

Mr.  
President of the Committee on Freedom of Association  
International Labor Organization  
Geneva- Switzerland

Subject: Complaint against the Peruvian Government for the violation of Freedom of Association and Collective Bargaining against Unified Trade Union of Banco del Trabajo (SUBTABANTRA) and the Unitarian Workers Union of Banco del Trabajo (SUDEBANTRA), carried by Banco del Trabajo and including the Judicial System of Peru.

The General Workers' Confederation of Peru (CGTP), registered in the Certificate Nr. 03001617 from the Register of Legal Entities of Lima, Third Level Union Central located at Plaza Dos de Mayo Nr. 8 (2nd floor, CGTP National Secretariat of Defense), Lima, represented according to its statutes by Secretary General, Mario Huaman Rivera, NID 08044524, Secretary of Defense, Mr. Lui Izarra Delgado, NID 29406106:

We appeal to your office in order to submit a complaint against the Government of Peru, represented by its President, Dr. Alan Garcia Perez, the President of the Congress, Dra. Mercedes Cabanillas Bustamante, the Ministry of Labor, Mrs. Susana Pinilla Cisneros and Banco del Trabajo, represented by its CEO Max Chion Li, on grounds of violation of the rights of the Freedom of Association and Collective Bargaining, having infringed upon the rights of the Unified Trade Union of Banco del Trabajo (SUTRABANTRA) and the Unitarian Workers Union of Banco del Trabajo (SUDEBANTRA).

## **I. Background of the Complaint**

1. Banco del Trabajo formed in Peru in 1994, with the objective of operating as a Multiple Bank, aiming to provide consumer credit to people from middle and low socioeconomic levels, especially small enterprises.

The shareholders of the bank belong to the Altas Cumbres Group, which is linked to Chilean investors (Cummins Group). At the present, the Group has branches in Chile, Ecuador, Guatemala, Costa Rica, Dominican Republic and Peru.

Banco del Trabajo maintains a 54 agency national network, 8 special agencies and 18 locations in agreement with Banco de la Nation.

By the end of 2005, the bank had 3159 employees and 450 000 clients. Also, it had a net financial income of 35 million soles, and is the third most used bank in

opening accounts for Peruvian Micro enterprises, behind other groups such as Credito and Mibanco.

2. In February 3, 2005, the General Workers' Confederation of Peru (CGTP), filed a Complaint to the ILO against the Peruvian Government denouncing the violation of the union rights of SUBTRABANTRA's members and leaders. The violation comprised bad practices against ILO's Conventions and Recommendations, such as disregarding SUBTRABANTRA's suitability for representing workers in Collective Bargaining, as well as the dismissal of several union leaders and members.

As a result, the ILO's Freedom of Association Central Committee submitted the Report # 340, Case 2400 (Vol. LXXXIX, 2006, Series B, # 1).

In this report, the committee submitted a recommendation to the Government of Peru, which we quote:

*We regret that the Peruvian Government did not send its observations of the alleged dismissals of the union leaders and members of the Unified Trade Union of Banco del Trabajo (SUBTABANTRA), within the context of harassing practices carried by Banco del Trabajo. We also regret that the aforementioned entity had contested the union's registration and refused to negotiate the claims. This Committee urges the Government to send its observations immediately.*

Hence, we see how the Government of Peru remains rebellious and does not take its responsibility in the compliance of ILO's endorsed Conventions. This passive attitude creates accessory position in these anti union practices.

Therefore, since the Government of Peru has no submitted any response to the Committee on Freedom of Association, we should also relate:

- In September 1<sup>st</sup>, 2006, Mr. Arnaldo Efrain Calle Flores, General Secretary of the Unified Trade Union of Banco del Trabajo (SUTRABANTRA), was restored to his position by means of a precautionary measure, after 30 months of legal struggle against Banco del Trabajo.
- The Judicial System resolved twice favoring the aforementioned leader, ordered his restoration, with full payment of accrued wages, and determined that the reason for the dismissal had been the forming of the Trade Union and his participation in Union activities. At the present, this process is before the Supreme Court of Peru, which can confirm the previous sentences.
- Despite this, in order to prevent the leader, Efrain Calle Flores, from his Union duties, illegally transferred him to another location in the country side, which went against the regulations that protect union leaders from

- these anti union practices. The leader submitted his complaint to Banco del Trabajo and the Judicial System. However, the company did not let him keep his job, alleging desertion, regardless of the precautionary measure favoring him.
- Banco del Trabajo contested through the courts the registration of the Unified Trade Union of Banco del Trabajo (SUBTRABANTRA), but this action has been dismissed by the Judicial System. However, Banco del Trabajo, disregarding this disposition, keeps neglecting SUTRABANTRA as a legitimate organization that represents the workers.
  - Therefore, by not acknowledging SUTRABANTRA, Banco del Trabajo refuses to engage in collective bargaining with the Union to date. As a result of this, multiple claims have remained pending solution since 2004.

