

## Executive Summary

### **Complaint against the Peruvian government for lack of compliance on its labour and environmental rights commitments, in accordance with the Trade Agreement between Peru and the European Union**

1. This document summarises the complaint brought forward by the signatory organisations, against the government of Peru, for not complying with its labour and environmental commitments agreed on in the Trade Agreement (TA) between Peru and the European Union. The trade agreement – signed in June 2012, in force since 2013 – comprises a set of obligations for the State Parties. The respect, promotion and adherence to international standards related to labour and environmental rights, are part of these obligations; they are also found in Title IX of Trade and Sustainable Development that is part of the TA with Peru.
2. Despite the commitments made, Peru has not seen and improvement in the situation of labour and environmental rights since the coming into force of the TA. This is the result of a lack of political will and of an efficient State that can guarantee the effective implementation – in its laws and practices – of environmental and labour standards contained in international human rights norms and Conventions, that relate to these rights of which Peru is a signatory.
3. Due to a lack of compliance by the Peruvian government with its international labour and environmental rights obligations (referred to in the TA), the undersigned organisations are submitting a complaint, presented before the National Point of Contact of the European Union, as per Art. 280 of the FTA.
4. To substantiate the complaint, the document includes emblematic cases chosen from various economic sectors: agriculture, mining, oil and gas, as well as textiles and clothing. Through these cases, the complaint highlights the violation of labour and environmental rights of the population directly involved in the economic processes facilitated and favoured by the TA. The cases will demonstrate how the labour and environmental obligations under Title IX of the TA are systematically violated as a result of a lack of adequate normative and/or institutional standards that would guarantee effective compliance. They also highlight the normative setbacks and generalised tolerance shown by the Peruvian government towards cases where there is flagrant lack of adherence of the [reduced] labour and environmental norms currently in practice in Peru.

### **Balance of the lack of effective implementation of internationally recognised labour standards, as contained in the fundamental International Labour Organization (ILO) Conventions.**

5. According to Art. 269 of the TA, “Each Party commits to the promotion and effective implementation in its laws and practice and in its whole territory of internationally recognised core labour standards as contained in the fundamental Conventions of the International Labour Organisation (...)”. These Conventions refer to: (i) the freedom of association and the effective recognition of the right to collective bargaining; (ii) the elimination of all forms of forced compulsory labour; (iii) the effective abolition of child labour; and (iv) the elimination of discrimination in respect of employment and occupation.

6. In the Peruvian case, there is a systematic failure to comply with the labour obligations assumed by the Peruvian State within the framework of the TA. This failure is reflected in a series of normative, institutional and political factors that prevent and hinder the exercise and full enjoyment of fundamental labour rights within the framework of bilateral trade between the EU and Peru. To add to the lack of operational and budgetary capacity of law enforcement agencies, there are also special regimes in place that affect primarily the workers in the textile, garment and agricultural sectors, both in the exercise of their right to freedom of association (a commitment directly assumed by the Peruvian State) and the possibility of achieving decent work.
7. These special regimes – that have been classified by international organisms as being harmful to fundamental rights – are characterised for their tendency to use hire workers in temporary contracts which are intended to facilitate personnel rotation. However, temporary contracts affect the worker's stability and imposes a rigid barrier that limits the right to collective bargaining.
8. On the other hand, the institutional weakness of the bodies responsible for labour oversight, in particular the National Superintendence of Labour Inspections (SUNAFIL), is contrary to the commitments made by the Peruvian State to ensure effective compliance with its labour legislation. The deficit in the number of departments (only 10 regions out of the 25 that exist have one) and of labour inspectors (there are only 105 inspectors, contrary to ILO's recommendation to have 2000 at the national level), contributes to widespread informal workforce and impunity when violations of labour rights occur, without due and timely oversight by the State.
9. A third aspect concerns the systematic failure to comply with the penalties imposed by the institutions in charge of oversight , as well as to judicial decisions against companies operating in the economic sectors covered by this claim, particularly those related to labour rights and social security. Both the Labour authorities and the Peruvian judicial system have serious limitations to exert their authority and ensure compliance with administrative and judicial decisions that protect the rights of workers.
10. Each of these factors – all of which explain why the State's breaches labour standards- is highlighted through emblematic cases explained in detail in this complaint. In the textile industry, the report includes the cases of garment and textile companies *Topy Top S.A.*, *Hilandería de Algodón Peruano S.A.*, *Creditex S.A.A.* and *Aris Industrial SA*, which exemplify repeated malpractices with regards to collective bargaining, such as the fraudulent use of special regimes that establish a reduced standard of labour rights, as well as the abuse of temporary employment contracts as a tool to deter, and also discipline unionized workers in their relationship with the referred companies.
11. The same is true in the case of agro-businesses, operating in the Coast and in the Amazon regions, where there are systematic violations to trade union indemnity, discrimination and practices against collective bargaining. There is also lack of compliance with basic security, health and safety standards at work. The complaint includes the cases of the companies *Camposol*, *Empresa Sociedad Agrícola Virú S.A.* and the *Palmas Group*, where labor inspections showed a number of anti-union practices. For example, granting higher salary bonuses to non-unionized workers, judicial criminalisation of union leaders, dismissal of unionized personnel and their leaders, non-compliance with judicial decisions and administrative sanctions, as well as various cases of fatal accidents and occupational diseases as a result of non-compliance with occupational health and safety legislation.

