Internationaal

Position paper

Outsourcing in Peru, Colombia and Bolivia

Identifying and understanding the hidden risks in mining supply chains

Content

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1. Introduction

Outsourcing in the mining supply chain sometimes involves risks which can lead to violations of labour rights. To make matters even more complicated, these outsourcing risks are often difficult to identify through standard due diligence measures, like those recommended by the OECD.
This paper presents the results of a case study commissioned by CNV Internationaal on two mines in Peru. The results are being kept anonymous because the study itself is not public and it contains commercially sensitive information. However, it also gives a thorough and in-depth look into the role outsourcing has played in those specific mines and reveals alarming risks related to labour rights violations.

The results are specific to this case study and cannot be extrapolated. More research is needed if we want to arrive at more general conclusions. Nevertheless, in this position paper we have made an attempt to determine whether any of the issues found in the case study also occur more generally in Peru and its neighbouring countries Colombia and Bolivia. Like Peru, Bolivia is an important country in the global metal market and Colombia is an important source of coal, a relevant raw material for the metal processing industry.

Although it is difficult to draw conclusions based solely on the comparative descriptions presented in this paper, in our opinion, the study provides sufficient indications that the risks which have been discovered could occur throughout the mining sectors of Bolivia, Colombia, and Peru and that more transparency is needed in the value chain. As far as CNV Internationaal is concerned, this is a joint task for all stakeholders in the metal value chain.

2. Outsourcing: What are we talking about?

2. Outsourcing: What are we talking about?

The international labour organization ILO describes outsourcing, or decentralization of production, as a way of organizing production whereby certain parts or operation of the production process are outsourced to third parties. OECD defines outsourcing as "delegating (part of) activities to an outside contractor", explaining that outsourcing means "acquiring services from an outside (unaffiliated) company or an offshore supplier" (OECD, 2021).

Outsourced workers are not directly linked to the main company. The legal character of the main company is different from that of the company being used for outsourcing, and therefore, the employment and remuneration conditions for outsourced workers are often not in line with the conditions of direct workers. Outsourcing introduces differing labour standards, which results in the working conditions for contract staff being of a lesser quality than those of direct employees. When outsourced workers try to form their own unions, they often suffer severe restrictions regarding their labour rights, especially in areas where they can easily be replaced by other workers. And if they try to join the main company's unions, they are also usually confronted with difficulties. (Ermida Uriarte & Colotuzzo, 2009, p71).

Outsourcing production activities makes it possible to introduce significant levels of flexibility in the use of the workforce and a reduction in wage costs that would be unthinkable in the context of labour law reform. Labour laws that have their foundation in the continual application of a series of basic principles can be bypassed without much difficulty through these types of strategies (Ermida Uriarte & Colotuzzo, 2009, p72).

Outsourcing is globally used by a majority of mining companies in several phases of extraction, as well as in general maintenance and support services, and to a lesser extent in mineral processing (Baatartogtokh et al., 2018). Outsourcing of mining processes is explained by Pillay (1999, p.194) as "a means of reducing costs in order to become 'globally competitive'", since it can increase productivity, improve effectiveness, and reduce operational costs. However, the mining industry's business model to maximize competitiveness through the use of subcontracting in various phases of the process, disrupts the organization of the labour market. And while outsourcing can be seen as a strategy to enhance competitiveness and efficiency, it is also a strategy that transfers the burden of labour risks to individual workers, putting them in a vulnerable position.

2.1 Cost-saving strategies

Outsourcing in the mining value chain is beneficial to companies because it makes it possible for them to reduce their own costs by outsourcing some of their processes and functions. However, the responsibility for compliance with applicable laws should also be passed on to the subcontractors. Outsourced staff is rotated and workers are denied contractual stability, enabling companies to save money in terms of workers' participation in profits, seniority bonuses, and access to insurance and occupational health and safety. *Moreover, the limited duration of contracts undermines any type of long-term union organization, reducing the possibility for workers to improve their conditions through union action.* These cost-saving strategies have direct consequences for the social and occupational well-being of the workers. The competitiveness of these companies greatly increases the scale and number of workers' rights violations.

2.2 Contracting companies and the weak position of workers

Benavides and Muñoz (2018, citing Bernal, 2013) have found several problems in mining contracting companies. These include tariffs that don't comply with increasing mineral prices, temporary or interrupted contracts which generate a large rotation in personnel, inappropriate labour conditions with low compensation, and the unclear distribution of profits. The subcontracting system obliges workers to accept temporary contracts which prevents them from claiming their collective rights and leaves them in unstable positions (Peña Jumpa, 2013). The tendency of parent companies to divide their operations and transfer them to several contracting companies weakens possibilities for workers to unionize, which in turn results in unequal compensation (Cedal, 2019).

Since outsourcing is an important tool for companies to increase their efficiency and productivity, many countries have developed labour laws to regulate the practice. This legislation is meant to prevent the improper use of outsourcing and protect the status of the permanent employment contract. Nevertheless, Toledo (2020) points out that the indiscriminate use of outsourcing has negative consequences for outsourced workers' stability and social and labour rights. As a management instrument, labour costs can be lowered through subcontracting by evading compliance with labour standards instead of promoting the generation of quality employment.

2.3 Improper use of outsourcing

Although this varies from country to country, aspects of the improper use of outsourcing include i) the existence of a direct hierarchical relationship between the management of the client and the workers, ii) the outsourcing of routine work or core business work, iii) the use of temporary contracts for longer periods of time while the workers continue to do the same work, iv) the hiring of temporary workers who do exactly the same work as permanent workers for long time periods, and v) the use of temporary work agencies which are not financially independent, do not have their own equipment, and only have one client. In essence, it can be said that the improper use of temporary workers actually involves an employee relationship, but this is prevented by the agency construction in order to avoid all employer responsibilities and expenses.

3. The findings of the field study in Peru

3. The findings of the field study in Peru in brief

A field study in Peru (Mujica, 2020)[1] commissioned by CNV Internationaal describes how the rights of outsourced workers from two mining companies in the Junin and Cusco regions are being violated. These include rights related to labour, occupational health and safety, and unionization. Through 182 surveys of workers and 44 semi-structured interviews (interviews with people working within the value chain, such as outsourced workers, local authorities, and specialists) data and information was collected between March and September 2020. A complementary methodology for data collection was used i) a local field team that was able to move on site and ii) specially developed instruments for data gathering through telecommunication, for example video conferences.

In both regions, the studies showed that significant parts of the mining operations' core business are being outsourced. These include the core exploitation phases and the maintenance process, where some tasks are high risk and require intensive physical labour. The majority of tasks performed by outsourced workers demand very little in terms of qualifications. In some cases it is enough to have a certification for handling the machinery or equipment. In one of the regions, the tasks of the contractor companies are not differentiated from those assumed by the mining company, and exploration tasks are shared between direct workers and outsourced workers. This indicates that outsourcing is being used inappropriately according to Peruvian Law 29245 and its implementation regulations (see also the section on Peru below).

Outsourcing is thus taking place within the "core business" of the mining companies, This core business consists of the extraction, crushing, and concentration of minerals. In both mining sites studied here, outsourced workers perform extraction tasks involving drilling, blasting, loading, and hauling. These are high risk tasks, and within the mining production chain, they are also the most labour intensive. Figures 1 and 2 show where temporary workers are being used at the two mining sites studied.

1. Jaris Mujica. He has a degree in Anthropology and a Master in Political Science from the Pontificia Universidad Católica del Perú; and a Master in Criminology from the Pompeu Fabra University in Barcelona. He is a researcher specialized in crime control, criminal organization patterns and research methods on violations and crimes. He has been a commissioner in the Anti-Corruption Unit of the Ombudsman's Office, Head of the Office of Internal Affairs of the Peruvian Penitentiary System, Head of the Information Unit of the Anti-Corruption Prosecutor's Office. →

Figure 1: Phases in the value chain of the Junin mining site according to the executing entity

