



Human Rights and Business Country Guide

Peru

THE DANISH
INSTITUTE FOR
HUMAN RIGHTS

 **SOCIOS PERÚ**
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How to Use this Guide

This Human Rights and Business Country Guide contains information regarding the potential and actual human rights impacts of businesses. The information in this Guide is gathered from publicly available sources, and is intended to help companies respect human rights and contribute to development in their own operations and those of their suppliers and business partners.

About the Human Rights and Business Country Guide

The Human Rights and Business Country Guide provides country-specific guidance to help companies respect human rights and contribute to development.

For companies to manage their potential human rights impacts, they must have comprehensive information about the local human rights context in which they operate. The Country Guide provides a systematic overview of the human rights issues that companies should be particularly aware of. For each issue, it provides guidance for companies on how to ensure respect for human rights in their operations or in collaboration with suppliers and other business partners.

The Country Guide is not only a resource, but a process. This Guide was produced through a systematic survey carried out by the Danish Institute for Human Rights (DIHR) and Socios Perú. The aim of this Guide is to improve the human rights practices of companies, including through facts-based dialogue regarding the issues presented here.

How the Human Rights and Business Country Guide can be used by companies

- Develop company policies and procedures related to human rights issues in the local environment.
- Assess and track the potential human rights impacts of your own operations or in suppliers, business partners and investments.
- Raise awareness among staff, suppliers and other business partners.
- Engage with workers, potentially affected communities, consumers and other stakeholders whose human rights might be affected by your operations.
- Engage with civil society organisations, government bodies or international organisations on human rights-related issues.
- Provide background information for auditors.
- Establish or collaborate with mechanisms for workers, communities and other whose human rights might be affected by your operations.
- Contribute to development initiatives that align with human development needs and priorities in the local context.

How the Human Rights and Business Country Guide can be used by governments

- Review and reform public policy and legislation relevant to the human rights impacts of business, including in the areas of labour, environment, land, equal treatment, anti-corruption, taxation, consumer protection or corporate reporting.
- Ensure respect for human rights in the state's own business affairs such as state-owned companies, sovereign wealth funds and other investments, public procurement, development assistance, export credit and other activities.

- Build awareness and capacity on human rights and business issues within relevant areas of public administration.
- Provide targeted advice to domestic companies.
- Inform the development of trade policy, trade and investment agreements and trade and investment promotion.
- Improve effective access to judicial and non-judicial remedies for victims of business-related human rights abuses.
- Enhance the contribution of the private sector in national and regional development programmes relevant to human rights.

How the Human Rights and Business Country Guide can be used by civil society organisations

- Inform human rights research and monitoring related to business operations.
- Work with affected workers and communities to define human rights and human development priorities related to the role of business.
- Provide capacity-building to government, business and civil society stakeholders on human rights and business.
- Work with local stakeholders to provide recommendations to business and government.
- Facilitate dialogue and engagement with, including multi-stakeholder forums, with state agencies and businesses.

The Country Guide aims to work with all stakeholders to promote, monitor and expand the activities described above. We request that all stakeholders who use the findings of the Country Guide in their work notify the Country Guide team of their activities and lessons learned. These experiences will be included in the Country Guide website, HRBCountryGuide.org.

Country Guide Process

The Peru Country Guide was produced by the Danish Institute for Human Rights (DIHR) and Socios Perú.

The Country Guide is a compilation of publicly available information from international institutions, local NGOs, governmental agencies, businesses, media and universities, among others. International and domestic sources are identified on the basis of their expertise and relevance to the Peruvian context, as well as their timeliness and impartiality.

The initial survey of publicly available, international sources was carried out in 2013. The draft was localized by Socios Perú with some interaction with local stakeholders from January to March 2015. The current version of the Guide was updated in 2016.

The completed Country Guide aims to provide a comprehensive overview, on the basis of the information available, of the ways in which companies do or may impact human rights in Perú. The current Country Guide is not meant as an end product, or a final determination of country conditions. It is intended to be the basis, and the beginning, of a process of dissemination, uptake and modification. DIHR and Socios Perú seek further engagement with local stakeholders, and intend to update the Country Guide on that basis.

Country Guide Content

Areas for Attention

Each section of the Country Guide identifies areas for particular attention by businesses. The Country Guide identifies these areas through an analysis of the country's legal framework for human rights protection; enjoyment of human rights in practice; and the proximity of third-party human rights violations to company operations.

The headline and risk description describe the relevance of each issue for businesses. The text that follows the risk description presents the quantitative and qualitative information upon which this determination was based.

- Background & Context gives an overview of economic, political and demographic characteristics.
- Rights Holders at Risk identifies groups that may be vulnerable to workplace discrimination or community impacts.
- Labour Standards identifies areas for attention related to employees and working conditions. This section includes child labour, forced labour, trade unions, occupational health & safety and working conditions.
- Community Impacts identifies areas for attention related to communities whose human rights may be affected by company operations. This section includes impacts related to environment, land & property, revenue transparency & management and security & conflict.
- Sector Profiles identifies human rights and business impacts related to a particular industry sector, such as extractive operations, manufacturing or agriculture.
- Region Profiles identifies regions of the country where the risk of adverse human rights impacts differs markedly from the national profile. This may include underdeveloped regions, export processing zones or conflict areas.

Cases

Each rights issue includes cases from media and law where the rights issue in question has been allegedly violated. These cases are drawn from the Business and Human Rights Resource Centre, international and local NGOs and stakeholder consultations. The cases presented here should not be considered comprehensive.

Access to Remedy

Victims of corporate human rights abuses have the right under international law to mechanisms that provide for remedy. The UN Guiding Principles on Business and Human Rights explicitly obligate governments and businesses to provide and/or participate in such mechanisms.

The Country Guide includes information under each rights area about the remedy mechanisms available to redress violations of the right. Where possible, this also includes practice information about the effectiveness of such bodies, and the number of cases they have heard and redressed.

Human Rights Guidance for Businesses

This section includes guidance for businesses to prevent and mitigate their adverse human rights impacts. This guidance is drawn from the Danish Institute for Human Rights' (DIHR) existing library of

human rights due diligence recommendations, as well as international frameworks, principles and guidelines. Where available, this section includes recommendations issued by local NGOs and directed specifically at companies operating in the country.

This section also includes examples of initiatives carried out by companies to mitigate their human rights impacts. These are organized into Due Diligence Initiatives—activities that aim to meet the company's responsibility not to violate human rights—and Beyond Compliance Initiatives—activities that aim to contribute to development beyond this baseline obligation.

Engagement Opportunities

Companies have a responsibility to prevent negative human rights impacts, but they also have an opportunity to contribute to positive human rights impacts. Each section of this Guide includes information for companies to link their policies and community engagement processes to ongoing governmental and institutional efforts to promote and fulfil human rights.

This includes Public Sector Initiatives—activities where the government is aiming to fulfil or promote the right in question through discrete programmes—as well as Development Priorities—themes identified by international institutions as warranting deliberate attention, or where companies could have the greatest impact with their development initiatives.

The purpose of the information in this section is to inspire further efforts and engagement by businesses, as well as to identify existing programmes that companies could support or take part in.

About DIHR

The Danish Institute for Human Rights is a National Human Rights Institution accredited under the UN Paris Principles, and carries out human rights and development programmes in Denmark and around the world. Since 1999, the Danish Institute has worked closely with the business and human rights communities to develop tools and standards for better business practice.

For more information, see humanrights.dk.

About Socios Perú

Socios Perú is a non-profit organisation created in 2006 with the aim of promoting a culture of dialogue that is based in strengthening capacities for the analysis, prevention and transformation of conflicts that enhance democratic processes within Peruvian society. Socios Perú works in regions with high levels of conflict (Cusco, Apurímac, Piura, Ica, Huancavelica) carrying out projects that promote human rights by extractive companies, together with multi-stakeholder spaces for dialogue and strengthening local capacities for the prevention of social conflicts.

Socios Perú leads the promotion of the Voluntary Principles on Security and Human Rights (VPs) in Peru. The VPs are a multi-stakeholder initiative made up of governments, NGOs and extractive sector companies and created in 2000 with the objective of implementing guidance on the to protect extractive companies' security and prevent conflicts through a framework where human rights and fundamental freedoms are respected.

For more information, see www.sociosperu.org

Table of Contents

Background & Context	7
Rights Holders at Risk.....	16
Child Labour	31
Forced Labour	38
Occupational Health & Safety	43
Trade Unions	49
Working Conditions.....	54
Environment.....	62
Land & Property	73
Revenue Transparency & Management.....	80
Security & Conflict.....	89
Access to Remedy	96
Sources.....	102
Endnotes	107

Background & Context

Overview of political and socio-economic conditions in which businesses operate. This information is designed to inform businesses of the broader political and development trends in the country.

Demographics & Economy	
Population	30,444,999 (July 2015 est.)
Ethnic Groups	Amerindian 45%, mestizo (mixed Amerindian and white) 37%, white 15%, black, Japanese, Chinese, and other 3%
Religious Groups	Roman Catholic 81.3%, Evangelical 12.5%, other 3.3%, none 2.9% (2007 est.)
Languages	Spanish (official) 84.1%, Quechua (official) 13%, Aymara (official) 1.7%, Ashaninka 0.3%, other native languages (includes a large number of minor Amazonian languages) 0.7%, other (includes foreign languages and sign language) 0.2% (2007 est.)

Political, Economic & Development Statistics

Quantitative indicators and country rankings

Country Rankings & Ratings			
	2013	2014	2015
Reporters Without Borders: Press Freedom Index (Where 1 indicates the highest degree of freedom)	105	104	92
Freedom House: Map of Freedom - Political Rights (On a scale of 1 through 7, where 1	2	2	2

indicates the highest level of freedom)			
Freedom House: Map of Freedom - Civil Liberties (On a scale of 1 through 7, where 1 indicates the highest level of freedom)	3	3	3
Form of government	Constitutional Republic		
Most recent general election	10 April 2016, with runoff expected 5 June 2016		
Current head of state	President Ollanta Humala Tasso (Keiko Fujimori and Pedro Pablo Kuczynski for runoff)		
Ruling party	Peruvian Nationalist Party		
Other major parties	<ul style="list-style-type: none"> • Alliance for Progress • Fuerza Popular • National Solidarity • Peru Posible • Peruvian Aprista Party • Popular Christian Party • Wide Front 		

Development Indicators & Trends			
	2013	2014	2015
GDP growth	5.8	2.4	2.4
GDP growth in Latin America and the Caribbean	3	3,2	3
GDP per capita (PPP) US\$	11,700	12,000	12,300
Human Development Index rank	85	84	n/a
Human Development Index score	0.73	0.73	n/a
Human Development Index score – Latin America and the Caribbean	0.7	0.74	n/a
HDI discounted for inequality	0.5	0.56	n/a
Gini coefficient	44.7	n/a	n/a

Percentage of population below national poverty rate	48	n/a	n/a
Percentage of population below absolute poverty rate (\$1.25 per day)	2.9 (2012)	n/a	n/a

Political Context

Governance structures and political developments

In 1980, after 12 years of dictatorship, military rule in Peru came to an end. Since then the country has been under civilian leadership. That same year, the Shining Path guerrilla group launched a two-decade insurgency. The conflict resulted in an estimated 69,000 deaths. In 1992, then President, Alberto Fujimori suspended the constitution, took over the judiciary, and dissolved the Parliament. The result was a new constitution that featured a stronger presidency and a unicameral Parliament. In April 2009, Mr. Fujimori was sentenced to 25 years in prison for overseeing death-squad killings and two kidnappings.¹

Peru's 1993 constitution establishes a unicameral Parliament consisting of 130 members with a five year mandate. The country is structured in 24 regions and 195 provinces.² The rights to peaceful assembly and association are guaranteed by the constitution, yet in 2015, Freedom House noted that various regulations that were approved limited police and military responsibility in the event of injury or death during a demonstration.³

Freedom of the press was guaranteed by the constitution while defamation was criminalised. According to Freedom House in 2015, journalists were subjected to attacks and intimidation.⁴

Socio-Economic Context

Human development indicators and trends

Peru is an upper middle-income country that has experienced strong economic growth in recent years, with an average of 2.9 percent growth rate between 2005 and 2014.⁵

Its 2015 Human Development Index rank was 84th out of 188 countries and its HDI value was 0.73, placing Peru in the high human development category but below the Latin America and Caribbean average. However, when the value was discounted for inequality it fell to 0.56, above the figure for average loss due to inequality in the Latin America and Caribbean region.⁶ Its latest Gini coefficient, which measures income inequality, was 44.7, among the lowest in the region but still high.⁷ Inequality was mainly observed between regions, with the rural areas the ones with the highest poverty levels, particularly in the sierra and jungle.⁸

Poverty rates were reportedly reduced by more than half between 2005-2014, accounting to 22.7 percent in 2014.⁹ However, the UNDP reported that the most recent survey data available informed that 10.4 percent of the population was multidimensionally poor, while an additional 12.3 percent lived near multidimensional poverty in 2012.¹⁰ Extreme poverty was particularly observed in rural areas in regions including Cajamarca, Piura, La Libertad and Apurimac.¹¹

The latest Millennium Development Goals monitoring report, from 2013, stated that Peru has made great progress in reducing poverty levels, chronic undernourishment, maternal and child mortality rates, and access to education.¹²

The World Bank noted in 2015 that challenges in Peru included achieving a stronger, more sustainable economic growth while further strengthening linkages between growth and equality.¹³

Development Frameworks

Companies should consult affected communities and align their development initiatives with national and local priorities. The following section identifies existing strategies for poverty alleviation and community empowerment.

Bicentennial Plan — Peru Towards 2021

The following strategic guidelines were identified:

- Fundamental rights and human dignity: human rights, democratisation, justice, promotion of equality;
- Opportunities and access to services: education, health, food security, water and sanitation, electricity, telecommunications, housing, citizen security;
- State and governance: State reform, governance, illicit drug trafficking, combat against terrorism, foreign relations, security and national defence;
- Economy, competitiveness and employment: economic growth and employment, competitiveness and economic structure, mining and hydrocarbons, tourism and gastronomy, macroeconomic stability, investment, foreign trade, science and technology;
- Regional development and infrastructure: territorial development, economic corridors, associativity and clusters, PPP and investment promotion, transport infrastructure, energy, electrical infrastructure, telecommunications, water and sanitation infrastructure, regional competitiveness, population spread; and
- Natural resources and environment: hydro resources, soil, forests, biodiversity, hydro biological resources, air quality, water quality, solid waste, environmental liabilities, climate change, cost of environmental degradation.

The government conducted broad consultations at the national and regional level, with the participation of autonomous bodies and private entities, including civil society organisations, donors, academia, federations, etc.¹⁴

Inter-American Development Bank Country Strategy with Peru 2012-2016

The strategy has the aim to help close the economic and social gaps between urban and rural areas, and support productivity gains as a basis for inclusive, sustainable economic growth.