## **II. Facts Supporting the Complaint**

1. In a communication dated April 13th, 2005, the Unitarian Union of Employees of Banco del Trabajo (SUBEBANTRA) formed in a Worker's General Assembly in April 9th, 2005, in Av. Los Halcones 259, San Isidro, requests of the Ministry of Labor and the Promotion of Employment to be signed up in the Union Registry, for its Directing Board and union status to be acknowledged as such, according to the current laws.
2. In May 25th, 2005, the Ministry of Labor and the Promotion of Employment emitted the Automatic Inscription Record, file # 67245 - 05 - DRTPELC/DPSC/SDRG/DRS, which certifies the registration of the Unitarian Union of Employees of Banco del Trabajo (SUDEBANTRA) before the Ministry of Labor, as well as its Statutes and Directing Board.
3. In a communication dated June 20th, 2005, SUDEBANTRA informs Banco del Trabajo about the Union, and expresses its interest not only in defending the rights of workers, but also in providing support to the enterprise's own betterment.
4. Through an affidavit dated June 27th, 2005, Banco del Trabajo, sends back the aforementioned communication to SUDEBANTRA, alleging they had no legal status for representing workers.
5. Through an affidavit dated July 1st, 2005, SUDEBANTRA protests against the attitude of Banco del Trabajo, strongly calling for the right of the Freedom of Association, which does not depend on the enterprise's arbitrary will, but the workers' collective determination, provided that the Union had already been acknowledged by the labor Official Institution and therefore held the legal status for representing workers.

6. In neglecting the existence of SUDEBANTRA, Banco del Trabajo also refused to withhold the Union quota from the member's pay sheet. Hence, the lack of financial resources harmed the Union's ability to organize. Consequently, SUDEBANTRA sent to the enterprise a letter dated September 12th, 2005, demanding compliance of the Union Quota withholding, which is also a legal obligation.

7. In a communication dated July 13th, 2005, SUDEBANTRA addressed the General Workers' Confederation of Peru (CGTP), in order to inform them about the antiunion practices carried by Banco del Trabajo, and requested their support for improving its plan and union's activities.

8. In August 25th, 2005, Banco del Trabajo contests through the courts the Union Registration of SUDEBANTRA, and demands its dissolution, alleging that a Public Notary was not present at the time when the Union's Record of Registration was signed, and that there was a difference of opinions amongst the representatives and the list of members.

9. The 17th Labor Court of Lima accepted this lawsuit, through resolution # 02, dated November 11th, 2005, File 182417-205-00355-0, and called SUDEBANTRA to appear and provide its testimony on this process. This resolution was delivered at SUDEBANTRA's headquarters on January 10th, 2006, i.e. two months after having been issued, which shows the Judicial System's slowness and ineffectiveness, against SUDEBANTRA.

10. On January 17th, 2006, SUDEBANTRA responded to Banco del Trabajo's lawsuit, demanding it to be declared groundless or null. In January 10th, 2007, the Court declared the suit unfounded, and the Union is expecting Banco del Trabajo to not appeal the sentence.

11. On September 5th, 2005, SUDEBANTRA submitted to Banco del Trabajo its first Project for a Collective Agreement or Claims Sheet, which was also submitted to the Direction of Collective Labor Relations, dated September 6th, 2005.

12. On September 7th, 2005, the Ministry of Labor ordered the case be opened and that both parties be informed in order to begin the collective bargaining process.

13. On September 14th, 2005, Banco del Trabajo sent back the Claims Sheet to SUDEBANTRA, despite its obligation to accept it and began the negotiations for collective agreement with the Union. This communication was also sent to the Ministry of Labor on the same date.

In order to avoid collective bargaining with the Union, Banco del Trabajo alleged that it had contested through the courts the SUDEBANTRA's Union Registration,

that an official notary was not present at the day of its forming, and that there were two trade unions, SUTRABANTRA and SUDEBANTRA, with which it would not negotiate simultaneously.

14. On September 16th, 2005, SUDEBANTRA rejected this action, and sent the Claims Sheet again, demanding the beginning of the collective bargaining process.

15. Through a letter received by SUDEBANTRA on September 23rd, 2005, Banco del Trabajo sent back the Claims Sheet for the second time and expressed its refusal to begin negotiations with workers.

16. On October 13th, SUDEBANTRA required the Ministry of Labor, through the Sub Direction of Collective Bargaining, to disregard the opposition held by Banco del Trabajo, and to continue with collective bargaining.

17. On September 15th, Banco del Trabajo rejected the requirement from SUDEBANTRA on the withholding of the Union Quota from its members, according to the law. This is a grave situation, since at the present the Union does not have the funds for covering its crusade against the bank's antiunion practices, nor for supporting the member's other requirements.