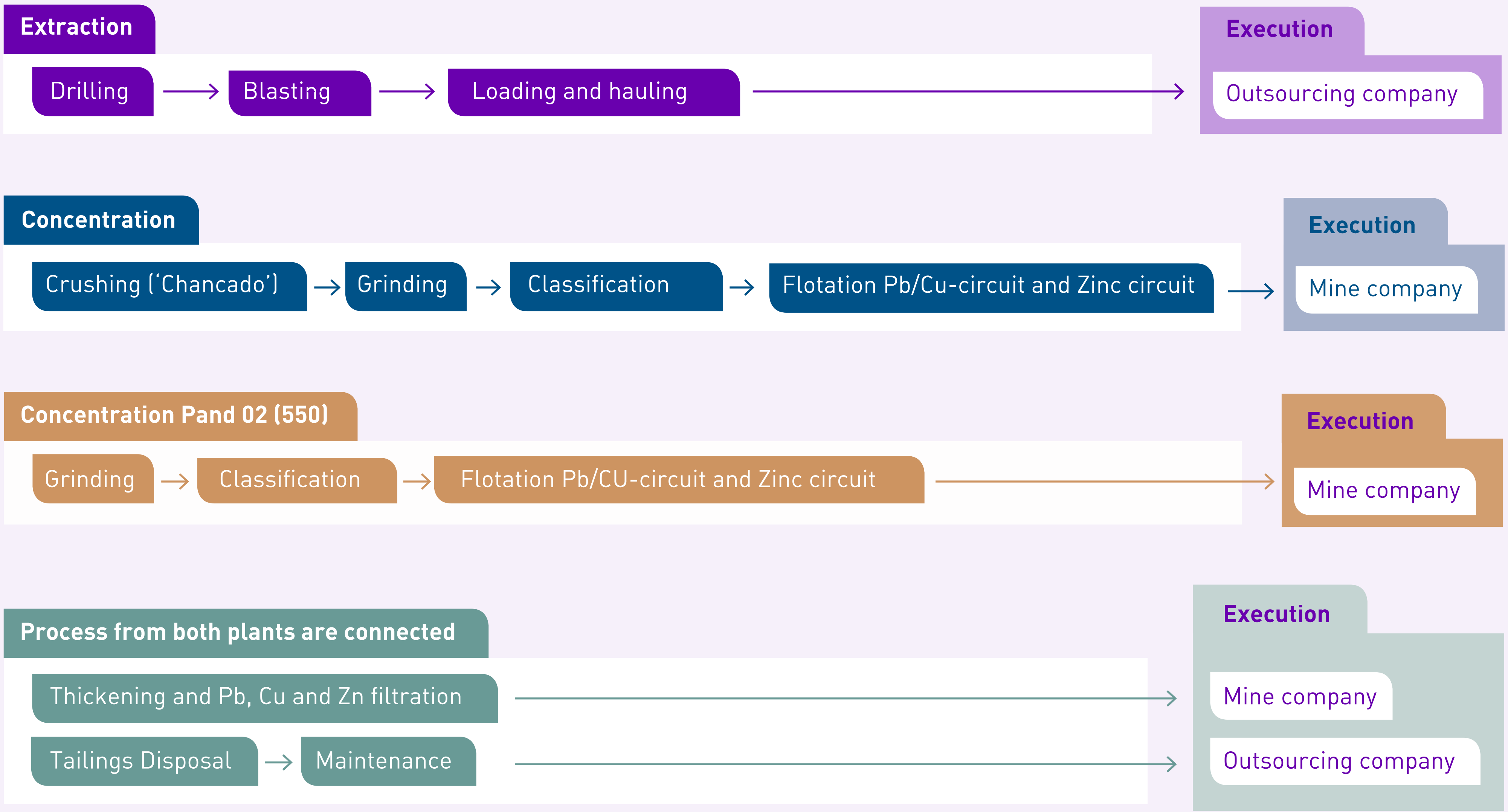
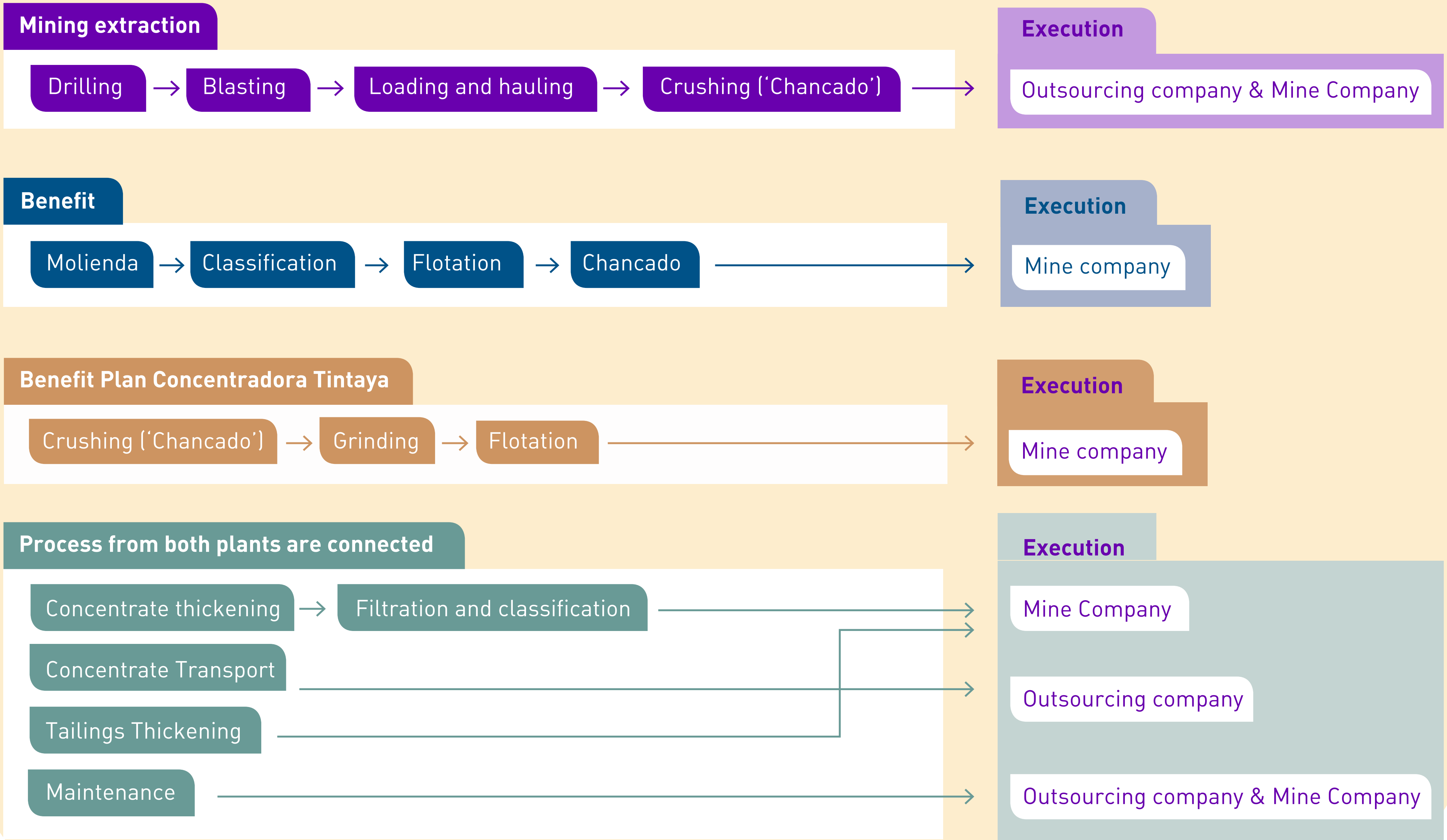


Figure 2: Phases in the value chain of the Cusco mining site according to the executing entity

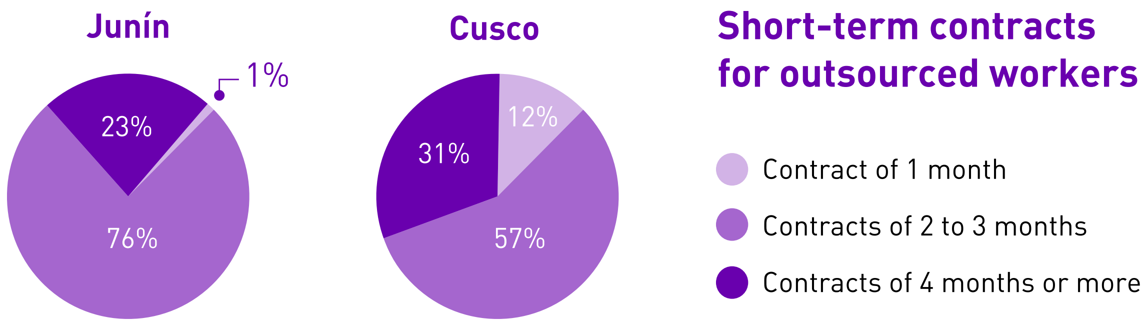


At both locations, the workforce is mainly outsourced, with more than 70% of the workers coming from outside of the mine companies themselves. In December 2019, the number of outsourced workers at the Junin site constituted 77% of all personnel. At the Cusco mine, 72% of the entire workforce was outsourced. It is important to consider that the overall percentage of subcontractor employees in Peruvian mining represented 56% in 2018 and in 2019, this was 67.9% (Ministerio de Energía y Minas, 2019). This shows that the number of temporary workers at these two mining sites is only slightly higher than the national trend.

Outsourced work can also be distributed among a large number of subcontracting agencies. In the Junín area, positions are outsourced to a dozen subcontracting companies, two of which account for 70% - 90% of the outsourced workforce. The mining site in the Cusco region is not limited to a small group of mining contractors. Approximately 1000 subcontracting companies are used, and 120 of these companies provide services on a regular basis.

Issues also exist in the area of employment. These are related to the intensive use of short-term contracts. The study shows that 100% of

Short-term contracts for outsourced workers



the surveyed outsourced workers were hired for a fixed term, in both the Junín and the Cusco regions. Contracts can last for very short periods of one month (for a small percentage of workers in the Cusco region), but the majority of workers sign new contracts every 2 to 3 months (76% in Junín and 57% in Cusco). The rest may have contracts of 4 months or more (23% in Junín and 31% in Cusco).

The use of short-term contracts for outsourced workers has increased the loss of employment in this group of workers. This has a negative impact on employment stability and benefits, and therefore, can be deemed illegal under the terms of Peruvian Law 29245 on outsourcing (see also the explanation in the section on Peru).

The continuous use of short-term contracts also impacts the freedom of workers to request improvements in their working conditions, to demand compliance with regulations, and exercise their right to freedom of association. Workers whose contracts were not renewed felt that this was directly related to them defending their labour rights. In Junín, 22 out of 27 labourers no longer working for subcontractors indicated that the termination of their contracts was the cause of their job loss. In Cusco this was 9 out of 11 labourers. The mayor of the Centro Poblado in the Junín mining region explains that "a worker who voices protest against any type of non-compliance is one of the main causes for contracting companies to withdraw workers from the payroll. [...] If you make any kind of complaint or claim regarding your salary or the use of Personal Protective Equipment (PPE), you are not considered for another contract."