12. In the mining sector, the case of the Chinese mining company Shougang is included. There is a history of complaints against this company related to non-compliance with and abuses against fundamental labour rights, in particular the right to be unionized, collective bargaining and the right to strike, as well as malicious anti-union practices, irregular outsourcing, fraudulent modal contracting, wage discrimination, and non-compliance with health and safety standards at work. Between 2000 and 2011, there were 11 fatal accidents, which the Labour Administrative Authority was not able to resolve.

**Balance of non-compliance by Peru to its environmental obligations, as per the TA.**

13. According to Art. 268 of Title IX of the TA, it is “the sovereign right of each Party to establish its domestic policies and priorities on sustainable development, and its own levels of environmental and labour protection, consistent with the internationally recognised standards and agreements referred to in Articles 269 and 270, and to adopt or modify accordingly its relevant laws, regulations and policies; each Party shall strive to ensure that its relevant laws and policies provide for and encourage high levels of environmental and labour protection”
14. However, at least since the entry into force of the TA, a sustained process to weaken environmental standards has been implemented, justified by the promotion of investment in strategic sectors of the Peruvian economy. These reforms modified the procedures related to environmental certification, affected negatively the right of indigenous people to prior consultation, as well as care in the sustainable use of water resources and access of indigenous peoples to their lands and territories, among others.
15. These legislative reforms began during the government of President Humala (2011-2016), and continue to date under the current government of Presidente Kuczynski (2016-2021).
16. Supreme Decree No. 060-2013-PCM (article 2), shortens the amount of time allowed for the approval of Environmental Impact Studies (EIA) through special provisions to execute administrative procedures and other measures that encourage public and private investment. It also exempts public officials in charge of performing environmental assessments from seeking the opinion of other *opinion authorities*, or from requiring information and request corrections to EIAs on matters or aspects that have not been observed during the approval process, nor found in the terms of reference.
17. Law No. 30230 weakened environmental control, especially in the extractive sector; it deprived the Environmental Assessment and Oversight Agency (OEFA) of powers to sanction environmental violations; created special procedures to legally control public and private, formal and informal, land tenure, in order to benefit investment projects. This created enormous legal insecurity in the ownership and possession of lands and territories of peasant and native communities (indigenous peoples), as well as among small landowners and farmers whose lands were qualified to be of interest and need to develop specific investment projects.
18. Supreme Decree N° 039-2014-EM (Regulation for the Environmental Protection in Hydrocarbons Activities), weakens environmental and social standards that had been put in place, especially in the hydrocarbon sector and with regards to citizen participation.