The following priorities were identified:

- Social inclusion;
- Rural development and agriculture;
- Housing and urban development;

- Climate change and disaster risk management;
- Water, sanitation, water sources, and solid waste;
- Energy;
- Transportation;
- Public management; and
- Competitiveness.

Rural areas such as the sierra and jungle were given priority.

The following areas of intervention were identified:

- Social inclusion;
- Rural development and agriculture;
- Water, sanitation, water resources and solid waste;
- Housing and urban development;
- Transportation;
- Climate change adaption and disaster risk management;
- Energy;
- Public management;
- Competitiveness and innovation.

The strategy promotes public-private partnerships in areas such as transportation, infrastructure, delivery of basic services, access to social services and development of economic opportunities.¹⁵

UN Development Action Framework 2012-2016

The UNDAF is a programme document between the government and the UN Country Team describing collective actions and strategies toward achieving national development

The UN Country Team undertook consultations with government entities, political parties, civil society, the private sector and international cooperation actors.

Five areas of intervention were identified:

- Inclusive economic development and decent work;
- Democratic governance;
- Social protection and access to social services;
- Environment, climate change and risk management;
- Cultural legacy.¹⁶

The UNDAF focuses on closing gaps and eliminating inequality, giving special emphasis to those populations most vulnerable and the development of capabilities of all development actors, both in the public sector and in the society as a whole.

The framework calls on the private sector to achieve the implementation of the priorities that were set out.¹⁷

World Bank Country Partnership Strategy with Peru 2012-2016

The strategy focuses on supporting the government in improving equality through social services, infrastructure and competitiveness, while continuing to preserve macro stability.

The following four strategic objectives were established:

- Increased access and quality of social services for the poor;
- Connecting the poor to services and markets;
- Sustainable growth and productivity;
- Inclusive public sector performance for greater inclusion.

The World Bank group undertook consultations for the preparation of the strategy with numerous State and Municipal clients, private sector, congressmen and civil society organisations.

The strategy calls on public-private partnerships to expand infrastructure services, including ports, airports, rail and road projects. The private sector is seen as an engine for the development of renewable energy and for the implementation of the national agenda on climate change.¹⁸

International Legal Commitments

Accession and ratification of international human rights instruments

UN Conventions	
International Covenant on Economic, Social and Cultural Rights	RATIFIED
International Covenant on Civil and Political Rights	RATIFIED
Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the Abolition of the Death Penalty	NOT SIGNED
Convention Against Corruption	RATIFIED
Convention Against Torture	RATIFIED
Convention on the Elimination of All Forms of Racial Discrimination	RATIFIED
Convention on the Elimination of All Forms of Discrimination Against Women	RATIFIED
Amendment to article 20, paragraph 1 of the Convention on the Elimination of All Forms of Discrimination against Women (1995)	NOT SIGNED
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (1999)	RATIFIED
Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity (1968)	ACCEDED
Convention on the Prevention and Punishment of the Crime of Genocide (1948)	RATIFIED

Amendment to article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination (1992)	NOT SIGNED
Convention on the Rights of Persons with Disabilities	RATIFIED
Optional Protocol to the Convention on the Rights of Persons with Disabilities (2006)	RATIFIED
Convention on the Rights of the Child	RATIFIED
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	RATIFIED
Optional Protocol on the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	RATIFIED <i>with declarations</i>
International Convention for the Protection of All Persons from Enforced Disappearance (2006)	ACCEDED
International Convention on the Protection of All Migrant Workers and Members of Their Families	RATIFIED
Convention Against Transnational Organized Crime	RATIFIED
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organised Crime	RATIFIED
Regional Instruments	
American Convention on Human Rights	RATIFIED
Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights	RATIFIED
Protocol to the American Convention on Human Rights to abolish the death penalty	NOT SIGNED
Inter-American Convention against Corruption	RATIFIED
Inter-American Convention on International Trafficking of Minors	ACCEDED
Inter-American Convention on the prevention, Punishment and Eradication of violence against women	RATIFIED
Inter-American Convention on the Forced Disappearance of Persons	RATIFIED
Inter-American Convention to Prevent and Punish Torture	RATIFIED
Inter-American Convention on the Elimination of All Forms of Discrimination	RATIFIED

Against Persons with Disabilities	
International Labour Organization Conventions	
ILO Hours of Work (Industry) Convention (C1, 1919)	RATIFIED
ILO Forced Labour Convention (C29, 1930)	RATIFIED
ILO Hours of Work (Commerce and Offices) Convention (C30, 1930)	NOT RATIFIED
ILO Night Work of Young Persons (Non-Industrial Occupations) Convention (C79, 1946)	RATIFIED
ILO Labour Inspectors Convention (C81, 1947)	RATIFIED
ILO Freedom of Association and Protection of the Right to Organise Convention (C87, 1948)	RATIFIED
ILO Night Work of Young Persons Employed in Industry Convention (C90, 1948)	RATIFIED
ILO Protection of Wages Convention (C95, 1949)	NOT RATIFIED
ILO Right to Organise and Collective Bargaining Convention (C98, 1949)	RATIFIED
ILO Equal Remuneration Convention (C100, 1951)	RATIFIED
ILO Social Security (Minimum Standards) Convention (C102, 1952)	RATIFIED
ILO Abolition of Forced Labour Convention (C105, 1957)	RATIFIED
ILO Discrimination (Employment and Occupation) Convention (C111, 1958)	RATIFIED
ILO Social Policy (Basic Aims and Standards) Convention (C117, 1962)	NOT RATIFIED
ILO Equality of Treatment (Social Security) Convention (C118, 1962)	NOT RATIFIED
ILO Employment Policy Convention (C122, 1964)	RATIFIED
ILO Minimum Age (Underground Work) Convention (C123, 1965)	RATIFIED
ILO Medical Care and Sickness Benefits Convention (C130, 1969)	NOT RATIFIED
ILO Minimum Wage Fixing Convention (C131, 1970)	NOT RATIFIED
ILO Holidays with Pay (Revised) Convention (C132, 1970)	NOT RATIFIED
ILO Workers' Representatives Convention (C135 of 1971)	NOT RATIFIED
ILO Minimum Age Convention (C138, 1973)	RATIFIED

ILO Migrant Workers (Supplementary Provisions) Convention (C143, 1975)	NOT RATIFIED
ILO Working Environment (Air Pollution, Noise and Vibration) Convention (C148, 1977)	NOT RATIFIED
ILO Occupational Safety and Health Convention (C155, 1981)	NOT RATIFIED
ILO Workers with Family Responsibilities Convention (C156, 1981)	RATIFIED
ILO Termination of Employment Convention (C158, 1982)	NOT RATIFIED
ILO Indigenous and Tribal Peoples Convention (C169, 1989)	RATIFIED
ILO Night Work Convention (C171, 1990)	NOT RATIFIED
ILO Prevention of Major Industrial Accidents Convention (C174, 1993)	NOT RATIFIED
ILO Worst Forms of Child Labour Convention (C182, 1999)	RATIFIED
ILO Maternity Protection Convention (C183, 2000)	NOT RATIFIED
Environmental Instruments	
Stockholm Convention on Persistent Organic Pollutants (2001)	RATIFIED
Kyoto Protocol (1997)	RATIFIED
United Nations Convention on Biological Diversity	RATIFIED
United Nations Framework Convention on Climate Change	RATIFIED
Montreal Protocol on Substances that Deplete the Ozone Layer, 1987	ACCEDED
Basel Convention on the Control of Transboundary Movements of Hazardous Wastes, 1989	ACCEDED
Other International Instruments	
Declaration on the Rights of Indigenous Peoples	SIGNED
Rome Statute of the International Criminal Court	RATIFIED
UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage (1972)	RATIFIED

Rights Holders at Risk

Societal groups particularly vulnerable to employment-related discrimination or poor development outcomes

Operating Environment		
	Peru	Latin America and the Caribbean
HIV/AIDS prevalence (ages 15-49)	0.01 (2013)	0.03 (2013)
Female labour participation rate	64 (2014)	52.9 (2010)
Percentage urban population	78.6 (2015)	80 (2014)
Percentage rural population	22.4 (2015)	20 (2014)
Human Development Index score	0.73 (2014)	0.74 (2014)
HDI adjusted for inequality	0.56 (2014)	0.57 (2014)
HDI Gender Equality Gap Index score	0.94 (2014)	0.97 (2014)
Population below PPP US\$1.25 per day (%)	2.9 (2012)	4.6 (2011)
Literacy rate, 15-24 years old (%)	98.7 (2012)	98.3 (2015)
Maternal mortality ratio (per 100,000 births)	68 (2015)	85 (2013)
Seats held by women in national parliament (%)	22.3 (2015)	27.4 (2015)
OECD Social Institutions and Gender Rank	0.08 (2014)	
Labour force	16.8 million (2015)	
Percentage of population 15-24 years old	18.9 (2015)	

Law prohibits discrimination on the grounds of	The constitution guarantees equality before the law and states that no one may be discriminated against because of his origin, race, sex, language, religion, opinion, economic status, or any other reason.
Major ethnic groups	Amerindian 45%, mestizo (mixed Amerindian and white) 37%, white 15%, black, Japanese, Chinese, and other 3%
Recognition of indigenous groups in law	The constitution guarantees the right to ethnic and cultural diversity.
Major Indigenous groups	1,789 indigenous communities in 12 regions, including the Amazons, Ayacucho, Cajamarca, Cusco, Huanuco, Junin, Loreto, Madre de Dios, Pasco, San Martin and Ucayali.
Major religious groups	Roman Catholic 81.3%, Evangelical 12.5%, other 3.3%, none 2.9% (2007 est.)
Major migrant groups	Bolivia and Brazil.
Persons with disabilities	1,9 million people (5.3 percent of the population)
Relevant legislation	<ul style="list-style-type: none"> • Constitution, 1993 • Law 26626 against HIV/AIDS, 2004 • Supreme Decree 19 that penalises discrimination based on HIV/AIDS at the workplace, 2006 • Law 28736 to protect indigenous tribes in isolation or recently contacted, 2006 • Law 28983 on Equal Opportunities for Men and Women, 2007 • Resolution Historical Forgiveness, 2009 • General Law 27050 on Persons With Disabilities, 2012
Responsible agencies	<ul style="list-style-type: none"> • Ministry of Culture • Ministry of Culture - Department of Policies for Afro-Peruvians • Ministry of Culture - The Department of Indigenous People's Policies • Ministry of Development and Social Inclusion • Ministry of Labour and Employment

	<p>Promotion</p> <ul style="list-style-type: none"> • Ministry of Justice and Human Rights • Ministry of Women and Vulnerable Populations • National Council for the Integration of Persons with Disabilities (CONADIS) • National Commission against Discrimination • National Office for Dialogue and Sustainability
Local NGOs addressing this issue	<ul style="list-style-type: none"> • Asociacion Pro Derechos Humanos • Centro de Culturas Indigenas del Peru • Coordinacion Nacional de Derechos Humanos • Confederacion Nacional de Discapacitados del Peru • Centro de Politicas Publicas y Derechos Humanos • DEMUS • Instituto Runa de Desarrollo y Estudios sobre Genero • Flora Tristan • Movimiento Homosexual de Lima • PROMSEX • LUNDU Centro de Estudios y Promocion de Afroperuanos • CEPES

Country Context

Human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.

The constitution guarantees equality before the law and states that no one may be discriminated against because of his origin, race, sex, language, religion, opinion, economic status, or any other reason.¹⁹

Afro-Peruvians

The constitution guarantees the right to ethnic and cultural diversity.²⁰ In 2009, the government adopted a resolution called Historical Forgiveness by which it asked for forgiveness from Afro-Peruvians over abuses, exclusion and discrimination committed against the community, and it further recognised their cultural identity and values.²¹

According to the 2010 National Household Survey, Afro-Peruvians constituted approximately 3 percent of the population.²² In 2013, the UN Development Programme (UNDP) noted, however, that Peruvian NGOs argued that official estimates did not accurately reflect the real figure.²³ On its latest report from 2011, Peru's Ombudsman referred to a World Bank report estimating that in 2004 Afro-Peruvians

accounted for as much as 10 percent of the population.²⁴ This group lives primarily in Tumbes, Piura, La Libertad, Lima, Ica, Arequipa and Tacna.²⁵

In 2013, the UNDP reported that Afro-Peruvians faced discrimination in access to employment, in many cases due to low levels of education.²⁶ The Ombudsman also reported in 2011 that only 6 percent of Afro-Peruvians reached university as opposed to the 12 percent national average.²⁷

According to a 2014 Committee on the Elimination of Racial Discrimination report, Afro-Peruvians suffered from discrimination, poverty and did not have access to job opportunities, health and education services.²⁸

Only 58.6 percent had a job, as of 2015.²⁹ Due to their low level of education, their income accounted to less than 2,300 soles (approx. US\$690) in 2015, according to a 2015 *Diario Correo* report.³⁰ Furthermore, only 3 out of 10 Afro-Peruvians aged between 18 and 26 had access to higher education, and only 3 percent completed a career. A 2015 Ministry of Culture survey noted that 28 percent of Afro-Peruvian youth did not work or study.³¹

Another 2015 survey conducted by the Pacifico University found that Afro-Peruvians applying for jobs were 38 percent less likely to obtain an interview, compared to white Peruvians.³²

Afro-Peruvian women were reportedly victims of gender-based violence.³³ There was a low level of Afro-Peruvian representation in politics.³⁴

In 2013, UNDP stated that from 2000 to 2011, levels of poverty for Afro-Peruvians remained the same at approximately 33 percent, even though Peruvian economic growth was the second highest in Latin America during the same period. Afro-Peruvians also reportedly faced difficulties in accessing health and education services.³⁵

Human Rights Defenders

In 2013, the UN Human Rights Committee expressed concern over the prevalence of violence against human rights defenders in Peru.³⁶ According to the National Coordination of Human Rights (NCHR), latest data reported that between 2007 and 2011, 255 attacks against human right defenders occurred.³⁷

A 2016 report conducted by various organisations noted a high level of criminalisation against human rights defender' activities, particularly in relation to the rights to ancestral land.³⁸ Front Line Defenders added in 2016 that environmental, indigenous people and land rights defenders were the most vulnerable to killings, judicial harassment, physical attacks, threats, intimidation and smear campaign.³⁹ Women human rights defenders were also subjected to risks.⁴⁰ Human rights defenders, particularly those who defend the rights of communities affected by mining and hydroelectric projects, were subjected to physical attacks and arrest, according to the UN Committee on the Rights of the Child in 2016.⁴¹

Migrant Workers

The law limits the employment of foreigners to 20 percent of total workforce and contracts cannot be longer than 3 years. Family members of migrant workers are not permitted to work.⁴²

The national legislation, according a 2015 UN Committee for the protection of all migrant workers and members of their families report, had provisions that could conflict with international standards for the protection of migrant workers and their families.⁴³

In 2011, the UN Special Rapporteur on Contemporary Forms of Slavery reported on a significant gold rush affecting the Madre de Dios region, leading to unregulated migration to the region from neighbouring countries, including Bolivia and Brazil.⁴⁴ Slave-like practices were reported in the region.⁴⁵

