. The Government attributes the failure of some regions to transmit information on their activities to continual changes in the regional authorities. It states, however, that measures designed to collect full data throughout the country and ensure full compliance with the requirements of Articles 20 and 21 of the Convention are being implemented. The Statistical Bulletin is submitted to the Office of the Deputy Minister of Labour on a monthly basis. The statistics in the Bulletin correspond to the reports of the SIIT, a centralized information registrant system that is now being implemented in 15 DRTPEs, which account for some 70 per cent of all inspections in the country. As for the allegations concerning the annual report, the Government states that the annual report to the ILO is prepared.
100. The Committee notes that in its 2010 comments, the CEACR notes “with interest, following its repeated requests, the provision of a report on the work of the labour inspectorate for 2007” and requests the Government “to ensure that an annual inspection report containing information on the subjects listed under Article 21 will be published regularly and transmitted by the central inspection authority to the ILO, in accordance with Article 20”.
- 101. The Committee stresses the need for the Government to adopt, on a regular basis, the necessary measures to collect full periodic data on the activities of local inspection offices with a view to the application of Articles 19, 20 and 21 of the Convention.**

3. Status and conditions of service of labour inspectors

102. The Committee recalls that Article 6 of the Convention states:

The inspection staff shall be composed of public officials whose status and conditions of service are such that they are assured of stability of employment and are independent of changes of government and of improper external influences.

Situation prior to the establishment of the SUNAFIL

103. The union maintains that the decentralization process has had an impact on labour inspectors' right of access to the public service and to professional posts and has led some of them to resign. It maintains that, in the context of the decentralization, the recruitment of labour inspectors under three different regimes (the public sector, private sector and CAS regimes) for inspection staff who perform the same duties have different legal statuses and working conditions, has resulted in differences in the level of pay and stability of employment.
104. The Government maintains that appointment to the post of inspector gives rise to permanent employment with a right to appeal in the event of wrongful termination. However, it admits that the regional governments have recruited inspectors under the CAS regime, which, as the Committee understands it, is a temporary contract. The DGIT, as the central authority for the inspection system, has expressed its opposition to the practice and has rejected the incorporation of staff hired in this manner into the labour inspectorate. The Government also indicates that CAS recruitment is temporary in nature and that legislation is being drafted in order to ensure that workers hired under this regime can be recruited to permanent posts.

105. It is the Committee's understanding that inspectors recruited under the private sector and CAS regimes are not incorporated into the administration and do not enjoy the status of public servants, as per the Convention.
106. The union also stresses that labour inspectors are not adequately paid and mentions the case of the administrative staff of MTPE, who earn more than labour inspectors. According to the complainant organization, decentralization could widen the existing gaps between the already inadequate wages of labour inspectors and those of other public servants who perform monitoring duties, such as the SUNAT staff, who earn twice as much as inspection supervisors.
107. The Committee emphasizes that the CEACR has been commenting on the status and conditions of service of labour inspectors (including their level of pay and career prospects) since 2001. In its 2010 observation on the application of the present Convention, the Committee recalls that the CEACR stressed "that it is essential that the status, level of pay and career prospects of labour inspectors are such that they attract quality staff, retain them and protect them from any improper external influence. These conditions should not only be expressed in law on the basis of legal provisions, but should also be applied in practice."
- 108. The Committee considers that the recruitment of labour inspectors by the regional governments under the private sector and CAS regimes has not provided labour inspectors with a status or conditions of service such that they are assured of stability of employment and are independent of changes of government and of improper external influences as required under Article 6 of the Convention.**

