



The Unequal Treatment of Sub-contracted Workers in the Mining Sector

Complaint against Colombia and Peru
for the Trade and Sustainable Development Chapter
of the EU Free Trade Agreement

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On 17 May 2022, the unions Sintracarbón, Sintracerrejon and Sindicato de Trabajadores Mineros Metalurgicos de Andaychagua Volcan Compañía Minera, coordinated by CNV Internationaal, filed a complaint in which they allege that the Colombian and Peruvian governments violated multiple provisions of the trade agreement with the European Union (EU). The complaint highlights a pattern of anti-union violence and the misuse of subcontracting, leading to violations of the right of workers to freedom of association, collective bargaining and thus the discrimination against sub-contracted workers doing the same job. These precarious labour conditions and anti-union practices take place in mines owned by Glencore (a Swiss multinational), where coal (in the case of Colombia), zinc, copper, tin, silver and lead (in the case of Peru) are exported directly to EU Member States.

The trade agreement between Colombia and Peru on the one hand, and the EU and its Member States on the other hand was signed on June 2012. International labour standards are part of the Trade and Sustainable Development (TSD) chapters of the EU's Free Trade Agreements (FTAs). The objective of these TSD chapters is to ensure that trade and investment include commitments with regards to labour rights and environmental protection, including core labour standards. The EU's Single-Entry Point (SEP) is the new complaints system for reporting breaches in TSD provisions across FTAs, as well as the General System of Preferences. Presently, mainly business organisations make use of the SEP, making CNV international (one of the first) non-business organisations to file a complaint under this mechanism.

The gap between direct and outsourced workers

Peru and Colombia ratified ILO Conventions 87, 98 and 111 before the Free Trade Agreement was entered into force. This has been further reflected by several legal initiatives to address the issue of outsourcing. In Colombia, this has been reflected in the constitution, the penal code, the labour code and specific decrees. Peru has legislated freedom of association and non-discrimination through the constitution and specific laws. However, the legal framework has not

significantly been strengthened after the conclusion of the FTA, and there are serious shortcomings in implementing them. This is demonstrated by the case of the Cerrejon Company Mine (Colombia) and the Volcan Company's Andaychagua Mine (Peru) that show a different picture.

In Peru, mining companies have increased the use of contracting agencies for their workforce. According to the Mining Statistical Bulletin, outsourced workers make up to 70% of the total workforce in the mining sector¹. With less than a third of the workers directly employed, outsourcing is the general rule rather than the exception in the sector. In Colombia, surveyed mining sites show similar figures, with a relatively small part of the workforce being under direct employment while the vast majority is outsourced despite performing similar duties.

Indeed, mining companies often justify outsourcing by arguing their desire to specialise in a specific part of the production process, whereas, in reality, it serves primarily to reduce labour costs. Outsourcing conceals direct labour relations, making it even harder to identify the real employer, and as a result, the possibility to enforce employee's rights and to enter into direct collective bargaining. Such a lack of transparency about the economic employer as well as the reduced labour protection leads to wage gaps

¹ <https://www.cnvinternationaal.nl/en/our-work/news/2022/march/peru-tackles-excesses-in-subcontracting-of-miners>



between workers employed directly by the mining companies and the contract agencies, and thus prompting unfair discrimination against workers who perform the same function.

The gap between direct wage and outsourced workers

Concretely, the difference between directly employed workers and outsourced workers is significant, both in the degree of job stability and wages. A study commissioned by Friedrich-Ebert-Stiftung (FES)² on coal mining in Colombia revealed that outsourced workers were working on short-term contracts, often lasting between 3 to 6 months or up to 1 year without any extra social benefits, however, making longer working hours and earning wages that are 30% lower.

Furthermore, there also appears to be a big difference between mining companies and contracting agencies in terms of (fatal) accidents. According to a report by PLADES³, mining companies in Peru suffered 18.2 fatal accidents between 2000 and 2018 whereas this number was 31.6 for contractor agencies in the same period, which indicates that the latter deploys less stringent occupational health and safety protections.



Despite improvements made between 2014 and 2018 with fewer accidents occurring, workers linked to contractor agencies remain more vulnerable. In conclusion, outsourced workers suffer from lower wages, social benefits, working conditions, earnings, and health and safety entitlements.