Persons with Disabilities

The constitution addresses social security, health, education and employment for persons with disabilities, and provides their right to engage in business, trade and industry.⁴⁶

General Law 27050 on Persons With Disabilities was adopted in 2012 and has the objective to promote the rights of persons with disabilities. The law mandates that 5 percent of university places be reserved for persons with disabilities.⁴⁷ It also stipulates that businesses with more than 50 employees must hire 3 percent of persons with disabilities, while that percentage rises to 5 percent in public sector institutions.⁴⁸ Companies complying with the law get a reduction on their income tax that could accrue to up to 50 percent if more than 30 percent of their workforce is composed by persons with disabilities.⁴⁹ There are also incentives to promote the labour integration of persons with disabilities through benefits granted in the framework of State contracts.⁵⁰

The government adopted regulations by which local and regional governments must allocate 0.5 percent of their budgets to improve provisions containing accessibility features.⁵¹

According to a national survey from 2015, approximately 5.3 percent of the population suffered from some kind of disability, representing 1.9 million people.⁵²

The latest report from the UN Committee on the Rights of Persons with Disabilities, from 2012, noted that discrimination in access to employment for persons with disabilities existed.⁵³ The Ministry of Labour added that only 15 percent of persons with disabilities had a job as of 2015. Out of that figure, 58 percent were working as artisans or street vendors, while only 25 percent were employees.⁵⁴

The educational profile of persons with disabilities were not compatible with the jobs available in the market, making it more difficult for them to find an employment, according to the Autonomous Workers Confederation of Peru in 2014.⁵⁵

The UN Committee on the Rights of Persons with Disabilities further noted reports of persons with disabilities in Peru's rural areas lacking identity cards, and in some instances names, limiting their access to basic services such as health care and education. No rehabilitation services existed for 81 percent of the population with disabilities. Indigenous peoples, Afro-Peruvians and other minorities with disabilities, as well as women and children in rural areas, were found to be most vulnerable.⁵⁶

The UN Committee on Economic, Social and Cultural Rights added in 2012 that representative organisations of children and women with disabilities did not participate in the designing of legislation or policy making processes and that there was no clarity as to the functions of division of responsibilities among various national institutions that promote the rights of persons with disabilities.⁵⁷

Persons Living with HIV/AIDS

Law 26626 against HIV/AIDS guarantees the right of persons living with HIV/AIDS to remain employed, and prohibits the dismissal of workers on the basis of their condition and the requirement of HIV/AIDS testing at the workplace. Furthermore, Supreme Decree 19/2006 penalises discrimination based on HIV/AIDS at the workplace with fines from 11 to 20 tax units.⁵⁸

According to the government, there were 52,409 persons living with HIV and 31,157 living with AIDS as of 2014, with a prevalence rate of 0.4 percent. The Ministry of Health noted that figures have been descending since 2008 and 2005, respectively.⁵⁹ The largest concentration of cases was observed in the

workforce population.⁶⁰ Most persons living with HIV were located in Lima, Callao, Loreto, Arequipa and Ica.⁶¹

A survey conducted by the government found that some companies subjected employees to testing.⁶²

A 2016 *El Nuevo Diario* article stated that many persons living with HIV did not have access to treatment due to the high cost of medicine that in many cases had to be covered by the patient.⁶³

Indigenous Peoples

The constitution guarantees the right to ethnic and cultural diversity.⁶⁴ The constitution guarantees the rights of all citizens to speak their native language and to use their own language with the authorities through the use of a translator.⁶⁵ In 2006, Law 28736 was passed by the Congress to protect indigenous tribes in isolation or recently contacted.⁶⁶

Peru's first census in 1993—the only census including an indicator on language spoken—revealed that the indigenous population was comprised of approximately 9 million people, or approximately 40 percent of the total population.⁶⁷ The latest national census from 2007 indicated that there were 1,789 indigenous communities in 12 regions, including the Amazons, Ayacucho, Cajamarca, Cusco, Huanuco, Junin, Loreto, Madre de Dios, Pasco, San Martin and Ucayali. 60 different ethnic groups were recorded and peoples from 13 different linguistic families existed, making Peru the most diverse country in the Americas.⁶⁸

The existence of indigenous peoples in voluntary isolation was recognised in 2012 by the government in five areas in the Amazon, paving the way for the creation of five reserves to protect these communities.⁶⁹ The International Work Group for Indigenous Affairs (IWGIA) reported in 2015 that approximately 350,000 indigenous peoples inhabited the Peruvian Amazon, with the largest communities being the Ashaninka and Awajun peoples.⁷⁰

According to a 2014 Committee on the Elimination of Racial Discrimination report, indigenous people suffered from discrimination and did not have access to job opportunities.⁷¹ A 2011 study conducted by the Pacifico University noted racial discrimination in hiring practices, particularly against candidates with Andean features.⁷²

The latest report by the United Nations Special Rapporteur on Contemporary Forms of Slavery, from 2011, indicated that indigenous peoples were more vulnerable to contemporary forms of slavery such as debt bondage in the logging, mining and agricultural sectors.⁷³

The UN Working Group on the issues of discrimination against Women in law and practice noted in 2015 that as a result of extractive industry activities, indigenous women's rights were particularly impacted, including in their access to land, water and agriculture production, and to violence.⁷⁴ Centro de Culturas Indigenas del Peru added in 2013 that indigenous women faced constant discrimination in access to basic services such as health and education.⁷⁵

Sexual Minorities

There is no legislation prohibiting discrimination against persons based on sexual orientation.⁷⁶

The latest UN Committee on Economic, Social and Cultural Rights report, from 2012, noted that discrimination in employment occurred, while an organisation from Arequipa stated in 2013 that although sexual minorities were adequately trained to meet job requirements, they faced discrimination in accessing employment.⁷⁷

Approximately 95 percent of women trans were sex workers, according to a 2015 Inter-American Commission for Human Rights report.⁷⁸ Women trans were also working in hair salons, commerce, and services.⁷⁹

The UN Human Rights Committee reported in 2013 that discrimination and acts of violence against sexual minorities occurred.⁸⁰ Discrimination in their access to housing, education and health care was further reported.⁸¹

A joint report from the Centre for the Promotion and Defense of Sexual and Reproductive Rights (PROMSEX) and the Peruvian Network TLGB added in 2015 that during 2014, 13 incidents of murder and 26 cases of violence against sexual minorities occurred.⁸²

Rural Poor

According to a UN Committee on Economic, Social and Cultural Rights report, from 2012, a large section of the rural population still lived in poverty, particularly in the sierra and jungle regions, where indigenous communities were concentrated.⁸³ The International Fund for Agriculture Development (IFAD) reported in 2013 that people born in Lima had a life expectancy that was 20 years longer than persons born in the southern highlands. The lack of opportunities for the rural poor had reportedly caused mass migration to urban areas.⁸⁴

Most rural women were reportedly poor or extremely poor, and worked in agriculture, tend livestock or engaged in income generating activities, corresponding to 80 percent of a family labour force.⁸⁵

Women in the Andean highlands and Amazon were particularly vulnerable to exercising their rights, notably in their access to basic services, land tenure and credit facilities.⁸⁶

Urban Poor

The Occidental Weekly reported in 2013 that almost a quarter of Lima's 8 million people lived in slums (pueblos juvenes) surrounding the city, while 1 million did not have access to treated running water.⁸⁷ According to a 2015 BBC report, residents in those communities were paying for water 10 times more than what piped water would have cost as a result of the lack of access to water services provided by the government.⁸⁸

Public schools in pueblos juvenes were reportedly low in quality. With few exceptions, residents experienced a high degree of isolation and suffered from extreme poverty.⁸⁹

The Inter-American Development Bank (IDB) reported in 2012 that a deficit of adequate housing affected approximately 29 percent of households, particularly in urban areas, while 20 percent of the population lacked access to housing. The IDB also noted that a lack of developed land in the cities reduced the possibility to generate low-income housing affordable to the poorest families.⁹⁰

Women

The law provides for equality between men and women and prohibits discrimination against women when it comes to marriage, divorce, and property rights.⁹¹ Law 28983 on Equal Opportunities for Men and Women, adopted in 2007, guarantees equal pay for work of equal value, and prohibits sexual discrimination in employment and education, as well as the arbitrary dismissal of pregnant women.⁹² Women are entitled to 90 days of paid maternity leave.⁹³ These provisions are in line with international standards.

Official figures indicated that women's participation in the labour market was 64 percent, compared to 82 in case of men, and underemployment was much higher than that of men.⁹⁴ Out of approximately 3 million workers in the private sector in 2014, 1 million corresponded to women.⁹⁵

During 2014, most women were working in agriculture (26,4 percent), followed by commerce, (26,2 percent) and manufacturing (8,9 percent).⁹⁶

The Single Confederation of Workers of Peru reported that women were mostly found employed in the sectors of commerce, health and education where un-registered and short-term contracts were the norm, according to the ILO in 2015.⁹⁷ Only 0.3 percent of women worked in mining activities.⁹⁸

A 2011 World Bank study found that extractive industries in Peru provided 'far more permanent and temporary job opportunities to men than to women.'⁹⁹ The study concluded that the lack of employment of women in mines indicated that many mining companies were missing a crucial development opportunity.¹⁰⁰

The UN Committee on the Elimination of Discrimination against Women (CEDAW) noted in 2014 a significant wage gap between men and women,¹⁰¹ while the UN Working Group on the issues of discrimination against women in law and practice indicated in 2015 that women received salaries that were 30 percent less than men's salaries.¹⁰² Furthermore, the UNDP added that Peru was the fourth country in the region with the largest wage gap between men and women as of 2013.¹⁰³ Most women working in the agriculture sector did not receive a salary.¹⁰⁴ 78 percent of women reportedly worked in the informal sector, with salaries being 30 percent lower than what women employed in the formal sector would receive.¹⁰⁵

Poor working conditions were reported, including the lack of social security benefits for women in the informal sector, farming and agriculture export sector.¹⁰⁶ Only 25 percent of women were covered by social security schemes.¹⁰⁷

The government reported that only 2,6 percent of women were employers, compared to 5,9 percent in case of men, and the vast majority was an employee (52 percent compared to 39 in case of men).¹⁰⁸

The national law prohibits sexual harassment and mandates companies with more than 100 employees to have an internal regulation containing the procedure to report cases of sexual harassment.¹⁰⁹

According to a 2015 survey, 30 percent of working women were victims of harassment in the workplace.¹¹⁰ Most of them were between 24 and 35 years of age.¹¹¹ Furthermore, Flora Tristan noted that 3 out of 10 working women were victims of sexual harassment in the workplace, according to a 2015 *El Comercio* report.¹¹²

On its latest report, from 2011, the UN Special Rapporteur on Contemporary Forms of Slavery stated that women employed as cooks in mining camps were at high risk of sexual exploitation.¹¹³ A 2011 World Bank report found that despite local geography, culture, income and education, women were, according to most social indicators, generally worse off than men in Peru.¹¹⁴ Indigenous women and women living in poverty reportedly faced barriers to access health services and coverage by the universal health system.¹¹⁵

According to a 2013 International Fund for Agriculture Development (IFAD) report, most rural women were poor or lived in conditions of extreme poverty.¹¹⁶ In 2011, the World Bank reported that the benefits from social programmes funded by extractive industries, administered either by the public sector or companies, tended to give greater priority to the projects proposed by men; included men more effectively than women in project consultation, selection and design, and were much more likely to benefit men.¹¹⁷

Men and women have equal rights to own land and married women must agree in case the husband would like to sell a property during marriage.¹¹⁸ In 2013, the newspaper *Cimac Noticias* reported that 20 percent of agricultural units (chacras) were managed by women, yet only 4 percent of those lands were

owned by women.¹¹⁹ CEDAW added that women were impacted by land acquisition by multinational companies as often did not receive compensation benefits or were not consulted regarding alternative livelihoods.¹²⁰

The government adopted in 2013 legislation with the aim to prevent, punish and eradicate femicide.¹²¹ In 2015 a new law was adopted on preventing, punishing and eradicating violence against women and household members.¹²² CEDAW noted in 2014 that women stereotypes were deeply entrenched in the society and were reasons for the high levels of violence against women.¹²³ Women living in poverty, indigenous and Afro-Peruvians women, and women with disabilities were the most vulnerable to violence and multiple forms of discrimination, including on grounds of sexual orientation and gender identity.¹²⁴ A 2013 National Survey found that 71,5 percent of women have at least suffered one episode of violence in their life.¹²⁵ The government reported that during 2014, 91 women were assassinated by their partners or former partners, compared to 109 in 2013.¹²⁶ Those figures, according to CEPAL, placed Peru as the second highest country in the Latin America region in terms of femicide rates.¹²⁷

Women participation in political life was low, and gender quotas on regional and municipal government were not always met.¹²⁸

Maternal mortality rate in Peru was high, particularly in the sierra and jungle regions, and among indigenous women.¹²⁹ PROMSEX claimed that the criminalisation of abortion was directly related to the high rates of maternal mortality.¹³⁰

CEDAW further noted that the Ministry of Women and Vulnerable Populations was allocated very low budget to promote gender equality.¹³¹

Cases

Reports of business-related human rights issues from NGOs, multilateral institutions and the media.