Changes in the situation since the establishment of the SUNAFIL

109. The union maintains that there is a draft supreme decree providing for the coexistence of various labour regimes within the SUNAFIL and that the Act establishing it (Act No. 29981) clearly and expressly provides that its workers must be subject to the private sector regime. The Government has not made any statements in this regard.
110. The Committee notes, however, that, according to article 20 of Act No. 29981, "SUNAFIL workers shall be governed by the private sector regime until the public sector regime is implemented." In that regard, it notes that, according to the first temporary supplementary provision of the Public Service Act (Act No. 30057),⁶ the regime envisaged therein is to be implemented progressively within a maximum of six years.
111. The Committee nevertheless observes that the purpose of the Public Service Act is "... to establish a single, exclusive regime for persons who provide services to the public entities of the State or are responsible for their management, for the exercise of their powers and for furnishing services to them" (article I). The second temporary supplementary provision of the Act provides that, once the "decision initiating the implementation process has been issued", any incorporation of public servants into the entity in question shall be subject to the provisions of the public service regime contained in the Act and its regulatory provisions (paragraph (c)). The regulations contained in Legislative Decrees Nos 276 (on the public sector regime) and 728 (on the private sector recruitment regime) shall remain in force only in respect of public servants who are governed by these regimes and elect to remain under them until their link with the entity is terminated (paragraph (e)). According to the fourth temporary supplementary provision of the Public Service Act, public servants governed by the regimes established in Legislative Decrees Nos 276, 728 and 1057 (CAS)

⁶ Promulgated on 3 July 2013.

may transfer voluntarily to the public service through an open, merit-based recruitment process. Regulations must establish the conditions for competitive recruitment involving a change of regime.

112. The Committee considers that the coexistence of three different regimes is not consistent with Article 6 of the Convention. It notes that the Government is implementing a process of change leading to a single public service statute that will place all labour inspectors under a regime that meets the requirements of Article 6 of the Convention. **The Government should provide the CEACR with information on progress in the implementation of that process at the Committee's next meeting in November 2014. The Committee also requests the Government, while the single statute is being implemented, to take the necessary measures to guarantee all labour inspectors stability and independence in their employment.**

113. Termination of functions. The CATP considers also that the above Public Service Act is in violation of the Convention because, by establishing evaluations as the basis for continuing public service employment, it opens the possibility of termination of employment with the public service on that basis. It also considers that the Act's wording, "staff members with demonstrated inefficiency", is subjective and represents an attempt to dismiss staff. Similarly, it maintains that potential termination of employment with the public service on the grounds of the public servant's ability, following a negative evaluation; elimination of the post for technological, structural or organizational reasons; or elimination of the entity by express legal mandate, set out in article 49 of the Act, should be eliminated and that the list of disciplinary grounds is vague and arbitrary. The Committee notes that the Government has not provided any information on this matter. It also notes, however, that the Act, which will apply progressively to all public servants, including labour inspectors, calls for a system of procedures and appeals that offer protection from wrongful termination.

114. The Committee considers that the processes of evaluation and termination of employment with the public service under the Act do not appear to be incompatible with the Convention. **The Committee requests the Government to ensure, while the Public Service Act is being implemented, to guarantee all labour inspectors stability and independence in their employment. It also requests the Government to submit to the CEACR information on developments in the situation as regards this matter at its next meeting in November 2014.**

4. Criteria for the recruitment and adequate training of labour inspectors

115. The Committee recalls that, according to Article 7 of the Convention:

1. Subject to any conditions for recruitment to the public service which may be prescribed by national laws or regulations, labour inspectors shall be recruited with sole regard to their qualifications for the performance of their duties.
2. ...
3. Labour inspectors shall be adequately trained for the performance of their duties.

Recruitment criteria

116. The Committee notes that, according to the CATP, although recruitment to inspection posts is legally subject to the criteria set out in the Regulations governing the career of labour inspectors, in practice unsuitable individuals have been hired to perform inspection duties at the regional offices.

