

Peru Accession Report

Based on a survey undertaken by TUAC in the spring of 2023 with two trade confederations of Peru (the Central Unitaria de Trabajadores del Peru (CUT) and the Central Autonoma de Trabajadores del Peru (CATP)), this note reports on the state of affairs regarding several core principles used by the ELSAC and the Investment Committee in the OECD's accession review of Peru.

The focus is on fundamental labour rights, social dialogue and industrial relations systems in line with the 2018 OECD Jobs Strategy, as well as commitment to and effective measures aimed at promoting responsible business conduct.

Labour Rights

- Freedom of association and right to organise

Trade unions in Peru report that the respect for the freedom of workers to associate and the right to organise leaves much to be desired, and that major improvements are urgently required.

The lack of respect of these rights is reflected in a very low union density rate: just 8.2% of workers in 2021 were members of a trade union. Moreover, union membership in the private sector is even lower and has declined from 22% in the past decades to 5.2% currently.

Trade unions describe an institutional environment which is biased against trade unions, as several obstacles prevent workers from joining a trade union:

Legal obstacles

- Excessive representativity requirements. A minimum of 20 to 50 members is required to form a union. The result is that unions are not present in micro and small enterprises.
- Limits on union membership in the public sector. Public sector trade unions are prohibited from joining a national confederation or industry federation that does not represent employees of the state.

Practical obstacles

- Abusive use of precarious employment contracts. 70% of employment contracts are fixed term, with many of these lacking an objective reason for using this type of labour contract. Moreover, regular posts in the public sector are (illegally) filled by recruiting third party staff via so-called “transitional service administration contracts”, which are fixed-term contracts of up to one month. The job insecurity that comes with this practice of short-term hiring in turn exposes workers to employer retaliation and serves to discourage workers from joining a trade union.
- Misclassification of workers in management positions and positions of trust.
- Limited access to legal recourse when workers are faced with dismissal, discrimination or harassment because of their decision to join or set up a trade union. Labour administration is weak, while processes are highly formalistic, bureaucratic and not adequate to protect what is a fundamental labour right.

Corporate practice

- Business exploits the legal requirement on the minimum representation described above by reorganising their economic activity into several micro-enterprises.
- Employer interference with union organising and union-busting strategies is widespread, and retaliation takes different forms: dismissal of trade union leaders and key members, collective dismissals, harassment, discrimination (including granting better pay, bonuses and promotions to non-union staff) and lock-outs.

- Right to collective bargaining

According to the trade unions, the right to collective bargaining in Peru is mostly not respected.

In the public sector, there are multiple restrictions on the right to collective bargaining. The law governing collective bargaining in the public administration limits the scope of negotiation and excludes pay-related issues in particular. State Budget law imposes allocated budgets on the process and contents of collective bargaining. Government also has extensive powers to intervene in the process of collective bargaining (ending strikes, declaring a strike unlawful, unilaterally imposing minimum service obligations, appointing the chair of an arbitration court, outlawing certain forms of strike such as go-slow or work-to-rule strikes).

In the private sector, priority is given to enterprise-level bargaining. If parties do not agree on which level to bargain, then company-level bargaining is the default option. The Ministry of Labour has the power to end a strike if it considers that the strike poses a risk to the company or the sector of production, or if it could have serious repercussions due to its size. Apprentice workers are excluded from collective bargaining, while striking teachers can be replaced via a national register of supply teachers.

Finally, employers tend to refuse to enter into the process of negotiation, both at company level and particularly at sector and multi-employer level. Alternatively, they may decide to abandon the ongoing process altogether, thus making bargaining inconclusive. Onerous conditions for workers to mobilise labour arbitration and ineffective conciliation processes are not helpful either. Trade unions also insist on the fact that the Peruvian state does not promote collective bargaining and that neither public procurement nor concession policy are conditioned to the respect of fundamental labour rights.

- Right to a safe and healthy workplace

Significant progress on the right to a safe and healthy workplace is also required. Key issues are the non-ratification of relevant ILO-conventions, the weakness of occupational safety and health inspection, non-functioning (and in the public sector non-implemented) Health and Safety Committees, high labour informality (including cheap migrant labour) in registered companies, plus the lack of formal training for workers (the training provided is too general and the rule of workers undergoing OSH training at least four times is not correctly respected). Moreover, the pace of work, night work and workers doing double shifts cause fatigue and result in accidents in the workplace.

Young workers, who are the least familiar with the risks in the workplace and generally on temporary contracts with monthly renewal, are most vulnerable to accidents at work.

- Effective labour inspection

Trade unions highlight many shortcomings with the system of labour inspection system in Peru.