Fatal accidents between 2000 and 2018 in Peru



2 Friedrich-Ebert-Stiftung (2014) La minería de carbon a gran escala en Colombia: impactos económicos, sociales, laborales, ambientales y territoriales. Available at: <https://library.fes.de/pdf-files/bueros/kolumbien/11067.pdf>

3 <http://www.plades.org.pe/noticias/participacion-de-peru-en-la-cadena-global-de-suministro-de-metales-luces-y-sombras/>

Anti-Unionization

Additionally, outsourced workers suffer limited associational and collective bargaining rights. According to a survey in Peru, 46.3% of the respondents indicate that their contracts are not renewed due to union participation and that their contracts are conditional on not joining a union. Furthermore, 63% feel hostility toward joining a union, and 49.6% indicate that they are not covered by a collective agreement.

According to the ITUC Global Rights Index,⁴ Colombia is one of the ten worst countries for working people in 2021 with a deep-rooted history of anti-union violence. In 2019, 12 murders, 198 death threats, 11 acts of intimidation, 4 attempted murders and 1 forced disappearance were reported, targeting workers and union leaders. Furthermore, the small scale of these satellite contracting agencies, fragments the workforce thus hampering further unionisation. Finally, even if a union of outsourced workers is created, it cannot function as a bargaining agent in relation to the mining company.

⁴ ITUC (2021) Global Rights Index. Available at: https://files.mutualcdn.com/ituc/files/ITUC_GlobalRightsIndex_2021_ES-1-final.pdf

Colombia

In 2022, Glencore acquires the Cerrejón company with mining operations in the region. The sub-contracted workers have significantly less rights. For example, some with fixed-term contracts earn lower salaries, up to 3 times less than direct Cerrejón employees with the same function. Due to the fixed-duration contracts, workers are prevented to accrue seniority. In another company, 12-hour shifts only provide a minimum wage.

Peru

In 2017, Glencore took control of Volcan and its mines, including the Adaychagua mining project. When the local union requested the company to negotiate a CBA, the company refused. The company equally refused to attend a government-mandated conciliation meeting. Following a strike at the end of 2021, the labour inspectorate started an arbitration procedure, resulting in a ruling in February 2022 to which the company still needs to comply with.

Regulatory shortcomings

The Peruvian law is clear on when outsourcing/illegal intermediation is allowed or not allowed. However, the problem is the enforcement and sanctioning of non-compliance. Indeed, many contracting agencies in the mining sector do not comply with the legal requirements when carrying out their activities. For example, the Peruvian Labour Inspection did attempt to sanction the malpractices of these contracting agencies. However, the agencies in collaboration with the mining company dismissed the workers and closed the company, only to reappear under a different name to service the mining companies. Such an example clearly demonstrates the limits of the current regulatory framework to ensure non-discrimination between workers.

Similarly in Colombia, significant steps have been taken at the legislative level to curb outsourcing and strengthen the sanctioning power of the ministry of Labour. However, the actual enforcement remains limited. In 2017, only 2% of all labour inspections in the country targeted the mining sector, resulting in 6 inspections on outsourcing.

The shortcomings in implementing the law, and assuring equal treatment between direct and outsourced workers, are not new. An earlier (2008) decision by the ILO Committee on Freedom of

Association on Coca Cola workers in Colombia has resulted in a clear decision that workers (including outsourced workers) should have the right to join or form a union of their choosing. A more recent (2018) decision of the same body came to a similar conclusion. Such criticism has equally been picked up by the European Parliament before the signing of the Free Trade Agreement, requesting a roadmap to address them.

In 2016 and 2017, similar cases have been dealt with under the US - Colombia free trade agreement and the Canada - Colombia free trade agreement, resulting in determinations of anti-union violence and the abuse of subcontracting. Also, the OECD Committee on Employment, Labour and Social Affairs also formulated specific recommendations for Colombia in similar terms, urging restriction on the use of sub-contracted services to hide real labour relations and implementation of adequate labour inspection to identify illegal intermediation. And the ILO supervisory mechanisms, reached similar conclusions, namely a failure to guarantee associational rights through the excessive use of subcontracting.