117. The Committee notes that the Government states that, in accordance with the Regulations governing the career of labour inspectors, access to inspector's posts is subject to competitive recruitment through which the capacity to perform duties is evaluated, and that the DGIT has expressed its disagreement in relation to the recruitment by regional governments of inspection staff under the CAS regime and rejected their inclusion in the labour inspectorate. The Committee also notes that, according to article 20 of Act No. 29981, all levels of SUNAFIL inspection staff are recruited to the post of labour inspector through a competitive process and are evaluated annually.
118. **The Committee requests the Government to take all necessary measures, on a regular basis, to ensure that recruitment criteria for labour inspectors in the regions are consistent with the provisions of Article 7(1) of the Convention and to report on that matter to the CEACR.**

Training

119. The Committee notes that, according to the CATP, under the Medium-Term Sectoral Transfer Plan (2010–14), the DRTPEs are not allocated the necessary resources by the regional executive authorities to train staff in the performance of inspection duties.
120. The Committee also notes the Government's statement that the central authority is responsible for the training system; that it sends the Committee a copy of the annual DGIT National Training Plan (2012) and a table showing the training courses offered by region and, for each course, the subjects covered and number of beneficiaries.
121. The Committee further notes that article 21 of Act No. 29981 provides that priority in the allocation of the resources of the SUNAFIL for the performance of its duties shall be given to the strengthening of activities focusing on, among other things, promotion, dissemination, training, technical assistance and control with a view to the optimal exercise of its functions and operation of the functional system for which it is responsible. At least 30 per cent of those resources shall be used to strengthen inspections, develop the necessary infrastructure and ensure optimal performance of functions under the responsibility of the regional governments.
122. The Committee notes also that the SUNAFIL human resources office is responsible for, among other things, planning and implementing the annual training and evaluation plan for labour inspection staff at the national level, pursuant to article 28(a) of Supreme Decree No. 007-2013.
123. The Committee notes that in its 2010 observation on the application of the Convention, the CEACR requested the Government to "provide further information on the content, frequency and duration of the training given to inspectors in the course of their employment, as well as on the exact number of inspectors concerned in each case".
124. The Committee considers that the plans and tables provided by the Government show that it is carrying out various training activities. It also welcomes article 21 of Act No. 29981, which states that a significant portion of the resources shall be allocated to training. **The Committee requests the Government to pay particular attention to the continuity of training for labour inspectors in the regions and to provide the CEACR with information on this matter.**

5. Human and material labour inspection resources

125. The Committee recalls that, according to Article 10 of the Convention:

The number of labour inspectors shall be sufficient to secure the effective discharge of the duties of the inspectorate and shall be determined with due regard for:

- (a) the importance of the duties which inspectors have to perform, in particular:
 - (i) the number, nature, size and situation of the workplaces liable to inspection;
 - (ii) the number and classes of workers employed in such workplaces; and
 - (iii) the number and complexity of the legal provisions to be enforced;
- (b) the material means placed at the disposal of the inspectors; and
- (c) the practical conditions under which visits of inspection must be carried out in order to be effective.

126. According to Article 11 of the Convention:

1. The competent authority shall make the necessary arrangements to furnish labour inspectors with:

- (a) local offices, suitably equipped in accordance with the requirements of the service, and accessible to all persons concerned;
- (b) the transport facilities necessary for the performance of their duties in cases where suitable public facilities do not exist.

2. The competent authority shall make the necessary arrangements to reimburse to labour inspectors any travelling and incidental expenses which may be necessary for the performance of their duties.

127. The Committee notes that the complainant organization maintains in its allegations that, in the Medium-Term Sectoral Transfer Plan for the Labour and Employment Promotion Sector (2010–14), the MTPE mentions, among other problems: the regional government authorities' lack of interest in supporting DRTPE requests for budgetary resources to be used for the recruitment of staff and acquisition of the logistical resources and infrastructure necessary for its proper functioning; a shortage of human resources to perform the duties transferred and of logistical resources, such as computers and office furniture and supplies; inadequate infrastructures to carry out the activities of the DRTPEs; and the lack of a database of regional office staff.

128. The Committee also notes that the CATP mentions the comments made by the CEACR in 2012 in respect of the Forced Labour Convention, 1930 (No. 29), and in 2010 in respect of the present Convention, in which it stressed the need both to provide the GEIT with staff and build its capacity for mobility, and, in general, to provide the labour inspectors with adequate facilities and means of transport, particularly in Lima, where 80 per cent of the country's enterprises are located. The union stresses the overall insufficiency of the current number of inspectors and expresses the hope that the situation will change with the establishment of the SUNAFIL and that a sufficient number of inspectors will be recruited; this will be possible if the SUNAFIL is given adequate budgetary resources.