Another example is given by a worker in the Cusco region who says, "Sometimes you make a claim, either for your PPE or because they have been late in paying your AFP (pensions fund), so they consider you problematic. You can be sure that after a month or two you will no longer get your contract." (Worker in the maintenance department). Another worker who was no longer working because his contract was terminated, explains, "I no longer have work with the company because I was leading these claims. The few who have stayed and the ones who have left have not received any compensation or settlement. I didn't formalize the complaint because it happened in the middle of a pandemic. But afterwards I made a virtual complaint to SUNAFIL. I also sent some letters to the owner of the contracting company." (Former field supervisor).

Outsourced workers included in this study are not unionized because unions for outsourced workers are non-existent in these regions. In addition, it is not possible for them to join a union for regular direct workers. Workers are often unaware of their rights regarding freedom of association (55.4% in Junín, 67.2% in Cusco), but besides that, many workers fear that their contracts will not be renewed if they attempt to unionize. Over 60% of workers in both mining regions feel that there would be negative consequences for workers who try to unionize, with the main consequence being the loss of their jobs through disguised dismissals or their employment contracts not getting renewed. This risk of the non-renewal of employment contracts is therefore a reason that workers avoid organizing.

Outsourced workers unaware of their rights regarding freedom of association: 55.4% in Junín, 67.2% in Cusco

Over 60% of workers in both mining regions feel that there would be negative consequences for workers who try to unionize.

In the area of health and safety at work, the study found that contractor companies have several deficiencies which violate workers' rights. The frequency and duration of worker training is insufficient according to both the requirements of the Annual Training Program and the Regulations for Occupational Safety and Health in Mining[2]. The majority of workers in the Junín region (64%) say they received 1 - 2 trainings and the rest received more than 3 trainings per year. 15% of these training programs lasted for less than 1 hour and 61% lasted 1 - 4 hours. In the Cusco region, this was 19.7% and 41% respectively.

2. Requirements of the Annual Training Program listed in the Regulations for Occupational Safety and Health in Mining depend on the type of work that each worker executes and the related risk assessment and control measures. Annex 6 of the Regulations specify 20 different types of training, each varying in a minimum of 2-4 hours per training.

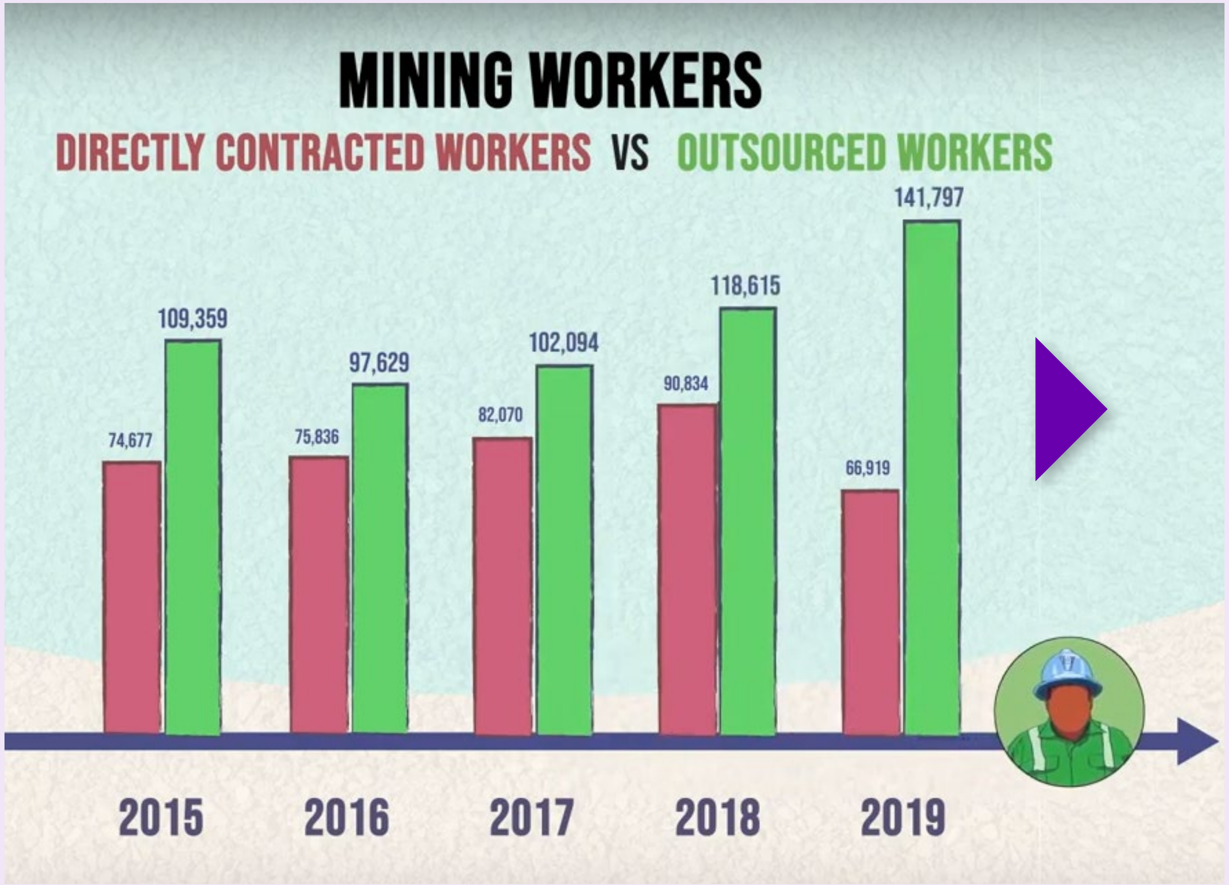
An interviewee from the Cusco region points out, "I received training, but sometimes the contractor told us that there was going to be training, but in the end, there was no training and we still had to sign an attendance sheet as if it did take place." (Heavy equipment operator).

Contracted workers experience issues with the provision of PPEs, which causes inconveniences and risks to their health and safety. 32.2% of workers in the Junín region indicated that they had experienced problems or inconveniences in acquiring a PPE, and that the ones which were acquired were often dirty, worn, second-hand, or not a fitting in size for the user.

Contractor companies provide limited medical assistance in the case of accidents suffered at work. Further, accidents are not always acknowledged by contracting companies and are therefore not reported correctly. For instance, out of 15 interviewees in the Junín region who had suffered work accidents, only 3 were reported as such. The others were reported as "general accidents".

Overtime working hours are often requested by the contracting companies, but are also frequently unpaid. In both Junín and Cusco, most of the outsourced workers worked overtime (80.2% and 91.8% respectively), and at least half of the people surveyed had never received payment for that extra work (45.5% in Junín and 49.2% in Cusco). Sometimes overtime hours get compensated with hours off, but enjoying days off and holidays is difficult under short-term contracts. While in Junín, 95% of the people surveyed indicated they had access to holidays; in Cusco this was only 46%.

figure 3; Link to explanatory video



4. Overview current situation in 3 countries

4. Overview current situation in 3 countries (Bolivia, Peru, Colombia)

Firstly, what we see in the field study in Peru, is the common use of outsourced workers throughout the mining value chain, including for core business activities. This specifically shows us that the use of short-term contracts over longer periods of time has consequences for workers in regard to organizing into unions and advocating better working conditions. We also see that working conditions are worse in several areas of labour rights.

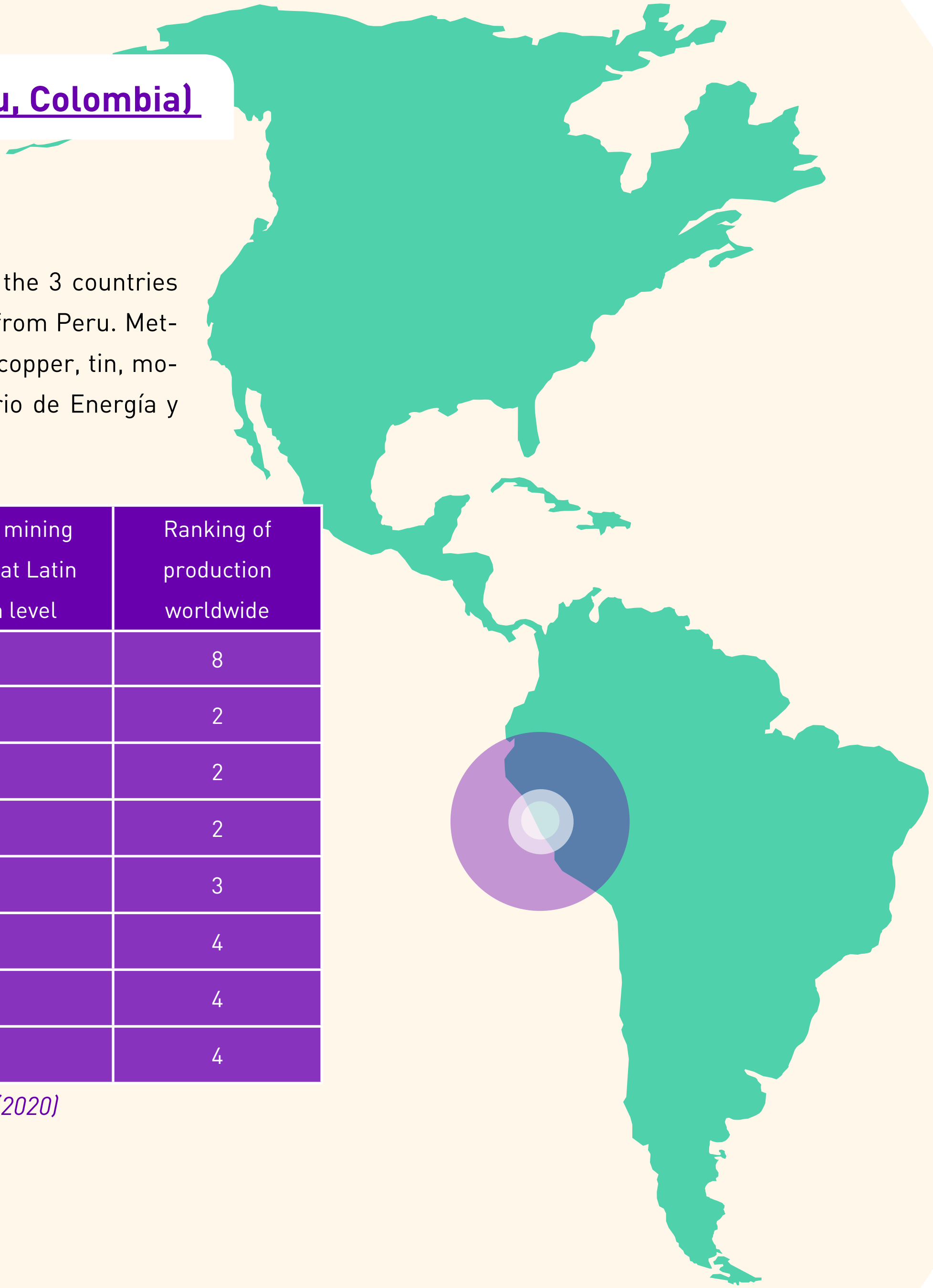
This chapter looks at how national legislation in Peru, Colombia, and Bolivia is shaped in terms of outsourcing. It will also look at information from secondary sources that may indicate that the situations described in the field study might be a risk throughout the mining sector.