18. On February 6th, 2006, the General Workers' Confederation of Peru (CGTP) sent a letter to the Banco del Trabajo's CEO, Max Chion Li, protesting the violation of the rights of Freedom of Association and Collective Bargaining, carried by Banco del Trabajo against the leaders and members of SUTRABANTRA and SUDEBANTRA, strongly demanding the bank amend these antiunion policies and respect the rights of the workers. There was no response to this communication from Banco del Trabajo.

19. On February 20th, 2006, SUDEBANTRA issued a statement demanding the end of the abuses carried by Banco del Trabajo against its workers. At that time, the Union denounced the hostile actions against its members, such as fraudulently setting up grave faults in order to dismiss the Union members.

20. On August 29th, 2006, SUDEBANTRA submitted the Claiming Sheet corresponding to the year 2006. As in the former case, the bank rejected the collective bargaining.

21. On November 15th, the workers members of SUDEBANTRA participated in a successful sit-in at the doors of Banco del Trabajo's headquarters, protesting against the violation of their rights. SUDEBANTRA issued a public statement, denouncing: 1) Banco del Trabajo's refusal to acknowledge the Union and to negotiate its claims from 2005-2006 and 2006-2007, 2) the threat of dismissal against its leaders and members, 3) the new fraudulent dismissal of Efrain Calle

Flores, leader of SUTRABANTRA, and 4) the abuse for not paying commissions to the workers.

22. The next day, November 16th, 2006, Banco del Trabajo, through its OP Communications Office, denied the existence of the Union, in an e-mail addressed to all its workers. The enterprise also tried to justify the dismissal of Efrain Calle Flores, and showed its lack of interest on the claims as well as the payment of commissions to the workers.

23. In November 2006, the Labor Observatory of Chile prepared a report on this case, called "The Alienated Banco del Trabajo," which has been published on its web site [www.olab.cl](http://www.olab.cl).

24. Through a communication dated November 20th, 2006, the General Workers' Confederation of Peru (CGTP) addressed the Presidency of the Ministers Council, the Labor Commission from the Congress of Peru, the Ministry of Labor and the Promotion of Employment, the ILO's sub regional office for Andean countries, the CEO of Banco del Trabajo and the Ambassador of Chile, denouncing the breaching of the Freedom of Association and Collective Bargaining of the workers from Banco del Trabajo.

In this communication, CGTP also denounced that Banco del Trabajo had been harassing the Union leaders and members by dismissing them under fraudulent procedures.

CGTP requested a meeting in order to finish with these violations. However, this request had no answer, neither by the Officials from the Government of Peru nor by the enterprise.

25. On December 17th, 2006, the workers members and leaders of SUTRABANTRA and SUDEBANTRA, in a simultaneous and coordinated activity, conducted a successful National Sit-in, demanding the respect of the workers Freedom of Association and Collective Bargaining.

26. Through an official circular letter dated December 19<sup>th</sup>, 2006, SUDEBANTRA called for a press conference for December 21<sup>st</sup>, 2006, in order to denounce the abuses and hostility against workers.

27. Through declarations in the newspaper *Gestion*, on January 15<sup>th</sup>, 2007, the Banco del Trabajo's CEO, Max Chion, declared that in 2007 the bank will accomplish *its consolidation process, it will make important investments in infrastructure and technology* and by the end of the year they will have *an institution totally adjusted to competitiveness*.

The major concern of CGTP lies on the way in which Banco del Trabajo holds the rights and welfare of workers, within this so-called consolidation process

towards competitiveness. By opposing the Union and the collective bargaining, the enterprise had provided clear evidence of antiunion policies as well as a complete lack of interest in the workers' requirements and demands.

28. Moreover, Banco del Trabajo keeps its workers under exploitive conditions, demanding from them productivity goals hard to achieve. Despite the workers' hard work, if they do not fulfill the Bank's specific requirements, they will not get paid no matter how close they were from reaching *these goals*.

29. Besides, Banco del Trabajo has set a so called "productivity game," by which the worker may be sanctioned or even dismissed from the company if does not achieve the company's productivity goals.

In brief, our colleagues are pushed to accomplish unreasonable and excessive productivity goals, which otherwise would mean the non payment of their commissions, or worse, their dismissal from the company.

In July 25<sup>th</sup>, SUDEBANTRA expressed its protest against the imposition of this system.

### **III. Legal Grounds for the Complaint**

#### **1. National regulations**

**1.1** According to the Single Arranged Text of the Law on Labor Collective Relations (TUO), D.S. Nr. 010-2003-TR, issued in November 5<sup>th</sup>, 2003, in Article 14, it states: *In order to form and subsist, unions must enlist a minimum of twenty (20) workers in the case of a company's Union, and a minimum of fifty (50) in other kinds of union.*

At the present, SUDEBANTRA, a national wide Union, enlists more than 20 workers, which means that it fulfills the requirements for forming and subsisting.