129. The Committee highlights that recommendations of the DGIT to various local governments, which the Government itself mentions, to the effect that: inspection staff should be recruited; an adequate environment and material resources should be provided so that the inspectors can properly perform their duties; the material working conditions of the inspectors should be improved by furnishing them with adequate offices, computers, software, printers and other material and logistical resources; and they should be

reimbursed for transport and incidental expenses incurred in the performance of their duties.

- 130.** The Government also indicates that, although the SIIT is being implemented in 15 regions, which account for some 70 per cent of all inspections in the country, the regional governments are responsible for allocating material resources to the inspection offices and for finding solutions to the lack of computer equipment and software. It also states that, with support from USAID as part of a labour inspection improvement project, labour inspectors in areas where the SIIT is not available will be given access to it.
- 131.** In that connection, the Committee notes that, in its 2010 observation on the present Convention, the CEACR requested the Government to carry out an assessment of the operation of the labour inspectorate and determine the human resources and material means that are necessary for its gradual improvement taking into account priority objectives. It also notes that the CEACR has commented on the issue of human and material inspection resources at many of its sessions.
- 132.** The Committee notes that, following the establishment of the SUNAFIL, its table for the allocation of staff was approved through Supreme Decree No. 019-2013-TR of 19 November 2013. It is the Committee's understanding, based on the table contained in annex to this Decree, that a total of 733 posts of inspection supervisor, inspector and assistant inspector, to be distributed among 26 regional SUNAFIL offices, have been created and approved.
- 133.** The Committee concludes that the allocation of material resources (budget, premises, means of transport and reimbursement of transport and other expenses necessary for the performance of inspection duties) to the labour inspection services does not appear to have been sufficient to ensure effective application of the relevant provisions of the Convention. In the absence of data on the number of establishments subject to inspection under the Convention, the Committee cannot draw conclusions as to whether the staffing table is adequate for current inspection needs.
- 134.** **The Committee hopes, however, that the Government will take the necessary steps to assess the human and material resource needs of the inspection services with a view to gradual allocation of the necessary budgetary and other resources. It requests the Government to provide information to the CEACR on any changes in relation to the provision of human, financial and material resources for labour inspection in all enterprises subject to such inspection.**

6. Prohibition of any direct or indirect interest

- 135.** According to Article 15(a) of the Convention:

Subject to such exceptions as may be made by national laws or regulations, labour inspectors:

- (a) shall be prohibited from having any direct or indirect interest in the undertakings under their supervision.

- 136.** The CATP alleges that the staff members responsible for handling penalty procedures who have been recruited by the regional governments do not respect the principles of legality, impartiality, equity, confidentiality, integrity and honesty. Also, since many penalties for which fines remain without effect, the workers are concerned and have lost confidence in the labour inspectors' independence and impartiality.

137. The Government, for its part, alludes to the principles that govern the system of labour inspection and the conduct of its staff; these principles are established in the LGIT and the Regulations governing the career of labour inspectors, which expressly state that the conduct of inspection staff must be consistent with the principles of legality, equity, impartiality, objectivity, effectiveness, confidentiality, loyalty, integrity and honesty. The Government also mentions the prohibitions applicable to inspectors, which are set out in the Regulations and include, among other things, having a direct or indirect interest in the undertakings under the supervision of labour inspectors.
138. The Committee notes that the union does not provide specific examples of cases in which the aforementioned principles of the Act were not respected.
139. The Committee does not have practical information on which to base conclusions on this matter. **It wishes, however, to stress the importance of ensuring that, in practice, measures are taken to protect inspectors from any undue influence, including, among other things, the payment of adequate remuneration and conditions of service such that they are assured of stability of employment and ethical training for all inspectors.**

7. ***Frequency and thoroughness of labour inspections***

140. The Committee recalls that, according to Article 16 of the Convention:

Workplaces shall be inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions.