- *June 2014, El Comercio:* The Ministry of Labour imposed sanctions to 5 companies on grounds of sexual harassment committed by employers during 2013. The penalties accounted to 76,000 soles (approx. US\$23,000).¹³²
- *2014, UN Committee on the Elimination of Racial Discrimination:* The television programme La Paisana Jacinta reportedly made negative stereotype of indigenous and Afro-Peruvians.¹³³
- *October 2013, Flora Tristan:* A police cadet was dismissed from the National Police School as a result of pregnancy.¹³⁴
- *March 2013, Peru 21 Noticias:* One of the requirements of a telecommunications company's vacancy was that the candidate had light skin.¹³⁵
- *August 2013, El Comercio:* The government imposed fines on a bar in the Asia District for denying the access to an Afro-Peruvian.¹³⁶

Company Initiatives

Private-sector programmes that aim to ensure respect for human rights or contribute to development

Company Due Diligence Initiatives

Pluspetrol Peru (2013): The gas and oil company provided its employees with language courses as well as a special Programme on Mid-level Management Positions to prepare employees for future promotions into those positions by developing their skills. 17 workers were benefited with the language courses while an average of 20.1 hours was spent on technical training per employee.¹³⁷

Newmont Yanacocha (2014): The mining company has established a Senior Specialist on Human Rights in order to handle cases of human rights abuses related to the company's operations.¹³⁸

Repsol Peru (2013): The company seeks to implement the UN Guiding Principles on Business and Human Rights in its operations. To this end, in Peru, the company established a grievance mechanism known as Xprestate in order to receive complaints from various stakeholders, including employees, on adverse human rights impacts. If applicable, complaints can be taken to the judiciary. The company also adopted a Policy of Respect for People and their Diversity by which it embraces the principle of non-discrimination, encourages equal opportunities and the valorisation of diversity in the workplace.¹³⁹

Company Development Initiatives

Barrick Gold (2014): The company implemented the project *Artisanal Textile Workshop* targeted at women living in Santiago de Chuco, with the objective to improve their capabilities in order to generate sustainable jobs. 45 women were trained for a 6 months period.¹⁴⁰

Southern Peru: The copper company has established a community relations team in collaboration with a Peruvian NGO to implement specific programmes in the areas of strengthening human capital and the creation of production projects, developing infrastructure and services, and creating opportunities for the communities' social well being, under the full respect of their social identity and culture. Among them is an assistance in nutrition to children under five and pregnant mothers in the province of Tacna.¹⁴¹

General Mills and AgroMantaro (2013-2017): The agribusiness companies committed to a four-year long project to provide US\$1.1 million to help smallholder artichoke farmers increase yields and improve profitability in the central Andes region of Junin. The project is expected to reach 100 small-scale farmers.¹⁴²

Stakeholder Recommendations

International Commission of Jurists (2014): The organisation recommends that companies develop programmes to improve the standard of living in the communities where the majority of workers come from, and concentrate on housing and essential public services.¹⁴³

Pillars in Practice' Workshop (2013): Participants at the multi-stakeholder workshop on human rights and business in Latin America formulated a number of recommendations for companies operating in the region:

- Businesses should create transparent mechanisms that share information with local communities on the potential human rights impacts of company operations, and enable the effective participation of communities in decisions that may impact them.¹⁴⁴

Ministry of Labour (2013): The Ministry recommends that businesses adopt measures that will allow employees that have children with disabilities to reduce their working hours, without any impact on their professional career.¹⁴⁵

UN Committee for the Rights of People with Disabilities (2012): The Committee recommends that private entities take into account all aspects of accessibility for persons with disabilities.¹⁴⁶

Asociacion de Desarrollo Comunal (2011): The organisation recommends that companies make statements on equal opportunities in the workplace and to disseminate best practices on the implementation of labour laws, particularly in relation to equal opportunities in the workplace.¹⁴⁷

World Bank (2011): The organisation recommends that companies incorporate women equitably into the workforce in order to contribute to sustainable development, through various means, including by:

- 'Implementing family-friendly work practices such as by establishing childcare facilities and working hours that accommodate family schedules;
- Increasing female employment by: targeting advertising and promotions to women; developing training programmes; identifying internal barriers to the promotion of women in the workplace; changing working conditions to address any perceived discrimination; and working with the community to change attitudes toward female employment;
- Offering training, mentoring and paying parity to women;
- Reducing opposition and resentment of male workers and supervisors by coming down hard on harassment;
- Including women as project partners at the local level in order to fulfil the community's demand for sustainable development;
- Offering microcredit schemes and banking services to women, as well as by setting up saving schemes for employees.¹⁴⁸

The organisation also recommends that companies ensure that policies or codes of conduct include disciplinary process for employees or contractors who instigate or commit discriminatory, disrespectful or abusive behaviour towards employees.¹⁴⁹

Human Rights Guidance for Businesses

Actions and priorities suggested by local and international stakeholders as well as company initiatives to ensure company respect for human rights and contribute to human development in the local context

Due Diligence Library

The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies

Discrimination

Does the company ensure that employment-related decisions are based on relevant and objective criteria?

- The company identifies different types of discrimination, including those rooted in formal structures and cultural traditions.
- It is company policy to ensure that decisions concerning hiring, wages, promotion, training, discipline, retirement and termination are based only on unbiased criteria, and are not linked to any of the discriminatory characteristics listed in the description for this question.
- Each job category in the company has a written description stating the salary level and the qualifications required for that job category.

- The company ensures that employment advertisements do not reference discriminatory criteria, such as race, gender or age (unless listed as part of a legal equal opportunities promotion).
- The company ensures that job applicants are not asked to give information about their marital status, pregnancy, intent to have children, number of dependents, or similar information that may lead to discriminatory hiring decisions.
- All hiring managers receive training regarding the company's non-discrimination policies.
- The company has established a procedure, accessible and known to all workers, where workers can safely report incidents of workplace discrimination.
- The company takes reasonable steps to enable qualified persons with disabilities or health conditions to gain employment opportunities with the company, for example by providing wheel chair access, flexible working hours, longer breaks etc.

Fair Treatment

Does the company protect workers from workplace harassment including physical, verbal, sexual or psychological harassment, abuse, or threats?

- The company has a commitment to prevent workplace harassment.
- The company actively informs workers of their obligations to refrain from violent, threatening or abusive conduct.
- Managers receive training on how to identify and deal with instances of harassment in the workplace.
- The company investigates all complaints of workplace harassment and takes appropriate preventative and disciplinary action including reporting of criminal actions to the appropriate authorities.

Privacy

Does the company respect the privacy of its employees whenever it gathers private information or monitors the workplace?

- The company has a procedure stating which kinds of workplace monitoring are allowed; what kind of personal worker information is retained; where it is stored; who has access; and why the information is necessary.
- Workers are made aware of all workplace monitoring, including cameras and Internet or e-mail monitoring, and the specific purpose of the monitoring.
- The company obtains the worker's prior written consent before gaining information from an individual with whom the worker has a privileged relationship, including a former employer, doctor or lawyer.
- Workers have access to all personal data collected about them, including data concerning disciplinary decisions and data obtained through monitoring, but excluding confidential management specific information related to performance evaluations, salary negotiations, promotions, rotation and similar employment decisions.

Community Engagement

Does the company engage with local communities on the actual or potential human rights impacts of its operations?

- The company has a commitment to engage openly with communities in and around its area of operations, prior to, during and after commencing activities that may negatively impact their access to resources (e.g. water, food, land) or livelihoods (e.g. fishing or hunting grounds).
- The company communicates and consults with local communities prior to, during and after commencing activities to prevent, reduce and mitigate impacts.
- The company takes steps to remedy the legitimate concerns of local communities regarding any negative impacts of the company's operations on the access to resources or livelihoods.

Country Risk

Does the company seek to avoid involvement in human rights abuses owing to government or societal practices?

- If operating in a country or region with systematic human rights abuses, the company seeks to become aware of and avoid the risk of contributing to, endorsing or benefiting from such abuses.
- Where the company risks involvement in systematic human rights abuses owing to government or societal practices, the company seeks to identify solutions through dialogue with other businesses, civil society organisations, experts and other relevant stakeholders, including where possible with the authorities.
- The company ensures that it does not endorse any state imposed discriminatory limitations on the right to vote, and does not pass along information concerning religious, racial, political affiliations or other characteristics of employees which could be used by the government as a reason to restrict the right to vote.

Standards & Guidance

NGO and institutional resources to enhance human rights due diligence efforts by businesses. These resources are drawn from the Business & Human Rights Resource Centre

- International Labour Organization Core Labour Standards on Non-discrimination and the ILO Bureau for Gender Equality: Non-discrimination comprises one of the four core areas of the ILO Declaration on Fundamental Principles and Rights at Work, which comprises the ILO core labour standards. The ILO integrates gender throughout its work, with the objective of achieving gender equality as an essential feature of decent work. This can include advisory services, research and information dissemination, training and capacity building.
- Oxfam Australia: Women, Communities and Mining: The Gender Impacts of Mining and the Role of Gender Impact Assessment (2009): This Guide is intended to inform mining company staff of potential gender impacts of mining projects and introduces some tools and approaches that can be used to conduct a gender impact assessment.
- Women's Empowerment Principles (2010): Developed in collaboration between UN Women and the UN Global Compact, the Women's Empowerment Principles are a set of principles for businesses offering guidance on how to empower women in the workplace, marketplace and community.
- The Forest Peoples Programme: Established in 1990, the Programme is dedicated to supporting Indigenous Forest Peoples protect their land rights and human rights. The Programme works directly with indigenous communities, assisting them in building their own capacities and exercising their human rights.

- IFC Performance Standard 7: Indigenous Peoples (2012): The IFC PS7 and its accompanying guidance offer directions on how private sector projects can respect the human rights of Indigenous Peoples through following the stated requirements.
- International Council on Mining and Metals Good Practice Guide: Indigenous Peoples and Mining (2010): The ICMM is the industry organisation for the mining and metals sector. The Guidance provides advice to companies on how they can build effective relationships with Indigenous Peoples, as well outlining ways in which companies can effectively engage throughout the lifecycle of a project.
- International Working Group for Indigenous Affairs (est. 1968): IWGIA is an international human rights organization specialising in Indigenous Peoples' rights. IWGIA works to further the understanding, knowledge, and engagement with the rights of Indigenous Peoples through publications, advocacy programmes and support of local projects.
- The Manila Declaration of the International Conference on Extractive Industries and Indigenous Peoples (2009): The Declaration is a statement on behalf of Indigenous Peoples and support organisations from 35 countries that calls on different stakeholder groups, such as extractive companies, communities and civil society organisations, to respect and uphold the recognised rights of Indigenous Peoples.
- Tebtebba Foundation (Indigenous Peoples' International Centre for Policy Research and Education): The Foundation's main purpose is to work for the respect, protection and fulfilment of Indigenous Peoples' rights and the operationalization of Indigenous Peoples' self-determined sustainable development. The Foundation offers a number of relevant resources on issues such as traditional knowledge and traditional livelihoods, biodiversity and climate change.
- UN Permanent Forum on Indigenous Issues (est. 2000): The Forum was formed to advise the United Nations Economic and Social Council on a number of Indigenous Peoples' rights issues, such as economic and social development, culture, education, environment, health and human rights.
- UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples (est. 2001): The Special Rapporteur mandate is to advise on and monitor the human rights situation of Indigenous Peoples. This includes country reports, promoting good practice, addressing relevant human rights violations and contributing to thematic study on topics related to Indigenous Peoples.

Engagement Opportunities

Development initiatives by public and private actors that provide opportunities for companies to contribute to human development

Public Sector Initiatives

'Boost Peru' Programme: The Ministry of Labour and Employment Promotion implements the initiative that offers vocational training, technical assistance for entrepreneurs and labour intermediation. The programme is targeted to people including unemployed persons, independent workers that have substantially reduced their income, and those who have received less than 2,000 soles (approx. US\$600) as a last salary.¹⁵⁰

Best Labour Practices Award: The Ministry of Labour and Employment Promotion developed the award that seeks to reward businesses that implement best practices in regards to the defence, respect and promotion of worker's fundamental rights. The award is given to 9 categories including equal

opportunities for men and women to access employment, combating sexual harassment at the workplace, professional development and access to training, etc.¹⁵¹

'Discrimination is absurd. Pop your bubble' Campaign (2014): EsSALUD developed the initiative in order to inform and raise awareness for the eradication of all discrimination against persons living with HIV/AIDS, particularly in the workforce.¹⁵²

Seal 'Secure Enterprise, Free of Violence and Discrimination against Women' (2013): The Ministry of Women and Vulnerable Populations implements the initiative as a strategy to strengthen all actions to prevent violence against women. It is an important distinction that highlights best practices that encourages gender equality and the prevention of gender violence in the private sector. During 2013, 7 companies were awarded with the seal.¹⁵³

Peru Works Programme (2006-present): The programme is being implemented by the Ministry of Labour and Employment Promotion with the objective of creating employment, building capacity and improving people's access to employment, particularly for heads of households, persons with disabilities, youth and the elderly living in situations of poverty and extreme poverty in urban and rural areas. As of 2014, approximately 900,000 people were participating in the Programme.¹⁵⁴

Wawa Wasi Programme- House for children (1993-present): This programme seeks to develop skills and provide a safe environment for the children of poor and working mothers, thereby making it easier for women to work as they often lose or leave their jobs in order to look after their children. Local communities in cooperation with governmental institutions implement the programme.¹⁵⁵

National Programme Juntos (2005-present): The programme provides monetary incentives directly to families in urban and rural areas living in poverty or extreme poverty. Mothers with children under the age of 14 receive monetary incentives upon compliance with certain commitments. Commitments include sending children to school and health care facilities. The goal is to overcome poverty and child malnutrition and to preserve human capital, especially in those populations at risk for social exclusion. As of 2015, 1,700,000 children benefited from the programme.¹⁵⁶

Plan on Equality of Opportunities for Persons with Disabilities (2009-2018): The government adopted the Plan with the objective of improving the quality of life of persons with disabilities. The plan includes the designing of labour regulations applicable to persons with disabilities as well as to improve their access to employment.¹⁵⁷

NGO Initiatives

National Coordination for Human Rights: The coalition of civil society organisations works for the defence, promotion and education on human rights, including in the workplace.¹⁵⁸

Child Labour

Work that interferes with the health, development, education or family life of persons under 18

Operating Environment		
	Peru	Latin America and the Caribbean
Net Enrolment Ratio in Primary Education (% both sexes)	94.4 (2013)	93.6 (2015)
Percentage of pupils starting grade 1 and reaching last grade of primary	73 (2011)	76.1 (2015)
One-year-old children immunised against measles (%)	85 (2013)	92 (2013-Latin America)
Mortality rate of children under 5 years old (per 1,000 live births)	16.7 (2013)	18 (2013)
Percentage of population below 14	26,9 (2015)	
Legatum Prosperity Index : Education	88 (2015)	
Restrictions on children under 18 from working	Work that endangers the health of children and adolescents; puts their physical, mental, and emotional development at risk; or prevents regular attendance at school.	
Minimum age of employment	14 years 12 years (with a permit from the Ministry of Labour)	
End of compulsory education	15 years	
Relevant legislation	<ul style="list-style-type: none"> • Constitution, 1993 • Labour Code, 2014 	
Responsible ministries	<ul style="list-style-type: none"> • Children's Consultative Council • Ministry of Labour and Employment Promotion 	

	<ul style="list-style-type: none"> Ministry of Women and Vulnerable Groups - Directorate General for Children and Adolescents National Directive Committee for the Prevention and Eradication of Child Labour
Local NGOs addressing this issue	<ul style="list-style-type: none"> Grupo de Iniciativa Nacional por los Derechos del Niño Red para la Infancia y la Familia

Country Context

Human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.

The national legislation states that the minimum working age is 14; however, children between 12 and 14 are allowed to work a maximum of 4 hours per day, while teenagers from 15 to 17 can work up to 6 hours per day if the Ministry of Labour issues a special permit stating that the children also attend school.¹⁵⁹ These provisions are in line with international standards.