**1.2** According to TUO's Article 16: *The creation of a Union shall take place in assembly, in which the Statutes and Board of Directors must be approved. This shall be registered in the Assembly's Proceedings, and countersigned by Sworn Notary or by the Justice of the Peace in behalf, indicating the place, time and names of the audience.*

According to TUO's regulation D.S. Nr. 011-92-TR, issued in October 15<sup>th</sup>, 1992, its Fourth Complementary Resolution states: *When Law refers to countersigning by Sworn Notary or Justice of the Peace it must read legalizing.*

Therefore, the Law specifies that by requiring the countersigning of a Notary or a Judge, it means “legalizing a copy with procedural purposes,” and not necessarily the actual presence of the officials during the Assembly. Hence, the arguments of Banco del Trabajo with respect to this issue are proven to be unfounded.

**1.3** According to TUO’s Article 17: *The Union must be registered in the corresponding Labor Officials Record. The Record is a formal act, not constituent, and therefore can not be denied, unless when not fulfilling the requirements established by this regulation.*

It also states in its Article 20: The cancellation of the Union Registration by the Labor Officials will proceed only after the Union’s dissolution, which would take place for the following causes:

- a. Agreement of the members’ absolute majority
- b. Occurrence of any of the events expounded in the statutes for that purpose
- c. Lacking of the constituent requirements

In cases a - b, the Union’s dissolution takes place *Ipso iure*, and do not require previous judicial statement.

In case c, the person proving a legitimate economical or moral interest will demand of the Labor Judge the dissolution of the Union, whom by previous verification will resolve the demand through summary proceeding, according to letter e, paragraph 3, Article 4 of Law Nr. 26636 – Labor Procedural Law. On the only grounds of the sentence determining the Union’s dissolution, the registration will be cancelled.

Moreover, Article 22 of TUO states: *The Unions’ registration, according to Article 17 of the Law, will take place automatically, under the only presentation of the application as a sworn statement, which should meet the requirements stated in the previous article.*

As it can be seen, the signing of the Union Registration has a formal nature, non constituent and automatic, provided that it fulfils all the requirements by the Law. Both SUDEBANTRA and SUTRABANTRA met the legal requirements, which was the reason for the Ministry of Labor to issue their documents of registration. Therefore, its cancellation can only apply when any of the aforementioned situations occur as addressed in the Law.

Despite this, in a clear anti union attitude, Banco del Trabajo contested through the courts the Union Registration of SUTRABANTRA and SUDEBANTRA. With respect to SUTRABANTRA’s case, Banco del Trabajo lost. Regardless of this

situation, it maintains its rebellious attitude and neglects acknowledging its representation above workers.

**1.4** According to TUO's Article 29, D.L. 728, it states: dismissal grounded on the affiliation to a union or the participation in union activities, or the candidacy to a union leadership, or acting according to this condition is null.

Moreover, the TUO's Article 30 from the Law on Labor Collective Relations states: *The Union code guarantees that some workers will not be dismissed nor transferred to other locations, without a fair ground or against their will. The acceptance of the worker is not necessary in cases when it does not prevent him from performing his tasks as a union leader.*

Also, according to TUO's Article 31 from LRCT, and Articles 12 and 13 from its Regulation D.S. Nr. 0011-92-TR, *the Union code protects: a) the members of a forming Union, from the submitting of the registration application until three months after, b) the members of the Board of Directors of the Union.*

According to national laws, the dismissal of workers is forbidden on grounds of their Union affiliation. Therefore, it must be concluded that when Banco del Trabajo threatened to dismiss the leaders of SUDABANTRA and SUTRABANTRA, or when it actually dismissed them, it acted illegally and violated the Freedom of Association.

Also, as it can be read, the leader Efrain Calle Flores is protected by the Union Code, which means that he can not be transferred to other location in order to prevent him from performing his union duty.

However, when in a provisional measure the Secretary General of SUTRABANTRA was restored to his position, Banco del Trabajo breached the Law and sent him to a different location, where he could not perform his union duty.

**1.5** According to TUO's Article 41, from the Law on Labor Collective Relations: *A Labor Collective Convention is the agreement oriented to regulate the wages, labor conditions, productivity and etc., referring to the relations between workers and employers, held, on the one hand, by one or various trade unions or their representatives, and on the other, by the employer, a group of employers, or various organizations of employers.*

Moreover, according to TUO's Article 53, it states: *the list of demands must be submitted directly to the Company, with a copy to the Labor Officials. When the Company refuses to accept it, the delivery will take place through the Labor Officials, considering the delivery date as the one stamped by the board's desk.*

Also, TUO's Article 54 states: *Receipt of the list is mandatory, unless there is a legal or conventional ground that is objectively demonstrable. The parties are obliged to negotiate in good faith, and to abstain from any activity designed to harm the counterpart, and always maintaining the legitimate right to strike.*

As we can see, both SUTRABANTRA and SUDEBANTRA seek to negotiate and sign collective agreements, in order to suitably regulate the labor relations, respecting the dignity and the rights of workers.