Situation prior to the creation of the SUNAFIL

141. The CATP alleges: that the planning and performance of inspections has been hindered by the transfer of inspection services to the regional governments; that the regional governments have shown no interest in the labour inspectorate and that, for this reason, labour inspections in the provinces have been minimal; there has been no attempt to address the issue of forced labour in the jungle; and there has been little activity in the provincial agro-industrial sector. It maintains that inspections are contingent on the receipt of complaints and that there is no planning.
142. The Committee notes that the Government denies the CATP allegation that inspections are not planned and maintains that the DGIT prepares an annual National Labour Inspection Plan, which sets out in detail the actions to be implemented throughout the year. The Government also states that the regional governments are responsible for performing inspections and mentions that, in 2012, the DGIT recommended that the labour inspection offices of several regional governments should implement the labour inspection guidelines and prepare and adopt inspection plans for 2012. It indicates that the DGIT prepares an annual national Labour Inspection Plan based on information drawn from the system.
143. The Committee notes that the issue of the planning and performance of inspections was raised by the CEACR in its 2010 comments on the application of the Convention, in which it expresses the hope that there will be “a mapping of workplaces which will allow the central labour inspection authority ... to draw up an appropriate schedule of inspections”. The Committee notes that the CEACR has also mentioned the coverage of the labour inspectorate on several occasions.
144. The Committee considers that the fact that in the past labour inspection offices had not been established in all the regional governments raises doubts as to the full functioning and

effectiveness of the system at that time. The Committee notes, however, that the central authority prepares annual inspection plans and that the regional governments are responsible for performing inspections.

Evolution of the situation with the creation of the SUNAFIL

- 145.** The Committee notes that article 50 of the Regulations on the Organization and Functions of the National Labour Inspection Authority (SUNAFIL) states that this body may have 25 regional offices, one for each region. The Committee does not, however, have specific information on which to base conclusions concerning implementation of this article in practice. **The Committee therefore requests the Government to provide the CEACR with information on the measures to ensure that the regions effectively implement the inspection plans and conduct the planned visits with the frequency and thoroughness required by the Convention.**

8. Adequate penalties that are effectively enforced

- 146.** The Committee recalls that, according to Article 18 of the Convention:

Adequate penalties for violations of the legal provisions enforceable by labour inspectors and for obstructing labour inspectors in the performance of their duties shall be provided for by national laws or regulations and effectively enforced.

- 147.** The Committee notes that the CATP draws attention to: the failure to take measures in response to offences and the failure to use deterrents; the ineffective collection or non-collection of fines; and the fact that violations for which fines are due are lifted without explanation in some cases and that penalties are not enforced in others.
- 148.** The Government, for its part, indicates that the regional governments are responsible for the application of penalty procedures. It states that the law provides for situations in which penalties may be without effect and that the inspection staff must conduct themselves with respect for the principles of honesty, equity, legality and impartiality. If they fail to do so, the penalty is not enforceable. The Government mentions the recommendations that the DGIT addressed to various regional governments in August 2012 with a view to the recruitment of fine-enforcement staff, adoption in 2012 of the MTPE Regulations on Fines and establishment of a procedure for the payment of fines. The Government has also transmitted a table showing the number of non-compliance reports issued and the number and amount of the fines imposed during the first half of 2012. The Committee also notes that statistics on penalties imposed as at November 2013 are posted on the website of the MTPE.
- 149.** The Committee observes that, under articles 4(h) and 6 of Act No. 29981, the SUNAFIL is responsible for enforcement of the relevant penalties. The first supplementary modification provision of the Act, amending article 39 of the LGIT, sets the amount of the fines on the basis of their seriousness, while article 41 assigns responsibility for matters relating to penalties to the SUNAFIL and the relevant regional government bodies. According to article 3 of the Act, read in conjunction with article 48(f) of Basic Act No. 27867, the regional governments are responsible for imposing penalties on micro-enterprises.
- 150.** The Committee notes that the application of this Article of the Convention has improved. **It hopes that the Government will continue its practical efforts to maintain this and will provide the CEACR with information on the matter.**

C. Other matters**1. *Scope of application of the system of labour inspection***

151. The Committee recalls that Article 2(1) of the Convention provides that:

1. The system of labour inspection in industrial workplaces shall apply to all workplaces in respect of which legal provisions relating to conditions of work and the protection of workers while engaged in their work are enforceable by labour inspectors.