4.1 Peru

China, Switzerland, and Canada are the 3 countries receiving the most metals exported from Peru. Metals exported to the Netherlands are copper, tin, molybdenum, lead and others (Ministerio de Energía y Minas, 2019).

Metals mined in Peru	Ranking of mining production at Latin American level	Ranking of production worldwide
Gold	1	8
Copper	2	2
Silver	2	2
Zinc	1	2
Lead	1	3
Tin	1	4
Molybdenum	2	4
Andalusite / Kyanite	1	4

Source: Ministerio de Energía y Minas (2020)



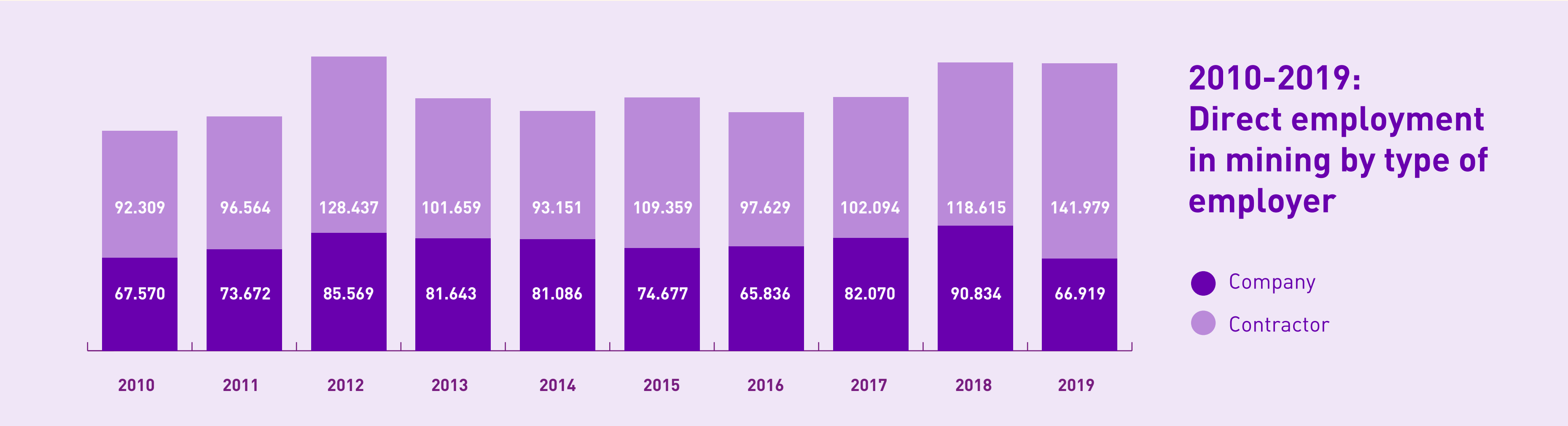
4.1.1. Legal Framework

Law No. 29245, regulating outsourced services in Peru, was issued in 2008, defining outsourcing as: *The hiring of companies to carry out specialized activities or works, provided that they assume the services provided at their own risk and expense; have their own financial, technical or material resources; are responsible for the results of their activities and the workers are under their exclusive subordination (Law No. 29245 article 2).*

This legal definition allows companies to contract other companies to develop specialized activities or work. This makes it a popular decentralization modality because it leaves room for it to be applied to an organization's main activities and core business. The regulatory framework in Peru specifies that outsourced workers, in a strict employment relationship with the contractor, cannot be subordinate to the company that hires the subcontractor, or to the company the service is provided to.

4.1.2. Due diligence risks in the country

If we look at the general panorama while keeping the findings of the field study and the legal framework in mind, a number of possible risks can be identified, related not only to union freedom, but to the improper use of outsourcing as well. Official data from the Peruvian government shows that in the mining sector, the hiring of personnel by outsourcing (contractor) is higher than the direct hiring by the company (Ministerio de Energía y Minas, 2019, p108):



Source: Ministerio de Energía y Minas > 2010-2018: Declaración Anula Consolidada (DAC) > 2019: Declaración Estadistica Mensual (ESTAMIN)

Looking at the Boletín Estadístico Minero edition 02-2020, it is confirmed that the outsourced workers account for 70% of total employment in the mining sector[3]. **This is a very high number, indicating that almost three quarters of mining workers have fewer rights.**

What researchers are saying

In the last decade, mining companies operating in Peru have increased their use of subcontracting companies to carry out main mining activities. Since the Free Trade Agreement was signed with the European Union, the number of outsourced and subcontracted workers has continued to grow. Moreover, they are also being implemented for tasks which used to belong exclusively to the main company (PLADES, 2019).

There are major differences between mining companies and subcontracting companies when it comes to (fatal) accidents. A report from PLADES (2019) shows that between 2000 and 2018, mining companies suffered an average of 18.2 fatal accidents, while subcontracting companies suffered 31.6.

These numbers imply that subcontracting companies use a less efficient security system. Although this study shows improvement between 2014 and 2018, with fewer accidents occurring during these years, the data also shows that workers who are not part of the main mining company still remain more vulnerable.

Outsourcing has created serious problems when it comes to protecting and guaranteeing the fundamental rights of all workers. In general terms, outsourcing is often used to hide direct labour relations. More precisely, the intervention of a third party in the dynamics of labour contracting makes it difficult to identify the employer and, therefore, to determine and enforce the employee's rights (Balbin Torres, 2006).

As a result, this creates wage gaps (Sanguinetti, 2013) between the main companies' workers and those who are employed by contracting companies. This situation appears to violate the principle of equal rights. Likewise, it causes outsourced workers to be subject to different working conditions, such as longer working hours, lack of adequate equipment for risky activities, and a higher risk of becoming the victim of occupational accidents and occupational diseases (Sanguinetti, 2013).

In addition, collective rights are also directly affected because "the small dimensions of these satellite companies or the distribution of the workers of the contractor companies in several user companies are some of the obstacles that any group of workers who want to form a union in a service company will have to face" (Arce Ortiz, 2013, p152). Even when outsourced workers form unions, they "will not have any representative relationship with the main employer because they are different companies" (Arce Ortiz, 2013, p153).

Finally, it is important to highlight the fact that profit sharing is also an area which is distorted in regard to workers from contracting companies. Profit sharing is only available to workers on the main company's payroll. This differentiation establishes a situation of unjustified inequality between the main company workers and those who have been outsourced. Both perform similar activities, but have clearly different rights.

3. Interestingly, the same source uses different numbers to describe the same issue (Anuario Minero 2019, Informe empleo minero 2020)

What workers say

In personal interviews with FENTECAMP, the trade union for outsourced mine workers, a picture emerged - not surprisingly - that the situation found in the two mine sites of the field study are generally recognizable. They indicate that mining companies commonly argue that "specialization" of a particular part of the value chain is the reason for outsourcing, but in practice it was verified that it is mainly used for labour cost reduction. *Wages, social benefits, labour conditions, profits, and health and safety rights are all lower for outsourced workers compared to direct workers.*

There are two examples of why specialization is not the main reason for companies to outsource employees. First and foremost, in some mining units only outsourced workers perform the main tasks of the mining production process, and direct workers are mostly engaged in complementary activities such as the transport of materials. Here, outsourced workers are the main workforce operating in the most important stages of the mining value chain. Examples of mines where this situation of inequality among workers occurs are mining unit of Uchucchacua of the company Minas Buenaventura (located in the Lima region); mining unit Orcopampa of the Compañía de Minas Buenaventura (located in the Arequipa region); Compañía Minera Kolpa (located in the Huancavelica region); and Unidad Minera Yauricocha of the Sociedad Minera Corona, a subsidiary of Sierra Metals (located in the Lima region).

In addition, in other mining units, two types of workers exist to execute the same tasks: direct workers and subcontracted or outsourced workers, with different rights. Examples of mining units where this occurs are the Sociedad Minera Austria Duvaz and the Minera Argentum of Pan American Silver Perú (located in the Junín region). These are indications of how outsourcing is used to reduce labour costs.