Despite the acceptance of the Claims List and good faith negotiation being mandatory for the Company, Banco del Trabajo has sent back all the lists in all cases. Moreover, although the Ministry of Labor had to send these Claim Lists and to start the collective bargaining, to date the Company prevents workers from exercising their right to collective bargaining.

**1.6** The TUO Regulation, D.S. Nr. 011-92-TR, Article 34, states: *According to what is stipulated in Articles 9 and 47 of the Law, regarding Collective Bargaining, the representation of workers, excepting directors and trusted employees, will be exerted by the Trade Union whose members represent absolute majority from the total of workers of the corresponding field. By "field" it must be read Company, branch, section, or location.*

*In cases when a single Trade Union does not affiliate the absolute majority of workers from a same field, its representation then is restricted to its members.*

*However, when a group of Trade Unions affiliate more than a half from the total of workers from a same field, they can represent the total, provided that they agree upon the way in which they will be represented. If there is no such agreement, each Trade Union will only represent their members.*

Clearly, according to current Peruvian Law, the existence of more than one Trade Union in one field is possible, as it happens with the company Banco del Trabajo.

Moreover, according to the rules, when there is more than one Trade Union in one field, the representation towards Collective Bargaining will be held by the one that represents the absolute majority of workers. If none of the Trade Unions does, then each of them will negotiate their own collective agreements.

Therefore, the Company's argument on the existence of two Trade Unions as a reason for not accepting the Collective Bargaining is proven to lack grounds.

**1.7** The Peruvian Constitution acknowledges in Article 28: *the right to Freedom of Association, Collective Bargaining and Strike. Protects its Democratic exercise:*

1. *It guarantees Freedom of Association*
2. *It encourages Collective Bargaining and promotes peaceful solutions to labor conflicts. Collective Bargaining is binding within the field of the agreement.*
3. *It regulates the right to strike in order to exercise it according to social interests. It states its limits and exceptions.*

As it can be seen, in Peru the rights to Freedom of Association and Collective Bargaining hold a Constitutional degree, and they are Fundamental Rights. Therefore, their full compliance is essential for the acknowledgment of human dignity. However, to the present, Banco del Trabajo keeps breaching such rights with impunity, as for the Government Officials, they do not give adequate protection to workers.

**1.8** According to TUO's Article 28, from the Law on Labor Collective Relations: *The wealth of the Union is constituted by:*

- a. *The member's quota and other obligatory contributions, which amounts and requirements should be stipulated in the code.*
- b. *The member's or third parties willing contributions*

The TUO's Article 28, states: *Under request of the Union and with the worker's written authorization, the employer is obliged to withhold the Union quotas, ordinary, and extraordinary when applied to all workers. The same applies for those contributions oriented to the formation and promotion of union members' cooperatives.*

As we can see, although it is a legal obligation for Banco del Trabajo, it has refused to withhold the Union quotas, and consequently harmed the Trade Union.

**1.9** According to the Law of Precedent of the Constitutional Court on dismissals, such as in affair Baylon EXP. 0206-2005-PA/TC, affair Telefonica EXP. 1124-2001-AA/TC and affair Llanos Huasco, EXP. 976-2001-AA/TC, it has been determined:

- According to the Sentence EXP. 1124-2001-AA/TC, 9. *In full agreement with the Constitution's Final and Transitory Fourth Resolution, Constitutional Rights must be interpreted within the context of International Treatises endorsed by the Peruvian Government. According to this Resolution, those Treatises are the parameters of interpretation on the rights acknowledged by the Constitution, which implies that the concept,*

*scope and field of protection explained in those Treatises are the parameters, given the case, for interpreting a Constitutional Right. (Article 55).*

*10. The substantive aspect of the Freedom of Association is fully acknowledged in Article 2 of Convention 87 on Freedom of Association, which consists in “the right to form organizations, as well as to affiliate to them(...)” Moreover, according to Article 1, paragraph 2, letter b, the protection of workers against any action designed to undermine the Freedom of Association extends to be “against any act with the object of dismissing a worker or harming him because of his union affiliations or his taking part of union activities (...)”*

- According to the Sentence EXP. 976-2001-AA/TC, it is considered as nullifying the dismissal resulting just from the affiliations to a Union or taking part in Union activities, or when the worker is a leader or candidate to a leadership (or acting as such).