152. The complainant organization maintains that the implementing regulations for the Occupational Safety and Health Act are unlawful because they limit the authority of the MTPE to monitor compliance with the labour laws by public sector entities to workers recruited under the private sector regime, whereas the Occupational Safety and Health Act clearly establishes that its authority extends to all the labour regimes. The Government has provided no information in this regard.

153. The Committee observes that the legislation in question (the Occupational Safety and Health Act) grants the system of labour inspection quite a broad scope of application and that a subsequent Supreme Decree reduces that scope. It notes that the Government has not ratified the Protocol of 1995 to the Labour Inspection Convention, 1947.

154. Noting that the issue involves a discrepancy in domestic law, the Committee encourages the Government to take the necessary steps to discuss this matter with the social partners at the national level.

2. *Additional functions of the system of labour inspection*

155. The Committee notes that Article 3(1) of the Convention provides that:

1. The functions of the system of labour inspection shall be:

- (a) to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, such as provisions relating to hours, wages, safety, health and welfare, the employment of children and young persons, and other connected matters, in so far as such provisions are enforceable by labour inspectors;
- (b) to supply technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions;
- (c) to bring to the notice of the competent authority defects or abuses not specifically covered by existing legal provisions.

and that, according to paragraph 2 of that Article:

2. Any further duties which may be entrusted to labour inspectors shall not be such as to interfere with the effective discharge of their primary duties or to prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers.

156. The Committee notes that, according to the CATP, inspection supervisors carry out administrative tasks because they have no support staff, a situation that hinders their performance of inspections as such. The Committee also notes that the Government does not deny the complainant's allegation.

157. The Committee considers that the Government should take steps to ensure that inspection staff are not required to perform purely administrative tasks and can devote themselves fully to their duties under Article 3(1) of the Convention.

3. *Effective cooperation between the inspection services and other government services and public or private institutions*

158. According to Article 5(a) of the Convention:

The competent authority shall make appropriate arrangements to promote:

- (a) effective cooperation between the inspection services and other government services and public or private institutions engaged in similar activities.

159. The Committee notes that the CATP urges that measures be taken so that the inspection services can cooperate with the police in addressing conduct that could constitute obstruction in their work, and with public prosecutors with a view to the joint handling of industrial accidents. The complainant also mentions the need for improved cooperation with other entities and, in particular, with the SUNAT. The Committee also notes that while the Government refers to an agreement signed with the MTPE and states that several meetings have been held to discuss its implementation, it does not provide any concrete or specific indications concerning labour inspection.

160. The Committee also notes that Act No. 29981 provides for cooperation between the SUNAFIL and the regional governments in the promotion of legislation, the exercise of advisory and technical assistance functions within its areas of responsibility (Article 4(f)) and the signing of relevant management agreements (Article 4(j)). The SUNAFIL must also ensure the functioning of the system of labour inspection with the help of the regional governments and other State entities (Article 18) and establish mechanisms for intersectoral linkages and coordination with other governmental entities and with the regional and local governments in order, among other things, to coordinate implementation of the relevant national and sectoral policies; implement follow-up, supervision, evaluation and monitoring mechanisms and management indicators; sign inter-agency technical assistance agreements; carry out cooperation activities; offer training courses; and disseminate labour law (Article 19(a), (b), (c) and (e), respectively). Supreme Decree No. 007-2013-TR also provides: for the SUNAFIL and its bodies to cooperate with the regional governments; for the signing of technical cooperation agreements between the SUNAFIL and national and international institutions, both public and private (Article 11(t)); and, in general, for ongoing coordination with the various national, regional and local public entities and with other entities involved in its activities (amended Article 51 of Supreme Decree No. 007-2013-TR).

