

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 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:

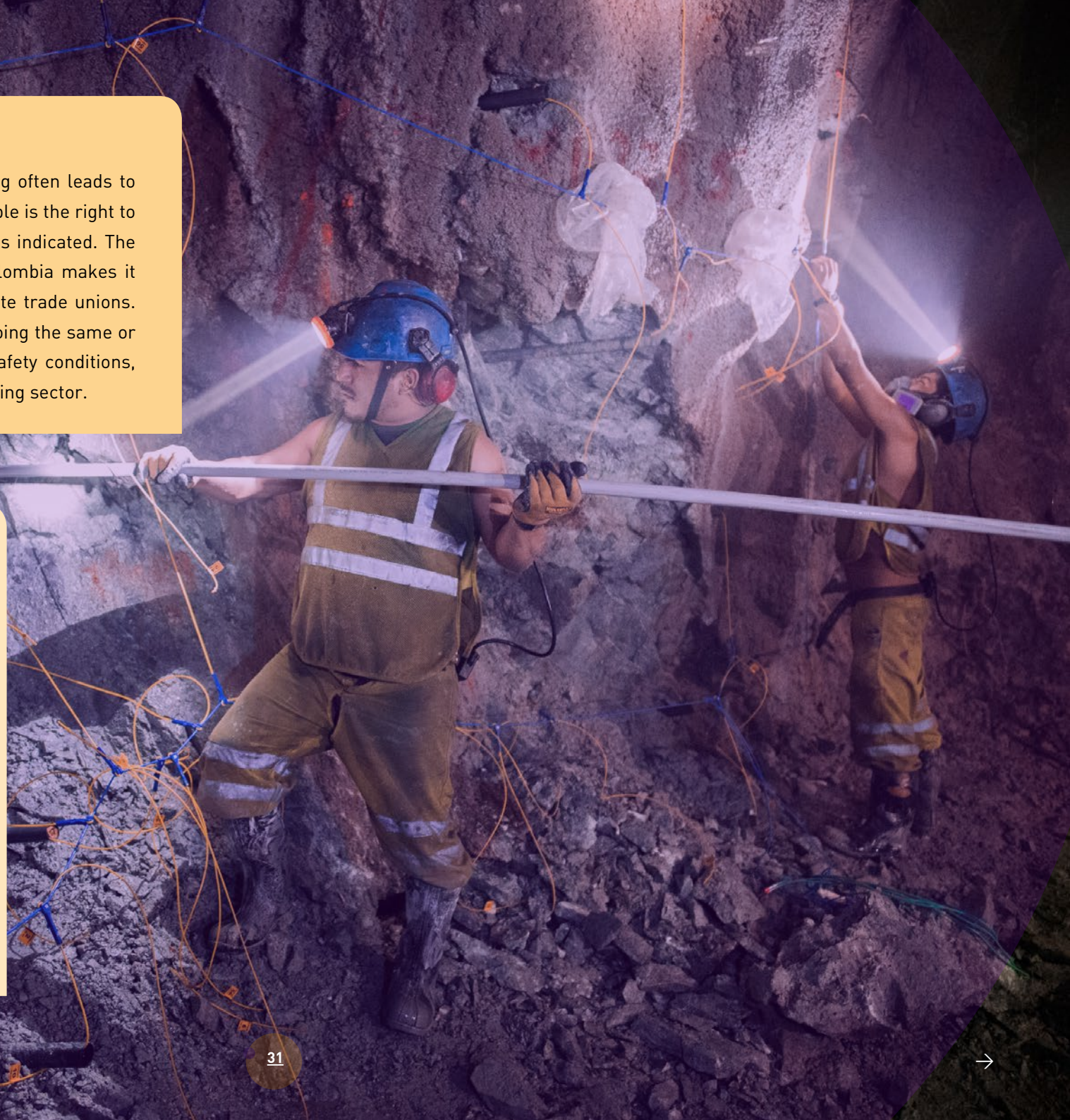
The main argument for outsourcing is that it is needed for temporary specialized labour. The field study shows that this is not how it's being implemented. It involves work that is routine, not specialized and is part of the company's core business. A first look at the general situation in the mining 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.