Although Peruvian law is clear on when outsourcing is allowed and when it is not, it is also important that the government is able to enforce this legislation. Looking at the experience of the trade union FENTECAMP, it has become clear that this is not always the case. In the mining sector, many subcontracting companies do not comply with the requirements to legally execute this activity. Directors of the trade union federation FENTECAMP have reported this situation to the National Superintendency of Labour Inspection SUNAFIL, and to the judicial authorities.[4]

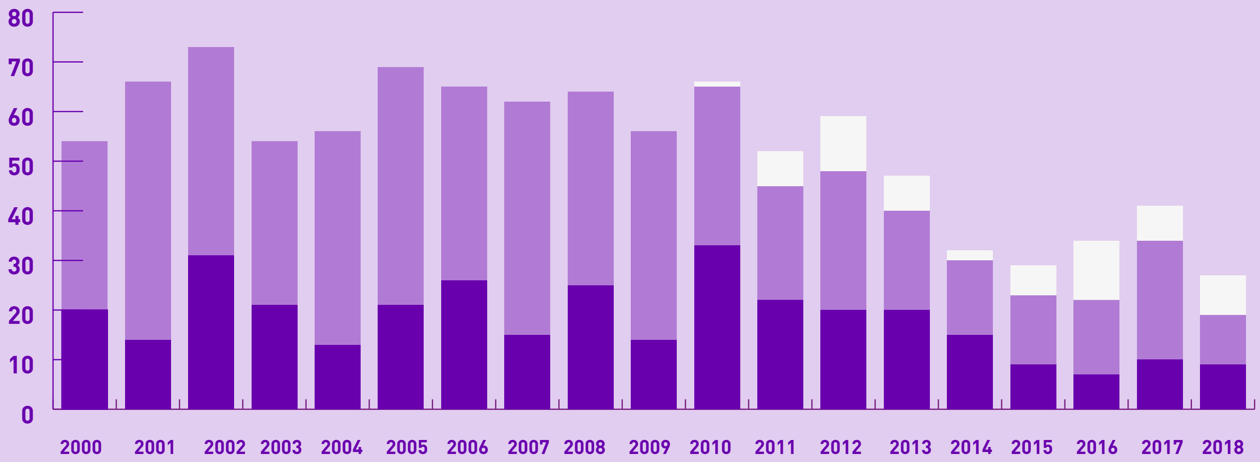
They have noticed that when outsourced companies become aware of the decisions and sentences given by SUNAFIL or the judiciary bodies, together with the main company, they decide to dissolve their currently binding service contract, fire the workers, and then establish a new company under a different name. This has happened in the case of the mining company Corona, Cía of Buenaventura mines in the Lima and Arequipa region. So, despite the establishment of a Regulatory Framework, outsourced companies coordinate with the main companies to manipulate the situation through various mechanisms to ensure that workers do not get onto the main company's payroll.

4. - Orden de Inspección N° 051-2020-SUNAFIL/INSAI, para verificar el cumplimiento del ordenamiento jurídico sociolaboral, y culminó con la emisión del Acta de Infracción 043-2019-SUNAFIL/INSSI (por desnaturalización de tercerización - involucra a 6 empresas tercerizadas y más de mil trabajadores).
- Sentencia judicial (Expediente 473-2017-0-1801-JR-LA-09) Desnaturalización de tercerización de un solo trabajador.

Outsourced workers also have no job stability. None of them. They all fall under one of the types of temporary contracts of the current regulatory framework. Contracts are renewed every three months, even though the service contract between the contracting company and the mining company lasts several years. Also, many workers rotate between various contracting companies every two or three years.

Two reasons can be identified for contracting workers for three months and renewing or rotating their contracts. i) The fulfilment of the maximum legal term of the temporary contract (maximum 5 years) and ii) the organization of workers (when they try to form or join a trade union). In other words, this labour instability generated by temporary contracts is the reason workers don't demand improvements in their employment conditions or form/ join a trade union. It is also why they cannot fight the illegal character of their temporary contracts. Companies consider it easier and less costly simply not to renew the contract of a worker than to arbitrarily fire him and pay compensation.

Other such incidents have happened in the copper and silver mining sectors of the country, showing non-compliance with OESO rights and conflicts around mines with community protests.[5]



Evolution of fatal accidents, at mining companies and contractors 2000-2017

- Mining company (total 345)
- Mining contractor (total 600)
- Related company (total 61)

Source: Anuario Minero 2017-2018 (mining yearbook)

5. *Meeran, R. (2016) High Court hearing in indigenous Peruvians' human rights claim against mining giant Xstrata. 4 July 2016. Leigh Day.* →
Business and Human Rights Resource Centre. (nd) Monterrico Metals lawsuit (re Peru).→
Hill, D. (2015) What Is Peru's Biggest Environmental Conflict Right Now? 8 June 2015. The Guardian sec. Environment. →
Lahrichi, K. (nd) Chile's Pollution Grows in Scramble to Meet China's Copper Demand. China Dialogue. →
Kramer, Anna. (2011 La Oroya, Peru: Poisoned Town. Oxfam America. →
Mining Journal. (2017) Doe Run Peru Auction. →

4.1.3. Multinational mining companies in Peru

This section shows which multinational mining companies operate in Peru, including an analysis of their sustainability reports and labour inspections.

Multinational Company	Company in Peru	Production
Sierra Metal (Mines in Peru, Bolivia and Mexico, headquarters in Canada)	Sociedad Minera Corona	Zinc, silver, copper, lead
Aluminium Corporation of China (Headquarters in China, state company)	Minera Chinalco	Copper, molybdenum, zinc, silver
Southern Copper Corporation (Headquarters in México)	Southern Perú Copper Corporation	Copper, molybdenum, gold, silver
Glencore Group (Headquarters in Switzerland)	• Volcan Compañía Minera • Antapaccay • Los Quenuales	Copper, zinc, silver, lead, gold
Barrick (Argentina, Chile, Peru, and Dominican Republic, headquarters in Canada)	Barrick Misquichilca	Gold and silver
Pan American Silver (Headquarters in Canada)	• Pan American Silver Perú (Compañía Minera Argentum) • Compañía MInera Huarón	Lead, zinc, silver, copper, gold
Nexa Resources (Headquarters in Luxemburg)	• Minera Cerro Lindo • Minera El Porvenir • Minera Atacocha	Lead, zinc, gold, silver, copper
MMG (Headquarters in Australia)	Minera Las Bambas	Copper and molybdenum
Newmont Mining Corporation (Headquarters in the United States)	Minera Yanacocha	Gold and silver
GoldFields (Headquarters in South Africa)	Golds Fields La Cima	Copper and gold

Source: Ministerio de Energía y Minas (2020)

Benchmarking on how other multinationals in the mining sector are handling the issue of outsourcing, based data from companies involved

Companies	Number of direct workers	Number of outsourced workers
Grupo México: División Minera. Incluye México, Perú y EUA al año 2018 ⤓	16,492	19,025
Cerro Verde - 2018 ⤓	4,884	3,000 (approximately)
Yanacocha - 2018 ⤓	1,376	available information: 452 subcontracting companies
Minsur - 2018 ⤓	709	2,964
Volcan - 2018 ⤓	3,011	7,784
Antamina - 2018 ⤓	2,781	4,743

Sustainability reports multinational mining companies

Analysis of the sustainability reports of the multinational mining companies operating in Peru shows that only few of them touch upon the type of workers they employ and whether they outsource part of their workforce. Pan American Silver (PAS) mentions in their 2019 sustainability report how they consider it important that the majority of the workers who are responsible for the company's main processes are employees of PAS and not of contractors (Pan American Silver, 2019). Nexa also mentions in their 2020 sustainability report that they believe they are in compliance with Peruvian labour laws regarding outsourcing of employees and show awareness of liability if legal requirements are not met. Their 2020 annual report mentions they had 5,349 company employees and 7,136 permanent independent outsourced workers as well as over 5,088 temporary independent outsourced workers which they state are mainly dedicated to construction works (Nexa, 2020).

Other companies do not mention any information related to the outsourcing of their workforce. They do show their progress on other topics like the workers' rights to freedom of association, collaboration with labour unions, occupational health and safety measures and awareness of labour related Human Rights issues, equal benefits, and grievance mechanisms.

Labour inspections

In 2017, the number of labour inspections in the mining sector was only 2% of all inspections. 58 companies in the mining sector were inspected regarding formalization, 12 regarding collective agreements, 4 on the right to strike, and 3 on discrimination for union membership. 6 mining companies were inspected on "denaturalization of the working relationship" (outsourcing). It is important to realize that the offices of the labour inspectorate are located in the cities while the mines are in remote and difficult to access locations in the Andes.

4.2 Colombia

This section discusses coal mining in Colombia, as this is related to the high energy use in the metals value chain.

4.2.1. Legal Framework

In recent years, several regulatory instruments[6] have been enacted in order to address the use of outsourcing as a precarious tool.

The Código Sustantivo del Trabajo mentions the figure of an independent contracted company, highlighting that this figure operates when the contracted company, with its own structure and total independence, assumes all the risks of the result it was contracted for. Law 1429, which enacts the law on formalization and generation of employment, indicates that this figure may not be used with the purpose of developing a permanent activity: *"the personnel required in any institution, public company and private company may not be linked through Cooperatives of Associated Work Service doing labour intermediation for the development of permanent activities, or any other type of link affecting constitutional, legal and benefit rights included in current labour regulations".*

The Ministry of Labour has issued various decrees regarding responsibilities related to the regulation and sanctioning of this law. These state that decentralization of production is prohibited for core company activities and that as a general rule, workers are to be directly contracted by the company through individual contracts because "workers are not a commodity".