Moreover, according to this sentence, a fraudulent dismissal occurs when: the worker is dismissed with wicked intentions or supported on deception, therefore, against truth and rightness of labor relations. Or when the worker is charged on nonexistent facts, or false, or imaginary, or is charged with a fault not legally stated, breaching in this way the “concurrence of a fault” principle, as it has been addressed by this Court (EXP. 415-987-AA/TC, 555-99-AA/TC and 150-2000-AA/TC); or when the termination of the labor relation takes place as a result of a vicious will (EXP. 628-2001-AA/TC), or by means of the “fabrication of proofs.”

- According to the Sentence EXP. 0206-2005-PA/TC, 9. *With respect to null dismissals, although the Private Labor Law regulates the reposition and compensation in cases of null dismissals according to Articles 29 and 34 from the Supreme Decree 003-97-TR, TUO from Law Decree 728, Law on Labor Productivity and Competitiveness, the Constitutional Court endorses the criteria issued on the affair Eusebio Llanos Huasco, with respect to its competence to know urgency cases related to the violation of constitutional rights that originate a null case, given the particular situations involved in the protection of those rights.*

*10. Indeed, the Freedom of Association and the right to unionize, acknowledged by Article 28, paragraph 1 from the Constitution (EXP. 0008-2005-PI/TC, fundamentos 26, 27, and 28) interpreted according to the Constitution’s Final and Transitory Fourth Resolution, and Article V from the Preliminary Title of the Constitutional Procedural Code, requires the Government’s compliance to adopt the required measures for guaranteeing to both employers and workers the Freedom of Association, and prevent any discriminatory action designed to diminish it, such as making the hiring of workers conditional to not joining the Union, or dismissing or in any way harming workers based on their union affiliations*

*or participating in union activities during their off time, or, under the acceptance of the employer, during working time (article 11, ILO's Convention 87 on the Freedom of Association and Protection of the Right to Organize, and article 1 ILO's Convention 98 Right to Organize and Collective Bargaining).*

## **2. International regulations**

2.1 The ILO's Convention 98 from 1949, endorsed by the Peruvian Government, establishes:

### Article 1

1. Workers shall enjoy adequate protection against acts of anti-union discrimination with respect to their employment.

2. Such protection shall apply more particularly with respect to acts calculated to:

(a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;

(b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

### Article 3

Mechanisms appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organize as defined in the preceding Articles.

### Article 4

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of mechanisms for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

2.2 The ILO's Convention 87, endorsed by the Peruvian Government, establishes:

### Article 2

Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization.

### Article 3

1. Workers' and employers' organizations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programs.

2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

### Article 4

Workers' and employers' organizations shall not be liable to be dissolved or suspended by administrative authority.

2.3 The Convention 135 has not been adopted in our country. However, as a recommendation to the Peruvian government, it states:

### Article 1

Workers' representatives in the undertaking shall enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as a workers' representative or on union membership or participation in union activities, in so far as they act in conformity with existing laws or collective agreements or other jointly agreed arrangements.

2.4 The Convention 154 has not being adopted by the Peruvian Government either. However, as a recommendation it states:

### Article 5

1. Measures adapted to national conditions shall be taken to promote collective bargaining.

2. The aims of the measures referred to in paragraph 1 of this Article shall be the following:

(a) collective bargaining should be made possible for all employers and all groups of workers in the branches of activity covered by this Convention;

(b) collective bargaining should be progressively extended to all matters covered by subparagraphs (a), (b) and (c) of Article 2 of this Convention;

(c) the establishment of rules of procedure agreed between employers' and workers' organizations should be encouraged;

(d) collective bargaining should not be hampered by the absence of rules governing the procedure to be used or by the inadequacy or inappropriateness of such rules;

(e) bodies and procedures for the settlement of labor disputes should be so conceived as to contribute to the promotion of collective bargaining.

### **3. Decisions of the Committee on Freedom of Association, according to the Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO**

**17.** The ultimate responsibility for ensuring respect for the principles of freedom of association lies with the Government.

**18.** It is the responsibility of the Government to ensure the application of international labor Conventions concerning freedom of association which have been freely ratified and which must be respected by all state authorities, including the judicial authorities.

**309.** The right of workers to establish and join organizations of their own choosing in full freedom cannot be said to exist unless such freedom is fully established and respected in law and in fact.

**315.** The right of workers to establish organizations of their own choosing implies, in particular, the effective possibility to create – if the workers so choose – more than one workers' organization per enterprise.

**771.** No person should be dismissed or prejudiced in employment by reason of trade union membership or legitimate trade union activities, and it is important to forbid and penalize in practice all acts of anti-union discrimination with respect to employment.

**772.** No one should be subjected to discrimination or prejudice with regard to employment because of legitimate trade union activities or membership, and the persons responsible for such acts should be punished.

**773.** Since inadequate safeguards against acts of anti-union discrimination, in particular against dismissals, may lead to the actual disappearance of trade unions composed only of workers in an undertaking, additional measures should

be taken to ensure fuller protection for leaders of all organizations, and delegates and members of trade unions, against any discriminatory acts.