161. The Committee encourages the Government to consider taking additional practical measures in order especially to develop and improve the inspection services' effective cooperation with the police, particularly in the event of labour inspectors being obstructed in their work, and with the public prosecutors and the public prosecution service in dealing with industrial accidents, and the necessary measures to develop the cooperation envisaged in Act No. 29981.

4. Measures to ensure the association of duly qualified technical experts and specialists

162. The Committee notes that Article 9 of the Convention states that:

Each Member shall take the necessary measures to ensure that duly qualified technical experts and specialists, including specialists in medicine, engineering, electricity and chemistry, are associated in the work of inspection, in such manner as may be deemed most appropriate under national conditions, for the purpose of securing the enforcement of the legal provisions relating to the protection of the health and safety of workers while engaged in their work and of investigating the effects of processes, materials and methods of work on the health and safety of workers.

163. The Committee notes that the CATP indicates that there is no collaboration with specialists and experts and that it refers to a draft supreme decree. The Government has provided additional information on that draft document, which would adopt regulations on OSH supervision, inspection and penalties in the mining, electricity, and hydrocarbon sectors and establish the regulatory framework for the establishment of a register of OSH experts (such as recruitment criteria, obligations and infractions).

164. The Committee hopes that qualified experts and specialists will soon be associated in the work of inspection as needed for the performance of inspection duties.

5. Right of free access and control

165. According to Article 12(1)(a) and (c) of the Convention:

1. Labour inspectors provided with proper credentials shall be empowered:
 - (a) to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection;
 - ...
 - (c) to carry out any examination, test or enquiry which they may consider necessary in order to satisfy themselves that the legal provisions are being strictly observed, and in particular:
 - (i) to interrogate, alone or in the presence of witnesses, the employer or the staff of the undertaking on any matters concerning the application of the legal provisions;
 - (ii) to require the production of any books, registers or other documents the keeping of which is prescribed by national laws or regulations relating to conditions of work, in order to see that they are in conformity with the legal provisions, and to copy such documents or make extracts from them;
 - (iii) to enforce the posting of notices required by the legal provisions;
 - (iv) to take or remove for purposes of analysis samples of materials and substances used or handled, subject to the employer or his representative being notified of any samples or substances taken or removed for such purpose.

166. According to Article 15(c):

Subject to such exceptions as may be made by national laws or regulations, labour inspectors:

- ...
- (c) shall treat as absolutely confidential the source of any complaint bringing to their notice a defect or breach of legal provisions and shall give no intimation to the employer or his

representative that a visit of inspection was made in consequence of the receipt of such a complaint.