In 2014, 352 authorisations were reportedly issued. Most of the authorisations were for jobs at hotels and restaurants, commerce, manufacturing, and real state.¹⁶⁰

The government has implemented policies aimed at eradicating the worst forms of child labour, especially work performed by minors below 18 years of age under dangerous and hazardous conditions.¹⁶¹ At the same time, the Organisation Manthoc, that represents child labourers, has been working in favour of child labour that its done under decent working conditions and that contribute to their knowledge, their social integration and their personal development.¹⁶²

According to latest official figures, from 2011, 1, 650,000 children were working,¹⁶³ accounting to 1 out of every 4th child in Peru.¹⁶⁴ 53,9 percent were between 9-13 years of age, while 46,1 percent were between the ages 14-17.¹⁶⁵ This figure made Peru one of the countries with the largest number of child labourers in Latin America, together with Bolivia and Guatemala.¹⁶⁶

55 percent of working children between 9-13 years of age were reportedly living in poverty,¹⁶⁷ and 70 percent of households with at least one child labourer worked in agriculture, mining or fishing; 13 percent in services and commerce; 4,8 percent in construction; and 3,9 in manufacturing.¹⁶⁸

Rural areas concentrated the great majority of child labourers.¹⁶⁹ El Comercio reported in 2013 that areas with the highest rates of child labour included Huancavelica, Puno, Huanuco and Amazonas, and that children received on average 162 soles (approx. US\$49) monthly.¹⁷⁰

According to a 2015 Peru 21 report, half of all child labourers worked under precarious conditions, including receiving low salaries and having long working hours. Reportedly, children between 5-11 of age worked on average 14.1 hours a week, adolescents between 12-13 worked 14.5 hours a week, and adolescents between 14-17 years of age, 23 hours a week.¹⁷¹

Approximately 200,000 children were street workers that were more vulnerable to illnesses, pollution, extreme weather conditions, robbery, accidents and aggressions. They reportedly received on average 9 soles (approx. US\$2,7) a day and worked between 20 and 29 hours a week, as further noted by Peru 21 in 2015.¹⁷²

The National Labour Inspection Superintendent's Office (SUNAFIL) has the mandate to conduct inspections where child labour had been reported.¹⁷³ SUNAFIL had, as of 2015, 294 labour inspectors and 83 of them were located in regional offices. During 2014, 52 cases of child labour and 3 cases of the worst forms of child labour were identified. Arequipa and San Martín were particularly vulnerable to child labour.¹⁷⁴ The Ministry of Labour imposed fines on 23 employers for child labour violations, which accounted to 5,292,000 soles (approx. US\$1,596,000). According to the newspaper *El Comercio*, in 2013, labour inspectors lacked logistical support, including vehicles, to reach inspections sites.¹⁷⁵ The U.S. Department of Labor added in 2015 that the number of inspectors was insufficient to monitor the implementation of the law and SUNAFIL was underfunded to conduct its activities.¹⁷⁶

The UN Committee on the Rights of the Child noted in 2016 that the Directorate General for Children and Adolescents at the Ministry of Women and Vulnerable Groups had insufficient capacity and resources to coordinate and implement the UN Convention on the Rights of the Child.¹⁷⁷

Worst Forms of Child Labour

The law prohibits work that endangers the health of children and adolescents; puts their physical, mental, and emotional development at risk; or prevents regular attendance at school.¹⁷⁸ In 2010, the government published a list of the worst forms of child labour, and prohibited several hazardous occupations for children, including underground work, lifting, or carrying heavy weights, accepting responsibility for the safety of others, or night work.¹⁷⁹

In 2014, the Ombudsman referred to official data reporting that 33.9 percent of children between 6-17 years of age were engaged in work that was dangerous.¹⁸⁰ Furthermore, the UN Committee on the Rights of the Child noted in 2016 that children were involved in the worst forms of child labour, particularly in rural areas, including in mining, agriculture, logging, brick making and garbage dump work, and illicit activities including illegal coca cultivations and drug trafficking.¹⁸¹

Out of all children working in rural areas, 87 percent worked helping in farming and animal grazing, according to a Peru 21 article.¹⁸² The latest UN Committee on Economic, Social and Cultural Rights latest report, from 2012, stated that children working in gold mines were exposed to dangerous conditions, having to carry heavy loads and work in poorly ventilated, unsafe environments.¹⁸³

On its latest report, from 2011, the UN Special Rapporteur for Contemporary Forms of Slavery noted that children as young as five were said to be preferred for certain types of work that required light weight or small hands. Examples of such work included stepping on bricks and turning them around for drying without damaging them in home brick-making factories and picking coca leaves.¹⁸⁴

The U.S. Department of Labor reported in 2015 that remnants of the terrorist group Shining Path used children as soldiers, and that children were used to produce coca and transport drugs.¹⁸⁵

Commercial sexual exploitation occurred in tourist zones such as Cuzco, Iquitos and Lima, and girls were reportedly engaged in commercial sexual exploitation in mining communities.¹⁸⁶ The UN Committee on the Elimination of Discrimination against Women added in 2014 that trafficking in adolescents for sexual or labour exploitation occurred, particularly in the mining and logging industries.¹⁸⁷

Education

Education is free and compulsory for a period of 13 years.¹⁸⁸ The UN Human Rights Committee noted in 2013 that the minimum age for employment set at 14 is below the end of compulsory education, which is set at 15 years of age.¹⁸⁹

According to official figures, 97 percent of children between 5-13 years of age were attending school.¹⁹⁰

In 2013, Peruvian NGOs reported that 60,000 children between 6 and 13 years of age did not attend school due to being involved in labour activities, while 600,000 combined work and school. In relation to children between 14 and 17 years of age, 244,000 were not enrolled in school, and school dropout rates were significantly higher among children that worked.¹⁹¹ According to a 2013 report from the newspaper RPP Noticias, children worked to contribute to the family income instead of attending schools.¹⁹²

The UN Committee on the Rights of the Child reported in 2016 that certain group of children including indigenous children, Afro-Peruvians, children living in rural and remote areas, children living in poverty, lesbian, gay, bisexual and intersex children and children with disabilities were subjected to discrimination including in their access to education.¹⁹³ The US Department of Labor added in 2015 that indigenous children's secondary school completion rate was 42 percent compared to 67 percent in case of all children,¹⁹⁴ and approximately 54 percent of children with disabilities did not reportedly know how to read or write.¹⁹⁵

The Ombudsman added that 14 percent of Afro-Peruvian children were not enrolled in elementary schools and out of the 70 percent of children enrolled in high school, 50 percent of them completed their education, which was lower than the national average. A large majority of Afro-Peruvians did not reach university level.¹⁹⁶

Girls in rural areas were forced to work long distances in order to access schools, exposing them to abuse and sexual violence.¹⁹⁷

In 2012, the UN Committee on Economic, Social and Cultural Rights stated that discrepancies between rural and urban schools in relation to quality and infrastructure existed.¹⁹⁸ Also, the UN Committee on the Rights of the Child expressed concern in 2016 at the increasing number of private schools, which could reinforce discrimination in the educational system.¹⁹⁹

The UN Committee on the Rights of the Child added in 2016 a prevalence of bullying and violence in schools.²⁰⁰ Cases of girls subjected to sexual abuse by professors were also reported.²⁰¹

Cases

Reports of business-related human rights issues from NGOs, multilateral institutions and the media.

- *June 2015, Peru 21:* An 11-years old boy was working on a rice plantation from 5 am to 4 pm, with a salary of 20 soles (approx. US\$20) daily.²⁰²
- *September 2013, El Comercio:* The Attorney's General Office rescued 14 minors that were being sexually exploited in a nightclub in Piura.²⁰³

Company Initiatives

Private-sector programmes that aim to ensure respect for human rights or contribute to development

Company Due Diligence Initiatives

Newmont Yanacocha (2014): The mining company has set up a mechanism to identify particular risks of possible episodes of child labour in their supply chain. The company has also adopted measures to abolish child exploitation.²⁰⁴

Nestle Perú: The company is committed to preventing and eliminating child labour in their supply chain. It conducts comprehensive monitoring, implements remediation activities and provides targeted support to local communities.²⁰⁵

Company Development Initiatives

Telefónica Perú: The company implements the project Aula Movil (Mobile Classes) that seeks to reduce the digital gap and improve learning achievements of children in public rural institutions or marginalised urban areas.²⁰⁶

Human Rights Guidance for Businesses

Actions and priorities suggested by local and international stakeholders as well as company initiatives to ensure company respect for human rights and contribute to human development in the local context

Due Diligence Library

The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies

- The company does not employ workers under 15 years of age for full-time work, 13 years of age for light work and 18 years of age for hazardous work (please see the question description for exceptions).
- If the company employs minors below the age of 18, the company has a list of job functions that can safely be performed by minors.
- The company is aware of local age-levels for completion of compulsory education and does not employ workers under that age for work that may interfere with such education.
- The company has a reliable procedure to check the age of young job candidates by birth certificate, other official forms of identification, or by alternative means such as physical appearance or knowledge of historic events.
- Company apprenticeship programmes do not constitute the main portion of the workforce, are limited in duration, are performed in conjunction with a school programme (or supervised by Labour Ministers or Labour Organisations), and do not interfere with the child's compulsory education.
- If the company becomes aware that it is employing young workers below minimum age, it ensures that they are enrolled in education programme, and that their dependents are compensated for the resulting loss of income.

Standards & Guidance

NGO and institutional resources to enhance human rights due diligence efforts by businesses. These resources are drawn from the Business & Human Rights Resource Centre

- Business and Human Rights Resource Centre, Business & Children Portal: The Portal is an information hub developed to give practical assistance to people from all business sectors in their

work and decision-making, leading to better protection of the rights and welfare of children. The Portal has sections on: issues, positive initiatives, alleged abuses, lawsuits and guidance.

- **Children’s Rights and Business Principles (2012):** Developed by UNICEF, UN Global Compact and Save the Children, these Principles are the first comprehensive set of principles to guide companies on the full range of actions that they can take in the workplace, marketplace and community to respect and support children’s rights.
- **ILO Programme on the Elimination of Child Labour (est. 1992):** The Programme has the overall goal of the progressive elimination of child labour, to be achieved through strengthening the capacity of countries to address it and promoting a worldwide movement to combat child labour.
- **UN Committee on the Rights of the Child General Comment No.16 on State obligations regarding the impact of the business sector on children’s rights (2013):** The Committee is the body of independent experts that monitors the implementation of the Convention on the Rights of the Child and the Optional Protocols. In April 2013, the Committee issued a general comment on business and children’s rights. The objective of General Comment No.16 is to provide States parties with a framework for implementing the CRC, particularly with regard to the business sector.
- **Children’s Rights in Impact Assessment – A Tool For Companies (2013):** Developed by UNICEF and the Danish Institute for Human Rights, this checklist is a practical tool intended to help companies to identify and manage their impact on children’s rights. The checklist contains a set of questions and indicators covering the 10 Children’s Rights and Business Principles, addressing different aspects of company policies and operations and the impact on children’s rights.
- **Better Work (ILO, IFC):** Guidance Sheet on Child Labour (2009)

Engagement Opportunities

Development initiatives by public and private actors that provide opportunities for companies to contribute to human development

Public Sector Initiatives

National Strategy for the Prevention and Eradication of Child Labour (2012-2021): The government designed the plan with the goal of eradicating child labour by 2021. The strategy includes components on poverty reduction, increasing school attendance, reduction of social tolerance toward child labour, improving working conditions of adolescents and increasing procedures to detect cases of child labour, among others.²⁰⁷

Semilla Project (2012-2016): The government of Peru, in collaboration with the government of the U.S. launched the project aimed at benefiting 6,000 children, 3,000 families and 500 adolescents in Junin, Pasco and Huancavelica. The project’s goal is to reduce child labour by supporting farmers in the improvement of their crop yields, facilitating access to education, among others.²⁰⁸

Juntos Programme (2005- present): This conditional cash transfer programme provides families with 80 soles (approx. US\$24) per month on the condition that they invest in their children’s health and education. As of 2015, 1,700,000 children benefited from the programme.²⁰⁹

NGO Initiatives

National Initiative's Group for Children's Rights: The coalition of civil society organisations works toward developing a culture of respect for children's rights in order to ensure their fulfilment and contribute to their comprehensive development.²¹⁰

Forced Labour

Debt bondage, human trafficking or other coercion that makes workers unable to freely leave employment

Operating Environment	
U.S. Department of Labour Trafficking in Persons: Tier Placement	Tier 2
Relevant laws	<ul style="list-style-type: none"> • Constitution, 1993 • General Labour Inspection Law, 2006 • Law 28950 on Trafficking in Persons, 2007 • Penal Code, 2008
Responsible agencies	<ul style="list-style-type: none"> • Ministry of Interior • Ministry of Labour and Employment Promotion • National Commission to Combat Forced Labour • Permanent Multi-Sectorial Working Group on Trafficking in Persons

Country Context

Human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.

The constitution prohibits slavery and forced servitude. It also states that no one should be forced to work without explicit consent and without fair and sufficient remuneration.²¹¹ The prohibition of slavery and forced labour is addressed in the Penal Code,²¹² which refers to 'crimes against freedom of work.' It criminalises threats or violence with the aim of compelling another to provide work without remuneration.²¹³ The General Labour Inspection Law defines forced labour as a grave infringement.²¹⁴

On its latest report, from 2011, the UN Special Rapporteur on Contemporary Forms of Slavery noted that labour legislation did not set the maximum percentage of remuneration that may be provided in kind, nor did it stipulate administrative sanctions for perpetrators or compensation for victims of forced labour.²¹⁵

According to the 2015 Global Slavery Index, there were an estimated 66.300 people in modern slavery in Peru.²¹⁶

In 2013, the UN Human Rights Committee reported that forced labour and domestic servitude occurred.²¹⁷ Furthermore, The Ministry of Labour reported that forced labour in Peru was particularly observed in logging in the Amazon, formal and informal mining and domestic labour. Other sectors that also reported forced labour were chestnut extraction in Madre de Dios, artisanal fishing and

agriculture.²¹⁸ The Ministry further reported that forced labour in Peru affected the most vulnerable groups in society such as communities in situation of extreme poverty, indigenous peoples and women.²¹⁹ The UN Committee on the Elimination of Racial Discrimination added in 2014 that indigenous people in Madre de Dios and Ucayali regions were engaged in forced labour practices and servitude in the forestry and mining sectors.²²⁰ Verite noted in 2014 indicators of forced labour in informal gold mining in Madre de Dios, Cusco, Puno and Arequipa.²²¹

The UN Special Rapporteur further noted that in mining, labourers received advance payments in cash or goods, which were then deducted from their salary based on a system of overestimating the goods provided and underestimating the value of the gold provided. Consequently, the workers became indebted to the employer.²²² Armed guards were reportedly used to prevent workers from leaving before all debts were settled, while rare cases of armed groups capturing indigenous men and forcing them to work in camps were reported.²²³ In 2013, the Ministry of Labour described how workers were trapped in cycles of debt and servitude that may be passed down through generations.²²⁴

A latest report from the International Labour Organization, from 2005, stated that approximately 30.000 people were believed to be working under conditions of forced labour in the Amazon, while the UN Special Rapporteur on Contemporary Forms of Slavery noted that those figures were still considered to reflect the situation in 2011.²²⁵ The ILO reported in 2012 that in Peru, trade unions strengthened the capacities of unorganised workers to protect themselves from forced labour, particularly in the case of indigenous workers in the forestry sector.²²⁶

In 2008, a Special Inspection Group on forced labour was created at the Ministry of Labour.²²⁷ The National Labour Inspection Superintendent's Office (SUNAFIL) under the Ministry of Labour has the mandate to conduct inspections.²²⁸ According to the Ministry of Labour, 68 inspections were conducted in 2014 to monitor the existence of employees working under conditions of forced labour, particularly in Lima and Ayacucho.²²⁹

The National Commission to Combat Forced Labour lacked permanent staff or dedicated funds to carry out its national plan, according to the UN Special Rapporteur in 2011.²³⁰

Trafficking

The constitution prohibits all forms of human trafficking. Trafficking in persons for sexual exploitation is a specific offence and the Penal Code expands the trafficking offence to include labour exploitation.²³¹ In 2007, Law 28950 on Trafficking in Persons was adopted.²³² The General Labour Inspection Law defines trafficking of persons as a grave infringement.²³³

In 2013, the UN Human Rights Committee reported that trafficking in persons existed in Peru.²³⁴ The US Department of States added in 2015 that Peru was a source, destination and transit country for men and women subjected to sex trafficking, particularly indigenous people.²³⁵

Peruvians were reportedly exploited in forced labour including in informal gold mining and related services, logging, agriculture, brick-making and the informal sector. Women were exploited in sex trafficking near mining communities as a result of their indebted situation due to the cost of transportation, and complicity of miners in their exploitation.²³⁶

According to a 2015 Reuters report, unemployed women living in poverty were the most vulnerable to fake promises of jobs as cooks, cleaners or hostess in mining towns that ended up being engaged instead in sexual exploitation.²³⁷

The cities of Cuzco and Lima, and the Madre de Dios region were reportedly main destinations for Peruvian sex trafficking victims.²³⁸

Cases

Reports of business-related human rights issues from NGOs, multilateral institutions and the media.