The objective of the Single Entry Point complaint

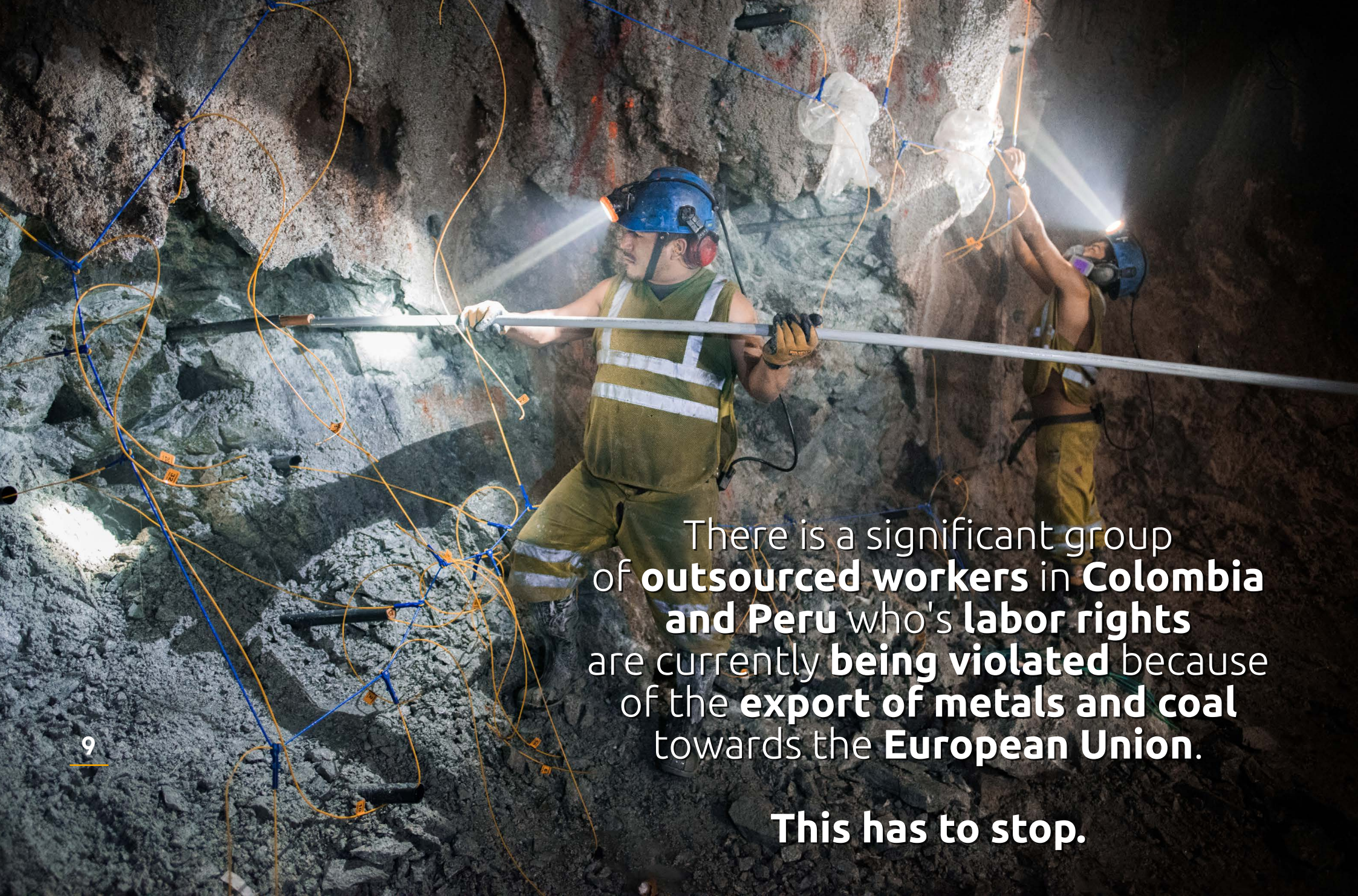
With the complaint to the SEP, the unions hope that the EU will work with both countries to achieve compliance with Chapter IX of the Trade Agreement. Through the complaint, the EU has been requested to take up this case and urge Colombia and Peru to investigate the individual cases in their respective Glencore subsidiaries and ensure equal salary and rights for direct and subcontracted workers.

Furthermore, it is important for both trading partners to address the excessive use of subcontracting and short-term contracts, including their effects on the labour rights (wages, OHS) as well as union and collective bargaining rights.



This can be achieved by agreeing with Colombia and Peru a results based, time-bound and practical roadmap with regular reporting to:

- evaluate the impacts of outsourcing labour and precarious contracts;
- investigate and monitor in order to ensure an effective application of fundamental ILO conventions (especially on ILO Conventions 87, 98 and 111) to outsourced workers;
- study the labour protection effectively enjoyed by outsourced workers, especially study if strict labor inspections are taken place with penalties for wage discrimination, refusal to bargain collectively, unfair dismissals, intimidation and threats against workers;
- open a dialogue on these specific cases in Cerrejon and Volcan, so that the companies involved comply with their duty of due diligence and stop violations of the right to freedom of association and collective bargaining as well as the right to equality;
- address the responsibility (inter alia through mandatory human rights due diligence) of all corporate actors involved in relation to outsourced workers.



There is a significant group of **outsourced workers** in **Colombia and Peru** who's **labor rights** are currently **being violated** because of the **export of metals and coal** towards the **European Union**.

This has to stop.



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