- 167.** *Inspection orders with the complaint attached to the cover.* The Committee notes that, according to the CATP, no measures have been taken to follow up on the CEACR comments regarding the application of Articles 12(1)(a) and (c), and 15(c) on the scope of the principle of free entry for labour inspectors to premises that are under their control and respect for the principle of confidentiality, and that the inspectors receive inspection orders with the complaint attached to the cover of the file and thus do not preserve the confidentiality required under the Convention. The Committee observes that the Government has not provided any statement in this regard.
- 168.** The Committee recalls that the CEACR has requested the Government on various occasions to take the necessary measures, in particular to revoke the legal provisions which make inspection visits subject to an inspection order from a higher authority, as well as those which state that the framework and facility to be inspected, for all inspection visits, are fixed in advance; this is in order to bring the legislation into conformity with these provisions of the Convention. **The Committee concludes that the Government should take the necessary measures to follow up on the CEACR’s comments relating to Articles 12(1)(a) and (c), and 15(c) of the Convention, and to bring the legislation and practice into conformity with these provisions of the Convention.**
- 169.** *Exceptions to the obligation of confidentiality.* The Committee observes also that, according to the CATP, the principle of confidentiality is not respected when the complaint is lodged by a former worker and concerns violation of the provisions of an employment contract or harassment since, under a DGIT directive, the complainant must waive confidentiality before such a complaint can be accepted. The Committee notes that the Government does not deny this allegation. In that connection, the Committee points out that, in its General Survey on Labour Inspection, 2006, the CEACR stresses that the principles set out in Article 15 of the Convention “are set forth in very general terms [and] it is the responsibility of the competent national authorities to define in specific terms the [concept of] confidentiality and, where appropriate, the exceptional circumstances under which labour inspectors may or should be exempted from the obligations and prohibitions established or under which they could be attenuated to maintain the objectives of labour inspection”.⁷
- 170.** The Committee notes that the CEACR also considers that “... compliance with this obligation does not raise any particular difficulties. However, its limitations are revealed in specific situations in which the investigation of individual cases makes it necessary to divulge the identity of the complainant. In such cases, it is admitted that the need for effective action to protect the victim has to prevail over the concern for confidentiality.”⁸
- 171.** It is the Committee’s understanding that the cases involving former workers that the CATP mentions are exceptions that are permissible in order to preserve the objectives of labour inspection and are therefore not incompatible with Article 15(c) of the Convention.

⁷ op. cit. para. 223.

⁸ *ibid.*, para. 237.

6. Notification of industrial accidents and cases of occupational disease

172. Article 14 of the Convention establishes that:

The labour inspectorate shall be notified of industrial accidents and cases of occupational disease in such cases and in such manner as may be prescribed by national laws or regulations.

173. The Committee observes that, according to the CATP, the system for the notification of industrial accidents and cases of occupational disease is flawed since accidents and cases of occupational disease in the informal sector or under non-compliant employers may not be reported, and this has an impact on the reliability of relevant statistics and on the labour inspectorate's prevention efforts; the union calls for rapid change in that regard. The Government, for its part, explains that enterprises in the informal economy will not report such situations because to do so might result in an inspection. The labour inspectorate learns of industrial accidents in the informal economy when they are reported by the person concerned or through the media.

174. The Committee observes that domestic law (articles 82 and 84 of the Occupational Safety and Health Act and article 110(a) of the Occupational Safety and Health Act Regulations) establishes the circumstances and the time period in which employers and medical centres must report industrial accidents and cases of occupational disease to the MTPE (and, in the latter case, also to the Ministry of Health). It notes, however, as the CEACR has done, that "Legal provisions that are in conformity are often not sufficient to ensure that practice is also in conformity" and that "[d]etailed regulations and precise instructions to all concerned – employers, workers, social and health insurance funds, police, and other bodies involved in dealing with industrial accidents and cases of occupational disease – are essential for ensuring that the principles enshrined in law are actually put into practice".⁹

175. **The Committee invites the Government to discuss with the social partners the possibility of developing a mechanism for the transmission of such information to the labour inspection services and to any other service that could assist in the collection of more reliable statistical data on this matter.**

IV. Recommendations of the Committee

176. *In the light of the above conclusions, the Committee recommends to the Governing Body that it:*

- (a) approve the present report;*
- (b) invite the Government, in light of the conclusions set out in paragraphs 80, 93, 94, 96, 101, 108, 112, 114, 118, 124, 134, 139, 145, 150, 154, 157, 161, 164, 168 and 175, to take such measures as may be necessary to ensure that the system of labour inspection as a whole is implemented in accordance with the provisions of Convention No. 81;*
- (c) recommend that the Committee of Experts on the Application of Conventions and Recommendations follows up on the issues raised in the present report in respect of the application of Convention No. 81; and*

⁹ *ibid.*, para. 119.

(d) make this report publicly available and close the procedure initiated by the representation of the Autonomous Workers' Confederation of Peru (CATP) alleging the non-observance of Convention No. 81.

Geneva, 6 June 2014

(Signed) C. Flores
Chairperson

J. A. De Regil

E. Familia

Point for decision: Paragraph 176