- *November 2015, Peru 21:* A women in Puno was given 6 months preventive detention while being investigated on grounds of forcing a child into prostitution.²³⁹
- *October 2013, Peru.com:* Three adolescents were rescued from an alleged trafficker in Las Palmeras, Madre de Dios. The victims were reportedly being transferred to the illegal mining area of La Pampa.²⁴⁰

Company Initiatives

Private-sector programmes that aim to ensure respect for human rights or contribute to development

Company Due Diligence Initiatives

Kimberly Clark-Peru: The company, which has facilities in Puerto Piedra, verifies through independent audits its supply chain to evaluate and address risks of human trafficking and forced labour. At the same time, it provides training on human trafficking and slavery to employees who have a direct responsibility for supply chain management.²⁴¹

Newmont Yanacocha (2014): The mining company has set up a mechanism to identify particular risks of episodes of forced labour in their supply chain. The company also adopted measures to abolish all forms of forced labour.²⁴²

Company Development Initiatives

SURA (2015): The financial services provider signed an agreement with the International Organisation for Migration in order to raise awareness on the topic of trafficking. In that framework, a theatre performance called 'Lita's nightmare' was presented in six schools and other venues in order to informed children on the crime of trafficking. The play reached 1.800 students during 2015, and it is expected to reach 10.000 by 2016.²⁴³

Stakeholder Recommendations

Verite (2013): The organisation recommends that companies:

- Comply with CSR standards related to gold mining;
- Increase their usage of the tool Fairmined;
- Implement better mechanisms for the responsible supply of gold, and ensure that gold produced illegally or in conditions of forced labour its not part of their supply chain.²⁴⁴

United Nations Special Rapporteur on Contemporary Forms of Slavery: The Rapporteur recommends companies to: prevent discrimination against indigenous peoples in the workplace; ensure written contracts are written in a language workers understand; and deposit wages in bank accounts.²⁴⁵

Human Rights Guidance for Businesses

Actions and priorities suggested by local and international stakeholders as well as company initiatives to ensure company respect for human rights and contribute to human development in the local context

Due Diligence Library

The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies

- Workers can give notice and leave employment within a reasonable length of time. This is clearly communicated to workers prior to starting employment.
- The company (or its recruitment agencies) ensures that it does not withhold wages or bonuses and that it pays them in a timely and regular manner.
- The company ensures it does not make deductions from wages for disciplinary measures or other deductions not authorised by national law.
- Within normal working hours workers are able to earn a living wage sufficient to meet the basic needs of themselves and their closest dependents.
- Overtime work is paid, voluntary and not compelled through threat of pay deductions, termination or other sanctions.
- The company (or its recruitment agencies) ensures that it does not retain identity cards, passports, travel documents or other personal items without which workers cannot leave employment. If letters of release or other documents are needed for the worker to leave employment, such letters are issued without delay.
- All workers are allowed to leave company premises during breaks and at the end of their shifts, and workers in company housing may freely enter and exit their accommodation at any time.
- The company (or its recruiting agencies) ensures that it does not require workers to pay recruitment fees or lodge money deposits.
- Loans or salary advancements to workers are based on fair terms that are clearly explained to the worker, are not granted to cover basic living expenses, are limited in size, and do not require the worker to remain with the company until repayment is completed.
- If the company uses prison labour it ensures that all prison workers have been convicted by a court of law, and that the work is voluntary and supervised by a public authority.
- The company ensures that it does not use labour from agencies or firms involved in human trafficking or other forms of bonded labour.

Engagement Opportunities

Development initiatives by public and private actors that provide opportunities for companies to contribute to human development

Public Sector Initiatives

- *Blue Heart Campaign (2015)*: The Ministry of the Interior launched the campaign to raise awareness on the crime of trafficking. In connection to the campaign, all police officers wore a blue bracelet to support the initiative.²⁴⁶
- *Project to Eradicate Forced Labour (2014)*: The government of Peru, in collaboration with the ILO and the government of the United States of America, signed an agreement in order to conduct studies to identify the range of forced labour in Peru with the objective to eradicate it. The US government committed with the amount of US\$600,000 to implement the project.²⁴⁷
- *II National Plan Against Forced Labour (2013-2017)*: The government adopted the Plan aimed at eradicating forced labour and providing adequate assistance to victims through, among other things, policies and legislation, education, communication and awareness raising, as well as strengthening social participation.²⁴⁸
- *National Plan Against Trafficking in Persons (2011-2016)*: The government developed this Plan including activities aimed at the prevention and prosecution of trafficking as well as the development of mechanisms for the protection of victims. Private companies are encouraged to participate in the designing and implementation of these activities.²⁴⁹

Occupational Health & Safety

Unsafe or unhealthy working conditions that expose workers to the risk of accidents or occupational illnesses

Operating Environment	
Relevant laws	<ul style="list-style-type: none"> • Law 29783 on Occupational Health and Safety, 2012
Responsible agencies	<ul style="list-style-type: none"> • Ministry of Labour and Employment Promotion- Department of Occupational Health and Safety • National Council on Occupational Health and Safety • National Centre on Occupational Health and Environmental Health Protection • EsSALUD
Local NGOs addressing this issue	<ul style="list-style-type: none"> • Instituto de Estudios Sindicales

Country Context

Human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.

Law 29783 on Occupational Health and Safety and further regulations adopted in 2012 have the objective of promoting a culture of risks prevention in the workplace, emphasising the employer's duty to prevent those risks.²⁵⁰ The law states that employers must maintain a safe and healthy work environment, and must provide employees with adequate protective gear. Employers are also obliged to provide workers with information concerning workplace risks as well as with occupational safety and health training. The law also requires them to develop an action plan for the prevention of workplace accidents. Employers are liable for all the economic costs related to workplace accidents or injuries. All employers must notify authorities of fatal accidents within 24 hours and must keep records on work related accidents and risks.²⁵¹ Companies that have a workforce of more than 20 employees must establish an Occupational Health and Safety Committee.²⁵² National legislation specifically covers the mining sector.²⁵³

A complementary insurance for workers that perform high-risk jobs is provided by ESSALUD.²⁵⁴ Employers have to contribute with a monthly health payment equal to 9 percent of the compensation paid by the employee.²⁵⁵

The Ministry of Labour reported that 14,737 occupational accidents and 128 cases of occupational fatalities were registered in 2014, compared to 18,956 occupational accidents and 178 occupational fatalities in 2013.²⁵⁶ The majority of accidents in 2014 were reported in the manufacturing industries, followed by real state, construction and mining.²⁵⁷ Most accidents in the mining sector occurred in contractors.²⁵⁸

In 2014, the Ministry reported that Lima, Arequipa and Callao were the cities where most accidents occurred.²⁵⁹

Most occupational accidents in 2014 were related to injuries in the fingers, eyes, hands, followed by contusions and cuts.²⁶⁰ The Instituto de Estudios Sindicales noted in 2014 that frequent risks associated to workplace accidents included the lack of personal protection equipment, exposure to pesticides, lack of appropriate rest areas or to consume food, prolonged working days, lack of sanitary facilities, etc.²⁶¹

The Confederation of Workers in Peru noted that not all cases of accidents were notified to the government, and that the authorities did not generally apply sanctions for failure to report them, according to the ILO's Committee of Experts for the Application of Conventions and Recommendations (CEARC) in 2015.²⁶²

In 2013, the International Commission of Jurists (ICJ) reported cases of companies in agri-business using chemicals that may have an impact on worker's health.²⁶³ Agriculture workers were reportedly engaged in the spraying of plantations without adequate equipment, thus exposing them to the risks of intoxication by the inhalation of pesticides.²⁶⁴

Workers in the mining and manufacturing sectors are exposed to high levels of heavy metals such as lead, mercury and arsenic, posing a risk of intoxication, particularly by its inhalation.²⁶⁵

In terms of occupational illnesses, 35 were recorded during 2014. The mining, manufacturing and construction sectors were the most vulnerable to occupational illnesses. Most of them related to deafness, followed by impacts due to forced postures and repetitive movements for a long period of time.²⁶⁶

According to a 2013 report from the Ombudsman's Office, more than 100,000 people worked in informal mining activities without the protection of their labour rights and in conditions that endangered their lives and health.²⁶⁷

A 2015 Piura University article stated that big companies tend to comply with OHS regulations, however, that was not generally the case with small and medium size enterprises, as their lack of knowledge of the laws was still a challenge for their implementation.²⁶⁸

The National Labour Inspection Superintendent's Office (SUNAFIL) is mandated to monitor compliance with occupational health and safety legislation.²⁶⁹ Occupational health and safety inspectors are authorised to conduct workplace inspections at any time, and workers are guaranteed the right to communicate freely with them. When an inspector observes a serious risk to workers, he or she can order an immediate cessation of work.²⁷⁰ However, the national legislation provides that an inspection visit requires an order to be issued by a higher authority and that a mission order containing a description of the purpose of the inspection should be sent in advance, provisions that, according to the ILO's CEARC in 2015, were not in line with ILO Convention 81.²⁷¹

During 2014, inspectors conducted 3,347 visits to worksites for monitoring compliance with Occupational Health and Safety regulations and 922 visits in relation to the application of the complimentary insurance to workers that perform high-risks jobs.²⁷² The U.S. Department of State reported in 2015 that many labour inspectors had to pay for transportation to sites and were harassed or prohibited from entering company premises.²⁷³

Cases

Reports of business-related human rights issues from NGOs, multilateral institutions and the media.

- *August 2015, La Republica:* A Macrotec worker claimed compensation for injuries on his face due to exposure to sulphuric acid while doing maintenance work at a Smelter.²⁷⁴
- *May 2014, El Comercio:* A maintenance worker fell from the 18th floor of a building while cleaning the windows, resulting in his death. The worker did not reportedly have all the necessary equipment for his security.²⁷⁵
- *Julio 2013, RPP Noticias:* A miner from Chinalco Mining in the Junin province was killed when parts of a crane detached.²⁷⁶
- *February 2013, El Comercio:* A construction worker died when a wooden platform fell from the 8th floor of a construction site. The company allegedly failed to implement security standards at the site.²⁷⁷

Company Initiatives

Private-sector programmes that aim to ensure respect for human rights or contribute to development

Company Due Diligence Initiatives

Camposol: The agri-business company implements a series of actions in order to mitigate the most common occupational health injuries, which are contusions at their facilities and cuts in plantation fields. The actions include: risks identification, evaluation and risk control classified by job, developing a capacity building programme and implementation of evacuation teams, first aid, programme on physical signs, etc. The company also conducts awareness campaigns on accident prevention.²⁷⁸

Antamina: The mining company with operations in Ancash established a Health and Safety Management System to identify several lines of action including identification of health hazards, evaluation and controlling of risks, and medical care for workers.²⁷⁹

Company Development Initiatives

Pluspetrol Peru (2013): The gas and oil company provided its employees with a healthy lifestyle programme that includes talks on disease prevention and nutrition, occupational medical examinations (including specific occupational medical examination for collaborators engaged in health risks activities or in need of adequate skills for the tasks performed) as well as medical campaigns in native communities.²⁸⁰

Human Rights Guidance for Businesses

Actions and priorities suggested by local and international stakeholders as well as company initiatives to ensure company respect for human rights and contribute to human development in the local context

Due Diligence Library

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Does the company ensure that its workers are provided safe, suitable and sanitary work facilities?

- Responsibilities for health and safety tasks are clearly defined.
- The company routinely monitors its production processes, machinery and equipment to ensure that they are safe and in good working order.
- Workers and managers are trained to respond to workplace emergencies; first aid kits and fire extinguishers are readily available; and escape exits are clearly marked and free from obstruction.
- The workplace is maintained to ensure clean and comfortable conditions including a suitable temperature, ventilation and lighting; suitable washing and sanitation areas appropriate for both genders.
- Residential or overnight facilities are safe and sanitary and meet the basic needs of workers including with regard to safety, space, temperature, lighting, ventilation, food, water, sanitary facilities, privacy and affordability.
- The company provides safe drinking water for workers and facilities for clean and sanitary food storage and eating.
- Where relevant the company has put in place special health and safety precautions for pregnant women, employees with disabilities, night workers, young workers and other vulnerable groups.

Does the company ensure that workers are provided with the protective equipment and training necessary to perform their tasks safely?

- The company has a procedure to ensure that all workers are provided, free of charge or deposits, with the protective equipment necessary to safely perform their job functions.
- The company is committed to ensuring that workers use the protective equipment provided and understand why it is necessary to use the equipment.
- The company ensures that all workers have the necessary training to safely perform their job functions and keeps workers fully informed, in a language and form understandable to them, of the health and safety procedures.
- An accurate record is kept of who has been trained and for what tasks.
- On a regular basis and when assigned to new tasks, workers receive training in the safe use of equipment and processes.
- A company function or member of staff is responsible for keeping informed of scientific and technological developments regarding health and safety risks and protective equipment.

Does the company actively involve workers in health and safety work?

- The company consults employees on health and safety issues either directly or through a freely elected safety representative(s) for relevant groups of employees.
- A health and safety committee has been established including employee safety representatives and representatives from management.
- Health and safety accidents are reported and investigated including involving the relevant worker(s), and actions are taken to prevent recurrences.
- Health and safety near-misses (accidents not resulting in injury) are reported and investigated to help improve safety.
- Health and safety accidents are monitored including hours lost as a result of injury or illness and e.g. compared to total hours worked (lost time injury frequency).