**786.** Acts of harassment and intimidation carried out against workers by reason of trade union membership or legitimate trade union activities, while not necessarily prejudicing workers in their employment, may discourage them from joining organizations of their own choosing, thereby violating their right to organize.

**810.** In a case in which a trade union leader was dismissed and then reinstated a few days later, the Committee pointed out that the dismissal of trade union leaders by reason of union membership or activities is contrary to Article 1 of Convention No. 98, and could amount to intimidation aimed at preventing the free exercise of their trade union functions.

**813.** Legislation should explicitly lay down remedies and penalties against acts of anti-union discrimination in order to ensure the effective application of Article 1 of Convention No. 98.

**814.** Where a government has undertaken to ensure that the right to associate shall be guaranteed by appropriate measures, that guarantee, in order to be effective, should, when necessary, be accompanied by measures which include the protection of workers against anti-union discrimination in their employment.

**817.** The government is responsible for preventing all acts of anti-union discrimination and it must ensure that complaints of anti-union discrimination are examined in the framework of national procedures which should be prompt, impartial and considered as such by the parties concerned.

**818.** The basic regulations that exist in the national legislation prohibiting acts of anti-union discrimination are inadequate when they are not accompanied by procedures to ensure that effective protection against such acts is guaranteed.

**826.** Cases concerning anti-union discrimination contrary to Convention No. 98 should be examined rapidly, so that the necessary remedies can be really effective. An excessive delay in processing cases of anti-union discrimination, and in particular a lengthy delay in concluding the proceedings concerning the reinstatement of the trade union leaders dismissed by the enterprise, constitute a denial of justice and therefore a denial of the trade union rights of the persons concerned.

**827.** In a case in which proceedings concerning dismissals had already taken 14 months, the Committee requested the judicial authorities, in order to avoid a denial of justice, to pronounce on the dismissals without delay and emphasized that any further undue delay in the proceedings could in itself justify the reinstatement of these persons in their posts.

**828.** Complaints against acts of anti-union discrimination should normally be examined by national process which, in addition to being speedy, should not only be impartial but also be seen to be such by the parties concerned, who should participate in the procedure in an appropriate and constructive manner.

#### **4. Evidences supporting this Complaint**

1. Report Nr. 340, Case 2400, submitted by the General Workers' Confederation of Peru (CGTP), where the Peruvian Government does not provide a response to the Committee on Freedom of Association on the case SUDABANTRA.
2. Information Alert Nr. 208, from the NGO Labor Program of Development, PLADES, accounting the restoration under a Precautionary Measure of the Union Leader Efrain Calle.
3. Copy of communication dated April 13<sup>th</sup> 2005, addressed by SUDEBANTRA to the Ministry of Labor, for its inscription in the Union Registration. Attached were the Board of Directors and the list of members.
4. Copy of the reference of automatic inscription issued by the Ministry of Labor, EXP. 67245-05-DRTPEL/DPSC/SDRG/DRS, dated May 25<sup>th</sup>.
5. Copy of the letter dated June 20<sup>th</sup>, addressed by SUDEBANTRA to Banco del Trabajo, informing about the creation of the Union.
6. Letter of Banco del Trabajo, dated June 27<sup>th</sup>, 2005, rejecting the creation of the Union and giving back the previous letter.
7. Letter from SUDEBANTRA, dated June 1<sup>st</sup>, 2005, responding to Banco del Trabajo about its denial to accept the existence of the Union, attaching the list of members, the Board of Directors, and the reference of inscription from the Ministry of Labor.
8. Letter from SUDEBANTRA, demanding that Banco del trabajo withhold the Union quota from its members.
9. Letter from Banco del Trabajo, dated September 15<sup>th</sup>, 2005, refusing to withhold the Union quota.
10. Letter from SUDEBANTRA, dated July 13<sup>th</sup>, addressed to CGTP.
11. Copy of the lawsuit on the cancellation of the Union Registration of SUDEBANTRA, dated August 23<sup>rd</sup>, 2005, and its amendment.
12. Copy of Court Ruling Nr.2, dated November 11<sup>th</sup>, 2005, from the 17<sup>th</sup> Labor Court, admitting the bank's lawsuit.
13. Response to the Lawsuit from SUDEBANTRA, dated January 16<sup>th</sup>, 2006
14. Letter from SUDEBANTRA, dated September 5<sup>th</sup>, 2005, sending to the bank its first List of Claims.
15. Letter from SUDEBANTRA, dated September 5<sup>th</sup>, 2005, informing the Ministry of Labor about the submitting of the List of Claims.
16. Ruling by Ministry of Labor, EXP. 157502-2005-DRTPEL-DPSC-SDNC, stating that Collective Bargaining should be begun.