19. With the adoption of Legislative Decree N° 1192, the Law of Acquisitions (Law 27117) was derogated, facilitating the acquisition and expropriation of real estate linked to investment projects, and establishing their expropriation as a general rule, to be applied whenever an investment project is deemed to be of public necessity and of large-scale.
20. Under the current government, Congress granted special faculties to the Executive to issue Legislative Decrees to promote economic recovery in the country. Of the 112 issued Decrees, the complaint highlights the ones deemed to have more negative environmental impact.
21. Legislative Decree No. 1333 facilitates the execution of infrastructure projects considered to be of national interest and of great scope, and gives the Agency for the Promotion of Private Investment (APIP) the mandate to define the need for relocation of communities and to convene communal assemblies, even though only indigenous communities have the power to convene assemblies for this purpose. The introduction of these faculties were done despite the fact that civil society organizations, for similar reasons, had previously demanded that Law No. 30230 be declared unconstitutional.
22. The Framework Law for the Promotion of Private Investment through Public-Private Associations (Legislative Decree N° 1251), reshaped the legal framework of what are known as Public-Private Associations (PPA)
23. These legislative changes form the basis of many conflicts arising from the ongoing environmental damages generated by extractive industries. The oil spills taking place in recent years, caused by damages in the Northern Peruvian Pipeline, is one of the prime examples. The pipeline is operated by the state-owned company Petroperú, which carries hydrocarbons (crude oil) and serves different operators that transport hydrocarbons (such as *Pluspetrol Norte SA* and *Pacific Stratus Energy of Peru SA*).
24. In January 2016, a lawsuit was filed in San Pedro for the leakage of approximately 2,000 barrels of crude oil travelling through the Northern Peruvian pipeline, in the Bagua province, Amazon region. On 12 September of the same year, an appeal was filed against PetroPerú for the oil spill of 7,500 barrels that occurred in November 2014, also in the Northern Peruvian pipeline. The competent authorities never issued a public report detailing the actions that had been taken to supervise the area, nor was an administrative sanction procedure for environmental damages ever opened, despite the magnitude of the case.
25. Another example is the oil spill that took place in km. 59 of the Northern Peruvian pipeline, located in the district of Uraninas, Loreto province, near the indigenous community of Nueva Alianza. The affected communities filed lawsuits demanding the authorities to update the environmental studies in the hydrocarbons sector; to fully repair the oil infrastructure; to secure environmental insurance and the payment of easements, as well as the respect of the right of indigenous peoples affected to prior consultation.
26. These events led the Inter-American Commission on Human Rights (IACHR) in July 2017 to issue a public report urging the Peruvian State to continue and expand the dialogue with affected communities, as well as to take the necessary measures to provide water, food and adequate health services to the communities affected. This situation reflects Peru's non-compliance (Article 277 of the TA) with its duty to ensure that "relevant laws and policies contemplate and encourage high levels of environmental protection".

27. The complaint also highlights the case of “Las Bambas” mining project, where continuous approval of a number of modifications to its EIA, without consultation or participation of the affected population, generated a serious social conflict. It also highlights the cases of the Southern Gas Pipeline - where the right to citizen participation for the approvals of the Sustainability Technical Report (STIs) was respected, nor the right to Prior Consultation. It also failed to guarantee transparency and accountability standards. The complaint also mentions the company Pluspetrol, which was denounced for negatively impacting the right to health, food, water, the right to land as well as the right to have a healthy and protected environment. Finally, it mentions the Tamboraque case (Nyrstar), for failing to comply with the timing of the transfer of tailings from deposits 1 and 2, favored by the reduction of powers generated by Law No. 30230.
28. Also detailed in the complaint, is the impact of agro export industries in coastal regions (Ica), where the overexploitation of agricultural resources puts at risk people’s access to essential resources, such as water, which is in violation of Art. 277 of the TA. The policy of the Peruvian State to promote agro-exports through Public-Private Associations has consolidated the control of exporting companies over underground water resources in the region, which end up being accessible only to those who are able to pay for them, (i.e., agro-export companies).

#### **Conclusions and demands**

29. The evidence of serious violations of labour and environmental rights in Peru, despite the commitments made by the country in accordance with its constitutional framework, domestic legislation and binding international treaties, as well as within the framework of the TA signed with the EU, supports this claim.
30. For the European Union and its Member States to ensure that sustainable development and human rights can be effectively recognized and observed by their trading partners, and to guarantee the protection of socio-economic and sustainable development, as well as the health and environmental model of the European Union, it is required that: (i) the Peruvian State commits to an Action Plan with clear goals and an effective timetable that guarantees its implementation; and (ii) parties define the sanctions that could be imposed if these obligations are ignored.
31. To guarantee the above, the organizations submitting this complaint ask: (i) that governmental consultations are convened to discuss the reported violations incurred by Peru of its obligations under Title IX of the Agreement; (ii) to set up a group of experts to examine in depth the violations raised in this document; (iii) that if our concerns are confirmed, the European Union takes a public stance by making the appropriate recommendations; and (iv) to respect the right of Peruvian civil society to organize, participate and be consulted as an Advisory Group in an autonomous and independent manner in all matters corresponding to the proper implementation of Title IX of the TA on Trade and Sustainable Development.