Standards & Guidance

NGO and institutional resources to enhance human rights due diligence efforts by businesses. These resources are drawn from the Business & Human Rights Resource Centre

- IFC Performance Standard 2: Labour and Working Conditions (2012): FC PS2 is guided by the international labour standards as outlined by the ILO and covers health and safety.
- Portal for Responsible Supply Chain Management: The Portal is designed to support companies in improving the social and environmental conditions within their supply chain. The Portal offers tools and guidance on a number of supply chain issues, such as child labour, corruption and discrimination. In addition, the Portal also details sector specific resource material and pertaining legislation.
- Ethical Trading Initiative Base Code (2012) and ETI Principles of Implementation (2009): The Ethical Trading Initiative is an alliance of business stakeholders promoting the implementation of corporate codes of practice that cover supply chain working conditions. The alliance consists of companies, NGOs and trade union organisations. The ETI Base Code has been developed as a code of labour practice, targeted generally for supply chains, and is in line with the key international labour standards. The accompanying ETI Principles of Implementation outline the requirements needed by corporate members to implement the ETI Base Code in their supply chains, including the necessary commitments, management practices and behaviours.

Engagement Opportunities

Development initiatives by public and private actors that provide opportunities for companies to contribute to human development

Public Sector Initiatives

First Forum on the Prevention of Risks at Work and Professionals Illnesses (2015): The Forum was organised by the Ministry of Labour and the first Vice-presidency at Congress, in order to promote a culture of labour risk's prevention and to inform on latest tendencies on occupational health and safety.²⁸¹

Training Plan for Inspectors (2013): The International Labour Organization provided technical assistance to the government in drafting a training plan and procedural guidelines for the staff of the National Labour Inspection Superintendent's Office (SUNAFIL).²⁸²

Centre for the Prevention of Labour Risks: The government created the Centre to give advice and training to companies in relation to occupational health and safety.²⁸³

Trade Unions

Restrictions on the right of workers to collectively represent their interests

Operating Environment	
Largest trade unions and union confederations	<ul style="list-style-type: none"> • Confederación General de Trabajadores del Perú (CGTP); The CGTP claims to represent 80 percent of union members. • Central Unitaria de Trabajadores (CUT); • Confederación de Trabajadores del Perú; • Central Autónoma de Trabajadores del Perú (CATP).
Relevant laws	<ul style="list-style-type: none"> • Constitution, 1993 • Labour Code, 2014
Responsible agencies	<ul style="list-style-type: none"> • Ministry of Labour and Employment Promotion • National Council on Work and Employment Promotion
Local NGOs addressing this issue	<ul style="list-style-type: none"> • Instituto de Estudios Sindicales

Country Context

Human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.

In Peru, tripartite dialogue is provided through the National Council on Work and Employment Promotion that is responsible for designing and implementing a National Plan on Decent Work in order to guarantee sustainable development with social inclusion and respect for labour rights. Business associations, trade union federations and civil society organisations compose the Council, while international organisations participate as observers. The Minister of Labour acts as President. Among the issues discussed are the effective observance of the fundamental principles and rights at work, such as freedom of association and collective bargaining.²⁸⁴

Latest available data reported that as of March 2013, 21 Regional Councils existed to facilitate social dialogue between unions, employer associations, regional governments and other relevant institutions. The Ministry of Labour stated that the councils contribute to economic and social growth, foster business competitiveness and productivity while guaranteeing access to employment and the protection of fundamental rights at work.²⁸⁵

According to the Instituto de Estudios Sindicales in 2014, tripartite dialogue in Peru was weak, workers' organisations were excluded when discussing about competitiveness, which had a clear impact on labour relations and policies and regulations were implemented outside of any dialogue or consultation with workers' organisations.²⁸⁶

Barriers to Unionisation

The constitution includes the right to freedom of association and the right to join and form trade unions.²⁸⁷ Workers in the public and private sectors are free to form and join trade unions without prior authorisation and employers are prohibited from interfering in the creation, administration, or maintenance of unions.²⁸⁸ The law however does not allow public servants with decision-making power and in positions of truth or leadership, and workers under training scheme to join unions, which, according to the ILO's Committee of Experts for the Application of Conventions and Recommendations (CEARC) in 2016, was not in line with ILO Convention 87.²⁸⁹ Workers with fix-term contracts were not allowed to join a trade union.²⁹⁰

A workplace-level union requires a minimum of 20 employees, while a minimum of 50 employees are needed for a sector-wide union, which the International Trade Union Confederation (ITUC) claimed to be too high by international standards, limiting the creation of unions in small and medium-size enterprises.²⁹¹

There were, as of December 2014, 176.249 unionised workers in the private sector, out of approximately 3 million workers.²⁹² Workers in sectors related to foreign trade were characterised by low unionisation rates, particularly in the textile sector.²⁹³ Only 1,4 percent of agriculture workers and 3,4 percent of workers in textile industries were unionised as of 2014.²⁹⁴

According to a 2012 International Labour Organization (ILO) report, the fall in unionisation experienced in Peru during the 1990s could be due to the rapid rise in the use of short-term contracts during the same period of time.²⁹⁵ The International Commission of Jurists (ICJ) also reported in 2013 that the adoption of special legislation in non-traditional export sectors, including agri-business and textiles, allowed companies to hire workers on a series of short-term contracts without requiring them to hire workers permanently.²⁹⁶ This has reportedly damaged workers' ability to organise unions since they may be fired for any reason, or not have their short-term contracts renewed.²⁹⁷

On its latest report, from 2012, the UN Committee on Economic, Social and Cultural Rights noted that foreign and migrant workers faced restrictions regarding their right to join trade unions.²⁹⁸

181 new unions were registered during 2014, compared to 200 during 2013. Most unions in 2014 corresponded to the construction sector, followed by commerce and manufacturing industries.²⁹⁹

Collective Bargaining

The constitution guarantees the right to collective bargaining.³⁰⁰ The law does not allow certain non pay-related issues to be negotiated collectively, which, according to the ITUC in 2014, restricted the principle of free bargaining.³⁰¹

According to the Ministry of Labour there were 443 registered collective bargaining agreement during 2014, particularly in the manufacturing sector, followed to a lower extent by the mining sector.³⁰²

Strikes

The constitution guarantees the right to strike.³⁰³ Strikes must be reported to and approved by the Ministry of Labour.³⁰⁴ The Ministry is empowered to end a strike if it poses a risk to the enterprise, to the sector or if it is seen as having serious consequences given its size.³⁰⁵ The law also provides that the Administrative Labour Authority is in charge of declaring a strike illegal within the private sector,

situation that according to the ILO's CEARC in 2016 should be done instead by an independent body that has the trust of both parties.³⁰⁶

The law does not allow atypical forms of strikes. The ILO's CEARC stated in 2016 that any work stoppage may be considered as a strike and the only restriction justified to cease a strike should be applied when they are not peaceful.³⁰⁷

Dismissals and delays in the reinstatement of striking workers were reportedly used to dissuade workers from going on strike.³⁰⁸ Union leaders reportedly complained that permission for a strike was very difficult to obtain and in practice most strikes were deemed illegal by authorities.³⁰⁹ For example, official figures showed that during 2014, only 15 out of 95 strikes were declared legal and that trend has been observed over the last couple of years.³¹⁰ Most cases were related to workers from the manufacturing sector followed by the mining sector, and in relation to non-compliance with legal norms.³¹¹

Anti-Union Discrimination

Discrimination against an employee for exercising his or her freedom of association is categorised as 'a hostility' in the Labour Code. Under such circumstances, workers can demand employers to refrain from discrimination within five days or present the case to the labour authorities for investigation.³¹² Under the Penal Code, employers may be punished with up to two years imprisonment if they demand the affiliation or non-affiliation of workers with a union through violence or threats.³¹³

In 2012, the ILO reported that Peru was one of five countries with the most serious and urgent cases of violations of the freedom of association that year, together with Argentina, Cambodia, Fiji and Ethiopia, particularly in relation to the investigation and sanction of perpetrators.³¹⁴ The Instituto de Estudios Sindicales added in 2014 that Peru was the country having the second highest claims on anti-union discrimination to ILO bodies, including the assassination of unionised workers over the last five years.³¹⁵

Latest UN Committee on Economic, Social and Cultural Rights report, from 2012, noted that the Labour Productivity and Competitiveness Act allows for dismissal without stating the grounds, and that the act has been used in reaction to trade union activity of employees.³¹⁶ In 2013, the Solidarity Centre reported that workers in the agricultural sector were subject to anti-union practices.³¹⁷ Also in 2013, Public Service International alleged that government anti-trade union policies included a 'campaign to discredit the unions accompanied by repression of trade union action,' as well as 'intimidation, persecution and use of judicial system to counter trade union leaders.'³¹⁸

A 2016 International Commission of Jurist report noted that unionised mining workers under short-term contracts did not reportedly have their contracts renewed in an attempt to limit their right to unionisation.³¹⁹

Cases

Reports of business-related human rights issues from NGOs, multilateral institutions and the media.

- *March 2016, El Comercio:* A man reportedly shot unionised workers at the sugar company Pomalca during a demonstration. An investigation was initiated due to concerns that the shot was done by the company's private guard.³²⁰
- *October 2015, Radio Uno:* A rally for peace and citizen security was convened by the Federation of Construction Workers to demand justice for the assassinations of 15 unionised workers in the construction sector.³²¹

- *May 2015, International Trade Union Confederation:* One person was killed and 200 reported injured as a result of clashes with the police who fired on striking workers blocking a highway near the Shougan Hierro Peru iron mine at Nazca province.³²²
- *May 2015, Telesur:* Members of communities in La Islay province demonstrated against the mining project Tia Maria. The demonstration resulted in clashes with the police.³²³

Company Initiatives

Private-sector programmes that aim to ensure respect for human rights or contribute to development

Company Due Diligence Initiatives

Johnson & Johnson del Peru: The company established in 2012 a Global Labour and Employment Guidelines, which refer to the ILO on Fundamental Principles and Rights at Work, including respect for freedom of association and the promotion of collective bargaining agreements.³²⁴

Company Development Initiatives

Glencore Peru: The company has set up a Trade Union-Management Joint Committee that is composed of representatives of unionised workers and the management, which meets once a month to hold a dialogue on issues of common interests as well as to follow-up on agreements reached, ensure their compliance, and solve specific issues.³²⁵

Human Rights Guidance for Businesses

Actions and priorities suggested by local and international stakeholders as well as company initiatives to ensure company respect for human rights and contribute to human development in the local context

Due Diligence Library

The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies

Does the company recognise the rights of its workers to freedom of association and to bargain collectively?

- The company has a commitment to recognise the rights of its workers to freedom of association and collective bargaining, including the right to freely form and/or join independent trade unions, and this commitment is clearly communicated to all employees.
- The company recognises workers' organisations for collective bargaining purposes and has procedures in place to ensure regular collective bargaining with authorised worker representatives concerning all workplace related issues.
- The company allows worker representatives access to collective bargaining agreements, company premises, employees and other relevant documentation needed to fulfil their duties.
- The company prohibits discrimination or adverse actions against worker representatives or employees for participating or refraining to participate in lawful trade union activities.

- The company has agreed with workers' representatives about the requirements of a fair hearing to be followed in relation to all disciplinary cases and employee grievances.
- The company has a committee, with participation of employee-elected representatives, which is responsible for hearing, processing, and settling disciplinary cases and employee grievances.

If independent trade unions are either discouraged or restricted, does the company enable workers to gather independently to discuss work-related problems?

- The company allows employees to engage in regular employee-only meetings within normal working hours, where employees can discuss concerns regarding working conditions.
- Where allowed by local legislation, and if independent trade unions are not present, the company informs employees of their right to form independent collective representation at the workplace.
- Where allowed by local legislation, the company informs workers of their right to engage in regular collective bargaining concerning all workplace issues.
- Company management meets regularly with worker representatives to discuss work-related problems and any concerns/complaints employees may wish to raise.

Engagement Opportunities

Development initiatives by public and private actors that provide opportunities for companies to contribute to human development

NGO Initiatives

Instituto de Estudios Sindicales: The organisation supports the development and strengthening of trade unions as important actors in a democratic society. Furthermore, it provides them with capacity building in order to promote social dialogue and governance.³²⁶

Working Conditions

Employment status, wages, working hours and social security

Operating Environment	
Minimum wage	750 soles (approx. US\$226)
Relevant laws	<ul style="list-style-type: none"> The Constitution, 1993 Labour Code, 2014
Responsible agencies	<ul style="list-style-type: none"> Ministry of Labour National Council on Work and Employment Promotion ESSALUD
Local NGOs addressing this issue	<ul style="list-style-type: none"> Instituto de Estudios Sindicales National Centre for Strategic Studies PLADES

Working Conditions: National Law		
	Peru	International Standard
Standard workweek	48	48
Overtime pay rate	1.25x	1.25x
Holidays with pay, per year	13 days	3 weeks
Maximum daily working hours	8	10
Maximum weekly working hours	48	48
Uninterrupted weekly rest period	24 hours per 7 days	24 hours per 7 days

Country Context

Human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.