Resolution 2021 allows the labour inspector to identify operations as illegal in the following situations:

- direct and indirect workers provide the same service
- the contractor is not financially independent
- the contractor has corporate ties
- there is no autonomy in the means of production or in the execution of processes and sub-processes
- the contracted company exercises regulatory and disciplinary power over its workers,
- instructions of time, manner, and place are given by the contractor
- the social security payments are made by the contractor
- the contractor and contracted company have engaged in conduct violating labour principles and standards

6. This section refers to Articles 22, 23, 24 and 34 of the Código Sustantivo de Trabajo; Article 63 of the 2010 Law 1429; Resolution 2021 of 2018; Article 5 of Resolution 2021

4.2.2. Due diligence risks in the country

Several multinational mining companies actively work in the coal industry in Colombia, including Drummond, Prodeco and Cerrejón. Glencore is an important owner of the last two companies.

Of the big mining companies operating in Colombia, Prodeco declares in their 2018 sustainability report that they employ 2523 direct workers and work with 11 contracting companies (Grupo Prodeco, 2018). The number of subcontracted workers is not specified. Nevertheless, in a debate during the 2019 meeting of the Asemblea del Cesar, Deputy Eduardo Santos shared that Prodeco employed 7,200 workers, 2,200 of which were directly employed by the multinational and another 5,000 who were being outsourced. Also, in an interview with several labour unions (March 18, 2021)[7], it was shared that 66% of Glencore workers were contracted and 34% were directly employed. Cerrejón specifies in their 2019 sustainability report (Cerrejón, 2019) that they employed 5,896 direct workers and 5,166 indirect workers. Drummond's 2019 sustainability report specifies that they employ 5,137 direct workers and 5,440 contracted workers through 23 contracting companies (Drummond, 2019).

In general, the main problem that has occurred with outsourcing processes has been the abuse of intermediation figures with the use of associated work cooperatives which have been used to supply personnel to companies, opening the way to labour flexibilization and leading to the violation of labour rights at the individual and collective level.

Because of the improper use of outsourcing structures, Colombian trade unions have made use of the labour clauses of the trade agreements between Colombia and Canada and between Colombia and the United States to file complaints.[8] These have resulted in specific recommendations from Canada[9] and the United States on illegal outsourcing in 2017 and 2016 respectively. They have also led to the development of agreements such as the "Santos Obama Labor Action Plan"[10] to take strict action against the improper use of temporary work arrangements and to increase the number of labour inspectors trained to recognize the improper use of outsourcing.

7. Meeting March 18, 2021 with 5 labour unions: Sintracarbón, Sintraminergetica, Sintradrummond, Sintracerrejon, Sintradem
8. See press release →
9. See recommendations in Action Plan under the Canada-Colombia agreement 2018 - 2021 →
10. See Labour Action Plan →

The ELSAC committee of the OECD has also made specific recommendations for Colombia along the same lines, recommending the restriction of the use of contracting of services as a disguise for real labour relations, as well as a need for proper labour inspection to identify illegal intermediation and precarious working conditions[11].

A study elaborated by Rudas et al. (2014), on behalf of the Friedrich-Ebert-Stiftung (FES), on carbon mining in Colombia, also found several issues related to outsourcing in the sector. Outsourced workers work with minimal conditions of stability and protection for their labour rights, with short-term contracts ranging between 3-6 months or up to a year, and with the majority of workers not receiving additional legal benefits. This kind of labour flexibility is implemented by big mining companies as a way to ensure low costs.

Significant differences exist between direct workers and outsourced workers with almost 30% differences in salaries and amount of labour stability. The differences in salary are related to the types of contracts that are issued.

These contracts have 3 different categories of workers: temporary workers, direct workers, and outsourced workers. The growing number of outsourced workers earn less than direct workers, while they work more hours and receive fewer benefits. These labour conditions are inferior compared to those of direct workers and they enforce poverty and misery among outsourced workers. 63.7% of direct workers earned more than 1,428,481 Colombian pesos (COP) a month, while only 11.1% of workers outsourced through temporary service companies earned more than that. In cases of other outsourced workers contracted through an employment agency, the maximum earned was lower, and 50% of those workers earned a salary lower than the legal minimum wage. Only workers who had a contract directly with the principal company earned salaries of more than COP 2,321,000 Colombian pesos. Although the exact salary figures have been adjusted since 2014, there is no reason to assume that these sharp differences between outsourced workers and direct workers is different today.

Despite the known professional risks in terms of accidents and health issues caused by working with coal, unions of indirect workers are not well represented in the mining sector of the country. Unions like Sintracerrejon, Sintradem, Sintradrummond, Sintracarbón, and Sinterminenergética represent direct employees but not outsourced workers.

Colombia is listed in the 2020 ITUC Global Rights Index as one of the top 10 worst countries for working people, since it is still one of the worst violators of trade union rights with a terrible record for impunity regarding murders of trade unionists. Between January 2019 and March 2020, 14 union leaders were killed in Colombia. Further, 4 attempted murders, 1 case of enforced disappearance, and 198 cases of threats to life were also recorded. The mining and energy sector is one of the sectors most affected by this extreme level of violence (ITUC, 2020).

The Covid19 crisis has become another occasion for the labour rights of outsourced workers in Colombia to be violated, as explained by the Agencia de Información Laboral (2020). More information and CNV Internationaal's position on this matter can be found here.

11. *See OECD Report →*

4.3 Bolivia

Bolivia is among the top 5 countries for sourcing, producing, and refining silver (20%)[12] and tin (7.14% producing[13], 3% refining[14]). In addition, the country also has large zinc reserves. Three multinational companies operate in the Bolivian mining sector, importing and smelting zinc-silver-lead minerals. These are Korea Zinc Co., the main global producer of zinc; Trafigura, the largest trader of raw materials; and Glencore, the third biggest producer of zinc and one of the world's biggest traders of raw materials.

In Bolivia, Trafigura is present through its subsidiary Impala. Impala Terminals Bolivia offers one of the biggest storage facilities for concentrates and minerals in the country, supporting the production of the main mining companies in Oruro. Impala does not have mines and is exclusively dedicated to the commercialization of minerals. Trafigura is one of the four big international commodities traders in the cooperatives supply chain, selling ingots or concentrate to the international market (Ronsse, 2019).

Glencore is present in Bolivia through Sinchi Wayra (productive operator, operating the biggest subterranean mines in Bolivia, producing concentrates of zinc and lead with silver content). They own 4 mines and plants in Potosí and 1 in Oruro. Glencore is another of the four international commodities traders in the cooperatives supply chain of Oruro (Ronsse, 2019).

The Bolivian Constitution of 2009 states that all mineral wealth "belongs to all Bolivian people", and therefore it is administered by the state (Ronsse, 2019). With productive competences being assigned to the state, the state-owned Bolivian Mining Corporation (COMIBOL) has a leading role in mining production. The state is able to administer mining reserves and exploit them directly, while at the same time signing contracts with both cooperatives and private companies.

4.3.1. Legal framework

In Bolivia, the Supreme Decree 521[15] currently prohibits all forms of evasion of labour regulations, whether through fraud, simulation, or any other means that occurs as a result of the modalities of subcontracting, outsourcing, or other modalities in the company's own and permanent tasks.

12. O bservatory of Economic Complexity (nd) Silver Ores and Concentrates (HS92: 261610) Product Trade, Exporters and Importers.→

13. United States Geological Survey. (2017) Tin →

14. ITRI. (2017) The top 10 refined tin producers of 2016 →

15. Bolivia: Decreto Supremo No 521, May 26, 2010 →

The following are considered infractions of the Laws: i) Any act that, through non-labour contractual figures, conceals relationships in which the characteristics of an employment relationship concur, ii) Recruiting and providing workforce, whether manual, intellectual or mixed, with or without profit motives through subcontracting, outsourcing, hiring or any other way that does not comply with the socio-labour regulations.

Any company that requires contracting another one for activities that are not their own or permanent to the business establishment, are obliged to include a clause in the contract which establishes that the contracted company will comply with the socio-labour regulations regarding its workers. This makes it possible to subcontract certain operations, but only those that don't belong to the company's own operations. For instance, the case of Sinchi Wayra shows that subcontracting takes place, since the company employs 1,402 direct workers and 942 subcontracted workers.

4.3.2. Due diligence risks in the country

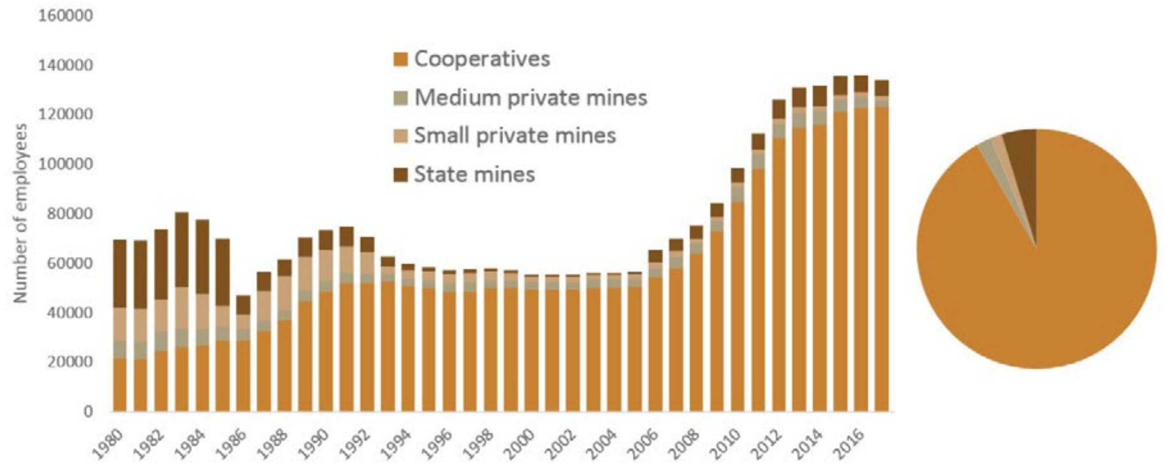
The situation in Bolivia is different from Peru and Colombia. Bolivian legislation is much stricter when it comes to outsourcing work within a company. In addition, the public state mining company plays a significant role. Finally, mining cooperatives that organize independent miners are the largest 'employer' in the mining sector. We would therefore like to focus on this last aspect in particular.