SUNAFIL is the state organisation which promotes, oversees and enforces compliance with labour, social and health and safety laws and regulations. SUNAFIL, however, does not have a permanent power of inspection but holds this power only on a temporary basis. The number of inspectors is also inadequate, well below the number advised by the ILO (which would be 2000 inspectors in the case of Peru), and many are on sick leave or medical rest because of work overload. Inspectors, moreover, are auxiliary and do not have full powers. Contrary to ILO convention 81, the supervision of labour and social obligations in the public sector is performed by another state agency, SERVIR. With SUNAFIL, investigations are

linked to general administrative procedures, not labour or social procedures of their own. The process following an inspection that has recorded breaches is time-consuming and can take up to three years. Finally, the central authority inspection services formerly advised government on the gaps, contradictions and problems in substantive norms that it was meant to supervise, but this advisory capacity was removed after a change in the law.

A broader issue that requires attention is the fact that the Ministry of Labour has been hollowed out and its services transferred to other ministries. One example provided by trade unions is that the Ministry of Justice is the governing body in charge of the implementation of the national action plan on Enterprises and Human Rights, including fundamental labour rights. Another example concerns the National Contact Point for the OECD Multinational Enterprise Guidelines (see below).

- Other labour right issues

There are issues with the list of prohibited and dangerous work for child and adolescent labour. Stronger enforcement is necessary to ensure that minors under the age of 18 are not employed to do domestic or agricultural work (as stipulated by labour laws). There is a lack of budget to implement regulations governing child and forced labour at the regional and local level. There is also a lack of implementation regarding the national plan of action to suppress forced or compulsory labour (protocol 29 of ILO Convention 29).

The gender wage gap is as high as 27.4% and driven, among other factors, by the fact that male-dominated sectors (such as mining or hydrocarbons) have higher wages compared to jobs in education and care.

The informal sector in Peru contributes little to economic activity (GDP) but accounts for the vast majority of workers (73% in 2019). Policies to address labour informality are ineffective because of the lack of an adequate budget, or only manage to insert informal workers into temporary jobs without much employment continuity.

Social dialogue and industrial relations systems in line with the 2018 Jobs Strategy

The OECD's 2018 Jobs Strategy calls for the promotion of quality industrial relations systems based on inclusive collective bargaining, i.e. collective bargaining that achieves high coverage of workers. The Jobs Strategy considers the existence of well-organised social partners based on broad membership as the best way to achieve such high coverage and refers to the extension of sectoral agreements to reach high coverage for collective bargaining systems.

Peru scores extremely poorly against this benchmark. As described above, trade union density rates are very low in Peru. Collective bargaining coverage rates however are even lower, below 5%.

Nor is the government pursuing any measures to promote collective bargaining. The previous government in 2022 did issue a decree to strengthen collective bargaining but this was radically rejected by employers, then followed by legislative initiatives in Congress to repeal it.

Trade unions in Peru also argue that, instead of promoting genuine social dialogue between and with robust social partners, the government tends to collude with employers to pursue a mercantilist model at the expense of labour rights.

Social dialogue/tri-partite councils do exist, both at the national and at regional levels. These however produce little result as trade unions' views and complaints are often ignored, while government representatives regularly support employers. Currently, social dialogue in these councils is in a state of limbo, given the violation of human rights related to recent social turmoil, with nearly 70 deaths among protesting citizens.

Trade unions are most often not consulted in the governance of labour market and social protection systems.

Promoting Responsible Business Conduct

The NCP was established in 2008 and redeveloped to be part of a private domestic investment initiative in 2015. Peru underwent an NCP peer review process in 2022. The recommendations from the peer review are now being used to restructure the NCP to be more consistent with OECD standards.

Both trade unions consider the NCP as being very poor, without resources (comprising a staff of just two) or a commitment to the Guidelines. The NCP, being part of the Ministry of Production, reflects a pro-investment basis, with labour rights seen as obstacles to investment reaching the country.

Neither trade union was informed about the NCP, nor invited to attend its activities. Both trade unions consider the NCP commitment to its mandate for promoting the Guidelines and contributing to resolution of issues with the Guidelines as being passive or non-existent.

Key demands for the OECD accession process of Peru

Trade unions implore the OECD and delegates at the ELSAC and IC to focus on the following reforms in the process of accession:

- That reforms guaranteeing the effective exercise of fundamental labour rights in line with the recommendations of the ILO supervisory bodies should be undertaken.
- The approval and harmonious development of the National Plan for Decent Work, in accordance with the international standards of the ILO and the pronouncements of international organisations in the field of human rights.
- That labour clauses be inserted in public procurement, investment and concession policy, limiting or excluding businesses that violate fundamental labour rights.
- The recognition of sector trade union organisation and introduction of multi-employer collective bargaining.
- The setting of time limits for collective bargaining, to avoid discussions remaining unresolved to the detriment of workers; the promotion of the principle of bargaining in good faith; and substantially improve the system of arbitration and ensure that employer-bias is removed.
- The restoration of the Ministry of Labour as the authoritative governing body for the labour market, namely by moving the NCP into the Ministry of Labour and incorporating trade unions into its structure. The strengthening of labour administration and provision of adequate budgets.
- The creation of an Economic and Social Council of Peru, to correct deficiencies in the National Labour Council.
- That a mandatory due diligence law be passed.