17. Letter from Banco del Trabajo, dated September 13<sup>th</sup>, 2005, sending back the List of Claims, and refusing Collective Bargaining.
18. Letter from SUDEBANTRA, dated September 16<sup>th</sup>, 2005, demanding Banco del Trabajo begin the Collective Bargaining.
19. Letter from SUDEBANTRA, addressed to the Ministry of Labor requiring the beginning of Collective Bargaining.
20. Letter from Banco del Trabajo, dated September 21<sup>st</sup>, 2005, sending back again the List of Claims, and refusing to begin the Collective Bargaining.
21. Letter from CGTP, dated February 6<sup>th</sup>, 2006, addressed to Banco del Trabajo's CEO, protesting the anti union conduct carried out by Banco del Trabajo.
22. Release from SUDEBANTRA, dated February 20<sup>th</sup>, denouncing the abuses from Banco del Trabajo.
23. Letter from SUDEBANTRA, dated August 28<sup>th</sup>, 2006, submitting the List of claims.
24. Information Alert Nr. 218, from the NGO Labor Program of Development, PLADES, an account of the sit-in carried by SUDEBANTRA in November 15<sup>th</sup>, 2006.
25. Release from SUDEBANTRA, dated November 15<sup>th</sup>, denouncing the bank's abuses to the public opinion.
26. Copy of the e-mail sent by the Department of Human Resources of Banco del Trabajo denying the existence of SUDEBANTRA.
27. Report written by the Social Observatory from Chile "El Banco del Trabajo Enajenado," about the situation in Banco del Trabajo.
28. Memorial dated December 14<sup>th</sup>, 2006, submitted by SUDEBANTRA to several Government Entities protesting against the Bank's abuses.
29. Letter from SUTRABANTRA, dated December 19<sup>th</sup>, 2006, calling for a press conference in order to denounce the bank's abuses.
30. Copy of newspaper Gestion, dated January 15<sup>th</sup>, 2007, with declarations of Banco del Trabajo's CEO Max Chion.
31. Press release from CGTP, denouncing the exploitation of workers.
32. Copies of the letters of SUDEBANTRA addressed to Banco del Trabajo's CEO, and several institutions, informing them of protest measures taken in December 15<sup>th</sup>, 2006.
33. Copies of letters from CGTP, addressed to the Banco del Trabajo's CEO and several institutions demanding the rights of Peruvian workers to be respected.
34. Copy of reference issued by the Ministry of Labor, dated January 11<sup>th</sup>, 2007, giving evidence of the absence of Banco del Trabajo's representatives to a meeting called by the Regional Direction of Labor and Promotion of Employment.
35. Copy of the Sentence, dated January 10<sup>th</sup>, 2007, declaring the Lawsuit from Banco del Trabajo aiming to cancel the Union registration to be lacking grounds.
36. List of current members of SUDEBANTRA in Lima, which reaches a total of 106, and copy of the Record of the Board of Directors of

- SUTRABANTRA, dated April 3<sup>rd</sup>, 2005, accepting the resignation of some of its members before the creation of SUTRABANTRA.
37. Copy of letter from SUDEBANTRA, dated July 25<sup>th</sup>, 2006, protesting against the imposition of an exploitative system, the so-called productivity game.
  38. Copy of Affidavit from Banco del Trabajo, dated August 8<sup>th</sup>, 2006, imposing on one of the members of SUDEBANTRA, the rules of the so called productivity game.
  39. Flier sent by Banco del Trabajo about the so called champions system.
  40. Letter from the members of SUDEBANTRA, refusing to accept this system, and endorsing their Union position, expressed on July 25<sup>th</sup>, 2006.
  41. Report submitted by PLADES on the system's arbitrariness imposed by the bank.
  42. Letters giving account of several groundless sanctions, imposed by the bank on the Union members, in order to harass them because of their Union affiliations.
  43. Sentences from the Peruvian Constitutional Court, EXP. 1124-2001-AA/TC, EXP. 976-2001,AA/TC, EXP. 0206-2005-PA/TC.

## **5. Therefore**

We request that you, Mr. President of the Committee on the Freedom of Association of the International Labor Organization, authorize opening this case. Also, we request the transfer of this Complaint to the Peruvian Government, and to commission its examination by experts from your organization, in order to submit a report to the ILO's Administration Council, confirming the violation of the Freedom of Association carried out by the Peruvian Government and Banco del Trabajo. Therefore, we also request the adequate corresponding sanction to this case, as well as including these anti-union practices in the ILO's files, and the urgent recommendation for the restoration of the dismissed leaders to their jobs, the acknowledgement of the Unions formed and the respect of the Freedom of Association and Collective Bargaining.

Sincerely yours,

Mario Huaman Rivera  
General Secretary  
CGTP

Luis Isarra Delgado  
Secretary of Defense  
CGTP