Traditional mining cooperatives operate mainly in the west of the country, in the regions of Potosí, Oruro, and La Paz. They exploit lead-silver-zinc complexes, tin, wolfram, antimony, and bismuth, mostly in deposits that are owned by COMIBOL.

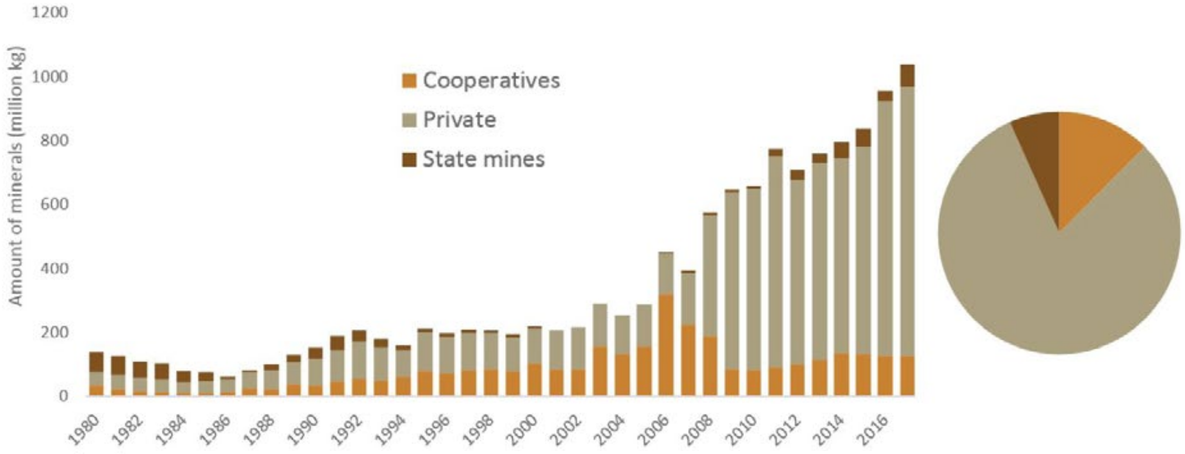
Reel (2017) explains that in Potosí, almost 40 cooperatives are in operation, and each has the right to work different shafts. While the smallest cooperative may have only a few dozen members, the largest could have 1,000 or more. Even though in 2017 there were 130,000 people working in cooperatives, they only extracted 12% of the total amount of minerals (Ronsse, 2019), implying that they are not very productive. State and private companies usually get the most sought-after concessions, which leaves the cooperatives with mines where the best veins have already been exploited (Reel, 2017).

A study by Ronsse (2019) explains that mining cooperatives are a cheap way to extract minerals because a) the amount of royalties they pay is very low, b) wages are significantly lower than for employed miners, and c) investment for safety measures and technology is minimal. This means workers continue to work with pick and hammer in many places. Since cooperative miners are associated self-employed workers, they don't receive a salary but are only paid for the minerals they extract. This is highly dependent on the quality of the gallery that is assigned to them. Individual members, or socios, share the rights to specific concessions, but it's the miner's responsibility to find and exploit profitable deposits within the concessions.

The same study by Ronsse (2019) shows that several issues exist around the cooperatives in the Oruro region. New candidates are obliged to work in the cooperative for a certain period of time without being made an associate, while productive cooperatives are not allowed to have people employed, doing productive tasks. Still, it was found that several people work in the mines of the cooperative without being official members. In addition, dangerous situations are created in the former COMIBOL sites where



Amount of people working for each actor and pie chart for 2017 (data: Ministry of Mining and Metallurgy, 2018; own elaboration based on Ronsse (2019))

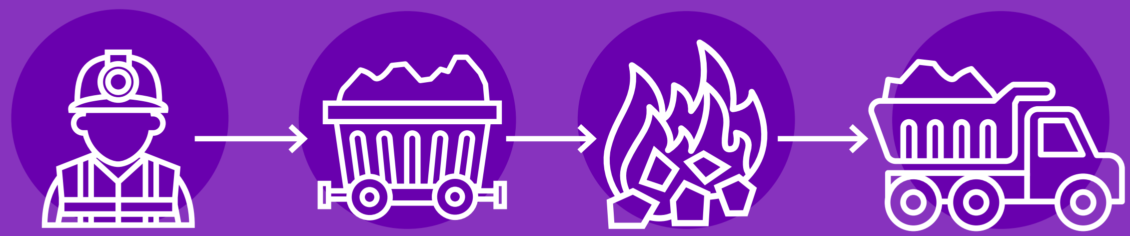


Amount of mineral extracted in kilograms per actor and pie chart for 2017 (data: Ministry of Mining and Metallurgy, 2018; own elaboration based on Ronsse (2019)) many of the mining cooperatives operate. When the big companies left those sites and they came into cooperative members' hands, general management of the mine was disregarded and teams of miners started to work in their own sub-gallery into the direction of the rich veins which were most interesting to exploit. This creates dangerous situations because no-go zones, implemented for structural safety, are no longer respected, and no engineer or architect is present to take care of long-term planning or safety in each associate's sub-gallery. A lack of coordination between the different mining galleries being exploited separately by teams of cooperatives adds to this. Compared to large scale operations, work continues to be done in a very traditional way, with only the use of very basic equipment. This causes serious risks in terms of occupational health and safety (Ronsse, 2019).

International mineral trade is in the hands of only a small group of companies, who often use unfair strategies to reduce prices for the minerals they purchase from cooperative miners. These miners, in turn, suffer losses.

Ronsse (2019) also explains that mining cooperatives do not export their minerals directly, but instead, they sell to local trading companies who mix different concentrates in order to ensure the product is correct for export. In addition to being the direct buyers of minerals extracted by cooperatives, these local trading companies are also the first mineral supplier companies in the international metals supply chain. In order to avoid confusion with international commodity traders, these kinds of companies are identified through the word "supplier".

The ingots or concentrate are then sold to the international market by smelters or suppliers. Since in most cases direct sale to foreign factories or smelters is impossible due to the need for large amounts of capital, international commodity traders play an important role in these transactions. This shows how international trading companies in this supply chain and the risks of poor labour conditions in cooperatives are linked and how this can affect their due diligence.



Mining cooperatives

- San José Jallpa Socavón
- El Porvenir (Japo)
- Monococala (COMMOR)
- Santa Fe
- Machacamarca
- Poopó

Suppliers

- Comermin
- Minexa
- Green metals
- Royel Metals Impex
- Promex Bol

Smelters

- Vinto
- OMSA

Traders

- Trafigura
- Altamira Trade
- Bluecoast
- Glencore

The links in the supply chain, own elaboration based on Ronsse (2019)

5. Key takeaways

5. Key takeaways

As mentioned earlier, the results of the field study in Peru cannot be generically extended point-by-point to the entire metal mining sector in Peru and Bolivia and the coal sector in Colombia. However, we do think that a number of important conclusions can be drawn, which at the very least, indicate that more attention needs to be given to outsourcing practices in the mining sector if we want to ensure real compliance with the OECD guidelines for due diligence.

Outsourcing, as described for the two mining sites studied in Peru, occurs throughout the business process of the mining industry in Peru and Colombia. At least half of the workforce consists of temporary workers. In Bolivia, the situation is different. Outsourcing is restricted by legal regulations and is therefore much less common. Nevertheless, the widespread use of mining cooperatives can be seen as a de facto informal way of outsourcing. In summary:

Key takeaway 1:

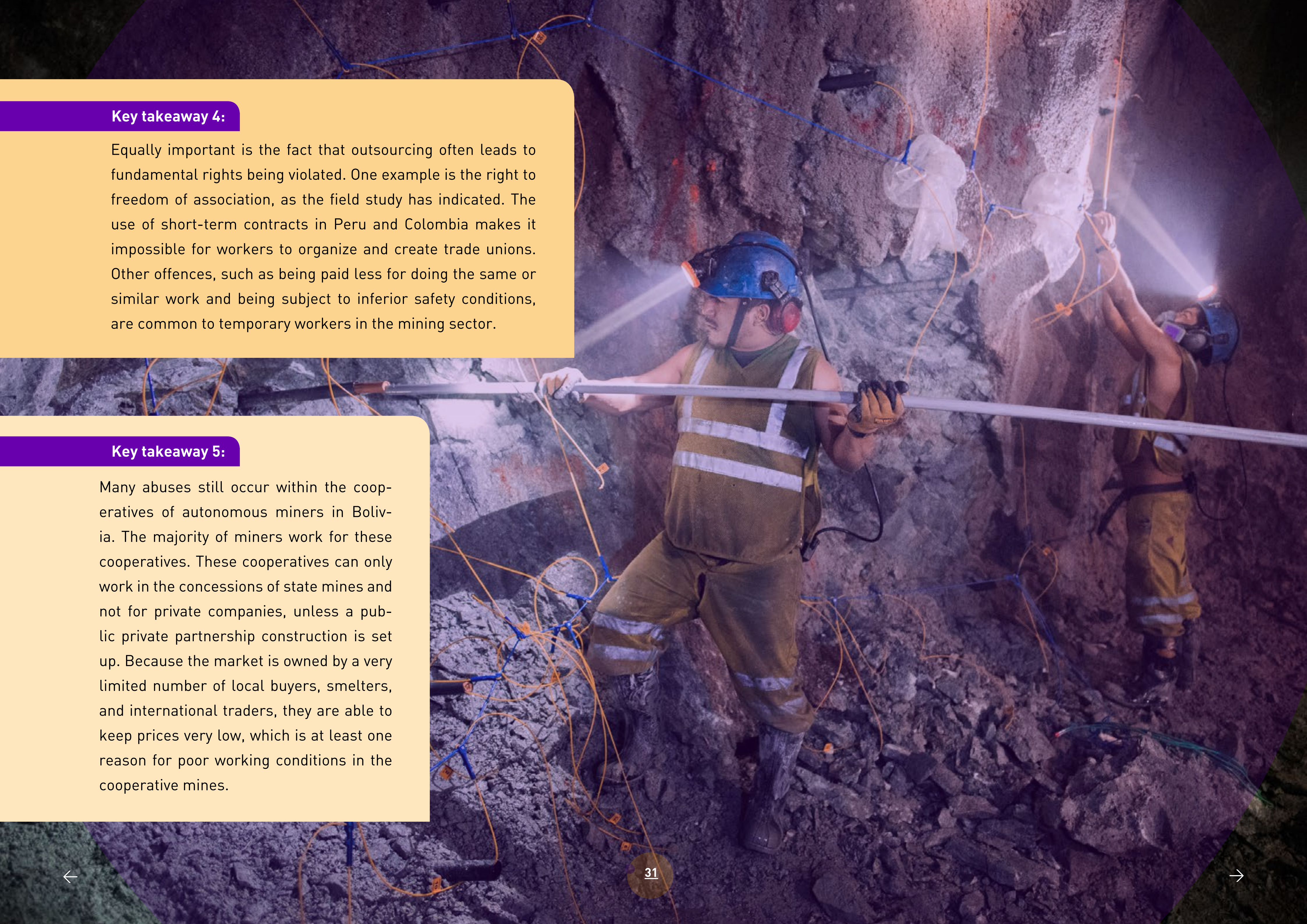
The legal frameworks of the three countries differ. All three are designed to prevent employment relationships through intermediary agencies from replacing direct employment relationships with corresponding rights. While outsourcing in Colombia and Peru is explicitly allowed, in Bolivia, in principle, it is not allowed. This is usually formulated in the sense that there must be a non-hierarchical relationship between managers of the client mining company and the temporary workers from the employment agency. They also say temporary workers cannot perform the same routine work that belongs to the core activities of the mining company and/or that temporary work agencies must be financially independent, have their own equipment, and multiple clients. However, risks remain high. Although the contracts with outsourcing agencies in all three counties countries are considered formal agreements and some mining companies have established protocols for dealing with providers, the temporary workers are still used in an improper manner full of risks.

Key takeaway 2:

In Bolivia, outsourcing is not allowed. In cases where outsourcing is necessary, it can only be done through government mediation. Nonetheless, mining cooperatives still seem to perform the function of providing cheap labour. In this process, products are sold to local buyers who then bring them to the international market through smelters via international traders.

Key takeaway 3:

The main argument for outsourcing is that it is needed for temporary specialized labour. The field study shows that this is not how it's being implemented. It involves work that is routine, not specialized and is part of the company's core business. A first look at the general situation in the mining sector in Peru and Colombia seems to indicate that this is the general practice. The deployment of temporary workers in both Peru and Colombia accounts for more than 50% of the total workforce, This, in addition to the fact that the labour inspectorates of Peru and Colombia are too weak to properly address abuses of subcontracted workers, shows there is means and opportunity for more widespread abuse of these subcontracting practices.



Key takeaway 4:

Equally important is the fact that outsourcing often leads to fundamental rights being violated. One example is the right to freedom of association, as the field study has indicated. The use of short-term contracts in Peru and Colombia makes it impossible for workers to organize and create trade unions. Other offences, such as being paid less for doing the same or similar work and being subject to inferior safety conditions, are common to temporary workers in the mining sector.

Key takeaway 5:

Many abuses still occur within the cooperatives of autonomous miners in Bolivia. The majority of miners work for these cooperatives. These cooperatives can only work in the concessions of state mines and not for private companies, unless a public private partnership construction is set up. Because the market is owned by a very limited number of local buyers, smelters, and international traders, they are able to keep prices very low, which is at least one reason for poor working conditions in the cooperative mines.

Key takeaway 6:

Information on the number of temporary workers is not kept by the Ministries of Labour in the countries concerned, except at an aggregate level. Some companies' sustainability reports mention the number of outsourced workers, but the majority do not specify the different types of workers. However, in line with the OECD guidelines, the importance of freedom of association and occupational health for ALL workers concerned, both their own direct employees and the employees of their providers, is emphasized.

Key takeaway 7:

Outsourcing has been globally acknowledged as means of organizing the workforce so that companies can remain competitive. However, it appears that it is being implemented more often as a method for reducing company expenses rather than simply being used to increase efficiency. Moreover, this is happening with negative consequences in regard to labour rights. This means that the mining business model and its profitability are based on deteriorating labour conditions and human rights violations.

Key takeaway 8:

Traditionally, unions have been well organized in the mining sector. This is certainly true for Peru, Colombia, and Bolivia. However, these unions primarily consist of directly contracted workers at the mining companies themselves. One reason for this is that unions can only organize by company in Colombia and Peru. The fact that there are almost no unions for temporary workers in the mining sector (FENTECAMP in Peru is one of the few exceptions) indicates that it is almost impossible for unions to organize temporary workers. One reason is the fact that temporary workers often rotate between different mine sites and regions. Contracting agencies use this as a way to suppress their unionization. Further, short term contracts are common in both Colombia and Peru, which makes workers vulnerable to layoffs, especially if they become union members. Workers often fear that the temporary agencies will not renew their contracts. This lack of subcontracted worker representation in trade unions leads to their rights being excluded from mining company negotiations, which is then reflected in them having poorer working conditions in comparison to fixed contract workers.

6. Recommendations

Based on the information described above and the key findings of the study, we have formulated a number of recommendations for the different actors in the value chain. Ultimately, we are convinced that the solution lies in a joint approach, but responsibilities must be clearly defined.

Recommendation 1:

Transparency with regard to the number of workers and outsourced workers and their respective working conditions within the supply chain must be increased so that stakeholders in the supply chain can hold each other accountable for proper use of outsourcing in the mining value chain. This is a responsibility for all companies involved in the value chain, as well as end-users, traders, and mining companies. Multi-stakeholder initiatives, such as the Dutch International RBC Agreement for the Metals Sector, are good examples to follow. Companies, government, NGOs, and trade unions should work together to identify and address risks in the metals supply chains and collectively set up company due diligence practices.

Recommendation 2:

Set up specific data portals to make information regarding the risks involved with outsourcing and workers' rights in the mining sector publicly available for each of the three countries. The information gathered in the data portals should be validated and verified by trade unions and stakeholder consultations with subcontracted workers. Unions should actively monitor and collect information and make this available. Additionally, standard setters, industry associations and international reporting systems, like GRI or international certifications (ISO 14000 and others), should require accredited companies to provide information on outsourced workers and receive and look for grievances on this topic.

Recommendation 3:

Insist on better monitoring systems regarding the improper use of outsourcing by national agencies, such as the labour inspectorate. Provide training for recognizing these situations. Establish a monitoring module for companies to register workers based on the employment status, i.e., direct workers, temporary workers, and subcontracted workers. This will give national agencies more options and create more transparency in the monitoring process. The Domestic Advisory Groups of the trade agreement with the EU, which Peru and Colombia are part of, should also be included in the monitoring systems.

Recommendation 4:

Mining companies should take responsibility for establishing a providers protocol to prevent improper outsourcing. These protocols need to clearly describe ways of recognizing improper outsourcing. Buyers should take responsibility by demanding equal labour rights and conditions for all workers through their purchasing practices, supplier contracts, and Code of Conduct.

Recommendation 5:

The concept of outsourcing is tied to the concept of solidarity between the main company that outsources their labour and the contracting company or temporary service company. If labour rights are violated, both the contracting company and the contracted company need to be responsible for these acts and not shield themselves. Setting up a complaints mechanism on illegal and improper subcontracting will allow legal remediation actions and access to remedies and improvements within the supply chain.

Recommendation 6:

Mining companies must ensure that freedom of association is respected by the providers they work with. Mining companies should engage directly with (the trade unions of) outsourced workers who work for the company. When no trade union is present, the company should ask for someone to represent the subcontracted workers. Whenever possible, conditions and rights negotiated in Collective Bargaining Agreements - CBAs – should be concluded for both outsourced and direct employees, with both groups identified as entitled workers.

Recommendation 7:

Within the guidelines of the OECD, specific guidelines should be drawn up on how the improper use of outsourcing can be recognized and how freedom of association can be guaranteed for outsourced workers.

Recommendation 8:

All mining standards and industry associations should include requirements in their standards for mining companies to i) subcontract services in line with national legislation, ii) only for technical specialist and temporary tasks, iii) request suppliers to uphold the same labour rights upheld by the mining company.

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