The constitution provides for the right to work.³²⁷

A 2014 Instituto de Estudios Sindicales study found that only 12 percent of workers enjoyed decent conditions.³²⁸ The government has reportedly promoted special regimes for export that allowed for flexible job schemes, including the abusive use of short-term contracts in the agri-business and textile sectors, which impacted on worker's rights.³²⁹

A 2016 International Commission of Jurist report added that in the mining sector, 68 percent of workers were under short-term contracts.³³⁰

Wages

The constitution provides for the right to fair and adequate compensation ensuring the worker and his family material and spiritual well-being.³³¹

The National Council on Work and Employment Promotion sets the minimum wage.³³² The latest adjustment to the minimum wage was done in 2012 and was still valid as of March 2016. The value set was 750 soles (approx. US\$226) as compared to 675 soles (approx. US\$203) in 2011, and it applies to all sectors of the economy.³³³

The newspaper La Republica reported in 2015 that the basic basket for one person accounted to 200 soles (approx. US\$60), and that the set minimum wage covered only around half of the basic basket of a family of four.³³⁴

The minimum wage was reportedly the second lowest in the region, only after Bolivia.³³⁵

In practice, approximately 250.000 to 270.000 workers received the minimum wage, according to a 2016 El Comercio report, accounting to 1.5 percent of Peruvian workforce.³³⁶ The UN Committee on Economic, Social and Cultural Rights noted on its latest report, from 2012, that 30 percent of salaried workers were paid less than the minimum wage.³³⁷

According to official figures, 2,104 soles (approx. US\$648) was the average monthly salary in the private sector as of December 2014. Women's salary corresponded to 1,815 soles (approx. US\$550) while men's salary corresponded to 2,227 soles (approx. US\$675).³³⁸

Higher salaries were reportedly noted in the mining sector, followed by electricity, water and gas provision, financial services and construction.³³⁹

A 2013 shadow report to the UN by Peruvian NGOs noted that workers in the agricultural sector did not receive wages that constituted a living wage.³⁴⁰ Women, who represented approximately 60 percent of workers in the EPZs, were reportedly paid less than the minimum wage, particularly in the textile sector.³⁴¹

Over the last five years, unionised workers were able to negotiate an increase in their salaries that accounted to up to 15 percent.³⁴²

Working Hours

Normal working hours are 8 hours per day, and 48 hours per week. Overtime is voluntary, except in justified cases. Overtime hours are to be paid at a rate of 1.25 percent for the first two additional hours

and 1.35 percent for the remaining hours. Companies must pay additional compensation for night work.³⁴³

According to the government, most employees worked between 35 to 47 hours a week, as of 2014.³⁴⁴

Latest official figures, from 2010, reported that women worked on average 73 hours a week, of which 36 hours corresponded to a paid job, compared to 66 hours in case of men, of which 50 hours corresponded to a paid job.³⁴⁵

In 2013, the Solidarity Centre reported that approximately 300,000 people were employed in the agricultural sector, working 12 to 14 hours a day.³⁴⁶

Social Security

The constitution recognises the progressive right to social security coverage.³⁴⁷ The Social Security of Health (EsSalud) provides health services to workers through the contribution of employers and employees to the system. Employers are mandated to pay 9 percent of the amount of a worker's salary. Employers also contribute for pension funds with 13 percent of worker's salary if the employee is affiliated to the National Pension System, or with 12 percent in case the employee is affiliated with the Private Pension System.³⁴⁸

The Ministry of Labour reported that out of approximately 3 million workers in the private sector, 120,000 did not have any type of social security coverage during 2014.³⁴⁹

Informal Sector

A 2014 Instituto de Estudios Sindicales study found that 74 percent of all jobs in Peru were performed in the informal sector. In small-sized enterprises, the percentage reached to 89 in 2013.³⁵⁰ 19 percent of Peru's GDP was originated in the informal sector, as reported by Gestion in 2015.³⁵¹

9 out of 10 workers in Huancavelica, Ayacucho, Puno and Cajamarca reportedly worked in the informal sector, as of 2015.³⁵² In Lima, 5 out of 10 workers were engaged in informal activities in the service sector.³⁵³

The National Centre for Strategic Studies reported in 2016 that in agriculture, 97,2 percent were informal workers, followed by transport and communication (80 percent), construction (75 percent) and commerce (74 percent). In these sectors, more than 7 out of 10 employees were working in the informal sector.³⁵⁴ Workers in the informal sector received salaries that were 50 percent less than what a worker in the formal sector would receive per hour.³⁵⁵

Most informal workers were reportedly women, youth and workers with lower educational levels.³⁵⁶

According to a 2013 report from the Ombudsman's Office, more than 100,000 people worked in informal mining activities without the protection of their labour rights and in conditions that endangered their lives and health.³⁵⁷

Law 27651 on the Formalisation and Promotion of Small Scale and Artisanal Mining was adopted in 2002, with the aim of reducing informal mining in the country. More recently, the government has also adopted legislation aimed at criminalising and eradicating illegal mining, including a 2012 amendment to the Criminal Code on illegal mining.³⁵⁸ As of June 2014, more than 58,000 artisanal and small-scale miners expressed their commitment to initiate formalisation of mining activities. However, only 7 of them were formalised due to among others, lack of resources and capability of regional authorities to handle those commitments.³⁵⁹

Cases

Reports of business-related human rights issues from NGOs, multilateral institutions and the media.

- *April 2015, La Vanguardia:* A rally was convened by the General Confederation of Workers to demand an increase in the legal minimum wage.³⁶⁰
- *2014, Instituto de Estudios Sindicales:* The textile company Topy Top allegedly used anti-union practices including providing benefits to workers who did not join trade unions or conditioning the renovation of contracts to disaffiliation from trade unions.³⁶¹
- *September 2013, The Wall Street Journal:* Peru's National Federation of Mining and Metallurgy started a 48-hour strike protesting, among other things, against a government decree broadening the number of beneficiaries of a new mining pension programme, diluting payments.³⁶²
- *August 2013, La Republica:* Labour inspectors went on strike to demand better working conditions. As a consequence, the Minister of Labour promised an increase of 100 percent in their salaries.³⁶³

Company Initiatives

Private-sector programmes that aim to ensure respect for human rights or contribute to development

Company Due Diligence Initiatives

Faber Castell Peru: The company is committed to the implementation of recommendations set out by the ILO in relation to working conditions, including equal wages, reasonable working hours and defined terms of employment.³⁶⁴

Stakeholder Recommendations

International Commission of Jurist (2014): The organisation recommends that companies:

- Adopt internal policies and procedures geared at assuring that the company's operations respect human rights, including the labour rights of the workers in accordance with international standard;
- Publish or socialise on the internet of the internal measures adopted to remedy serious failures to comply with international standards for the protection of workers.³⁶⁵

Human Rights Guidance for Businesses

Actions and priorities suggested by local and international stakeholders as well as company initiatives to ensure company respect for human rights and contribute to human development in the local context

Due Diligence Library

The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies

Working hours

Does the company ensure that the workweek is limited to 48 hours; that overtime is infrequent and limited; and that workers are given reasonable breaks and rest periods?

- Normal company working hours are limited to 48 per week by both company policy and practice, or fewer if provided by national law, collective agreement or industry standards.
- Overtime is infrequent, remunerated at premium rate, and does not exceed 12 hours in any one week, or 36 hours per month.
- The company has a system to plan, record and monitor hours worked by each employee, and regularly evaluates whether the number of workers is sufficient to meet production targets without resorting to overtime.
- Where overtime per worker systematically exceeds 12 hours per week, the company increases its workforce to correspond to production targets, or puts in place measures to increase worker productivity and reduce overtime.
- Workers are allowed at least 24 consecutive hours of rest (or more if provided by national law or industry standards) in every seven day period.
- The company ensures that workers have no less than a 30-minute break for every 4 hours of work (or more if provided by national law or industry standards) and that workers are allowed to use toilet facilities whenever necessary and not just during designated breaks.

Wages

Does the company provide a living wage that enables workers to meet the basic needs of themselves and their dependents?

- It is company policy to provide workers with a living wage sufficient to meet basic food, clothing and housing needs and provide some discretionary income for themselves and their dependents.
- The company is aware of whether the legal minimum wage in the country of operation meets the requirement for a living wage.
- If no national minimum wage is established, or if national minimum wage standards are insufficient to meet the basic needs of workers and their dependents, the company calculates a living wage based on the cost of living in its area of operation.
- Part-time workers receive wages and benefits that are proportionate to those of full-time workers, and receive overtime compensation at a minimum of 1.25 times their hourly salary.
- The company pays wages at regular intervals and does not take deductions from wages for disciplinary measures or other deductions not authorised by national law.

- Bonus and piece-rate payment systems are monitored to ensure that the total salary paid meets living wage requirements without resort to overtime.

Leave

Does the company ensure that workers are paid holiday leave, sick leave and parental leave in accordance with international minimum standards?

- Workers are granted at least three weeks of paid holiday leave per year or more if required by national law or collective agreements. Part-time and short-term workers are provided with paid holiday leave proportionate to the number of hours worked, at a rate equal to that of permanent full time employees.
- Workers are entitled to paid sick leave in accordance with the applicable national law. If sick leave is not provided for in national law, the company consults with union or worker representatives to establish alternative means of protection in case of illness or injury.
- The company ensures that sick leave is not deducted from workers' vacation time.
- Female workers are entitled to no less than fourteen weeks of paid maternity leave per child.
- The company grants compassionate or parental leave to workers who have recently adopted a child or children, or have taken on the responsibility to care for foster children or other dependent children.

Employment status

Does the company ensure that all workers have an official employment status?

- The company ensures that all employees receive employment contracts prior to starting work for the company, and that contracts are understood by each employee.
- Contracts detail each employee's rights and obligations of employment, including clear job description, bonus and salary systems, and reasonable notice periods.
- Reference to company handbooks or other relevant documents on employment terms are integrated into the contract.
- The company ensures that contractors provide workers operating within company premises with an official employment status in line with company standards.

Standards & Guidance

NGO and institutional resources to enhance human rights due diligence efforts by businesses. These resources are drawn from the Business & Human Rights Resource Centre

- Ethical Trading Initiative Base Code (2012) and ETI Principles of Implementation (2009): The Ethical Trading Initiative is an alliance of different business stakeholders promoting the implementation of corporate codes of practice that cover supply chain working conditions. The alliance consists of companies, NGOs and trade union organisations. The ETI Base Code has been developed as a code of labour practice, targeted generally for supply chains, and is in line with the key international labour standards. The accompanying ETI Principles of Implementation outline the requirements needed by corporate members to implement the ETI Base Code in their supply chains, including the necessary commitments, management practices and behaviours.

- Institute for Human Rights and Business and Global Business Initiative on Human Rights, State of Play: The Corporate Responsibility to Respect Human Rights in Business Relationships (2012): The Report examines how the UN Guiding Principles can contribute and guide the complex network of business relationships that now exist in a global economy. It explores how companies of all sizes are now beginning to implement human rights considerations and the UN Guiding Principles into both traditional and contemporary business relationships.
- Portal for Responsible Supply Chain Management (est. 2008): The Portal is designed to support companies in improving the social and environmental conditions within their supply chain. The Portal offers tools and guidance on a number of supply chain issues, such as child labour, corruption and discrimination. In addition, the Portal also details sector specific resource material and pertaining legislation.
- IFC Performance Standard 2: Labour and Working Conditions (2012): IFC PS2 is guided by the international labour standards as outlined by the ILO and covers a range of aspects, including: terms and conditions of employment, non-discrimination, health and safety, and forced labour. The Standard addresses employees, contracted workers and supply chain workers.
- International Labour Organization: The International Labour Organization (ILO) is the UN agency responsible for preparing and overseeing international labour standards. The mission and objectives of the ILO are to promote rights at work, encourage decent employment opportunities, enhance social protection and strengthen dialogue on work-related issues.
- OECD Guidelines for Multinational Enterprises (2011): The OECD Guidelines are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. Chapter 5 is on employment and industrial relations, aligning with the international labour standards of the ILO.

Engagement Opportunities

Development initiatives by public and private actors that provide opportunities for companies to contribute to human development

Public Sector Initiatives

Pensión 65 (2011- present): This initiative seeks to help combat poverty in Peru by providing a pension grant of 265 (approx. US\$80) to those individuals over 65 years who have worked informally and lack adequate resources for retirement.³⁶⁶

Strategic Guidelines for Social Security (2011-2016): The strategy seeks to implement actions towards the inclusion of all independent and informal workers into the social security network. Furthermore, the government will develop strategies in coordination with national institutions such as the Ministry of Labour so that companies can register all their employees. New coverage plans will be designed in order to include independent and informal workers under the same social security benefits given to workers in the formal sector.³⁶⁷

NGO Initiatives

Instituto de Estudios Sindicales: The organisation promotes decent working conditions for men and women from a human rights perspective, with a gender approach.³⁶⁸

Environment

Company impacts on the environment that affect the health or livelihoods of local communities

Operating Environment	
Percentage of population with access to improved water sources	87 (2015)
Environmental Performance Index rank	73 (2016)
Food Security Index rank	54 (2015)
Relevant laws	<ul style="list-style-type: none"> • Constitution, 1993 • Framework Law on the National Management of the Environmental System, 2004 • Law 28611 General Law on Environment, 2005
Responsible agencies	<ul style="list-style-type: none"> • Council of Minister's Presidency - Department for the Supervision of Forestry and Fauna • Environmental Assessment and Oversight Agency • Multi-Sectorial Commission to Fight Illegal Logging • Ministry of Agriculture - National Water Authority • Ministry of the Environment • National Service on Environmental Certification for Sustainable Investments • National Environmental Impact Assessment System
Local NGOs addressing this issue	<ul style="list-style-type: none"> • Derecho, Ambiente y Recursos Naturales (DAR) • Instituto de Defensa Legal del Ambiente y el Desarrollo Sostenible

Country Context

Human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.

The constitution guarantees the right to a sustainable environment, and mandates that the state must promote conservation and the sustainable use of natural resources.³⁶⁹ The law penalises crimes against the environment including through fines and sanctions of up to seven years of prison.³⁷⁰

Peru was among the 12 countries with the greatest biodiversity in the world and was the seventh largest in relation to the size of natural forests, according to the Ministry of Agriculture in 2013.³⁷¹

The Ombudsman reported in 2015 that socio-environmental conflicts corresponded to 60 percent of all conflicts during 2014 (168 cases), of which 70 percent related to mining activities and 12 percent to the oil and gas sector, particularly in Ancash, Apurimac and Cusco.³⁷²

Participation & Access to Information

The public has the right to access environmental information on request and the government must proactively disclose environmental information.³⁷³

In Peru, a series of environmental certification instruments are in place. Environmental Impact Declarations (DEA) are mandatory for all projects that may have adverse environmental impacts while Detailed Environmental Impact Assessment (EIA-d) should be conducted for high-impact investment projects, particularly in the mining and energy sectors.³⁷⁴

According to a 2015 Gestion report, Environmental Impact Assessments in Peru could take up to 18 months to be completed and cost between US\$1 to US\$4 million.³⁷⁵

Each government ministry has its own unit responsible for both the approval of DIA and the promotion of investment in its particular sector.³⁷⁶ Since 2015, the newly created National Service on Environmental Certification for Sustainable Investments (SENACE) was mandated to assess all EIA-d in mining, oil and gas, and electricity sectors.³⁷⁷ The law also mandates that SENACE conducts public hearings and give special attention to natives and peasant communities' views in the framework of those processes.³⁷⁸

The creation of SENACE seek to address critics about conflict of interests of sectorial ministries that were mandated to promote investment while at the same time approve EIAs. El Comercio reported in 2014 that some stakeholders thought that SENACE would contribute to the reduction of social conflicts around extractive projects, while others considered that it could bring more bureaucracy around EIA processes.³⁷⁹

In practice, the UN Committee on the Rights of the Child noted in 2014 that EIA were not always conducted prior to granting licenses to companies.³⁸⁰ According to the 2015 Environmental Democracy Index, not all environmental impact assessments were public.³⁸¹

A 2012 report by the National Coordination of Human Rights (NCHR) stated that EIA processes were not standardised and that governmental agencies mandated to conducting them lacked the required technical knowledge.³⁸²

Food & Livelihoods

According to the World Food Programme in 2016, 11 million people, accounting to 38 percent of the population, did not cover their minimum daily calories intake, and fourteen out of 25 regions in Peru were extremely vulnerable to child chronic under-nutrition.³⁸³ The government identified the following

regions as highly vulnerable to food insecurity: Cajamarca, Amazonas, Huancavelica, Huanuco and Apurimac.³⁸⁴

The Department for the Supervision of Forestry and Fauna at the Council of Minister's Presidency (OSINFOR) reported in 2013 that deforestation in the Amazon region was a result of agribusiness, logging and illegal mining, which, according to Global Witness negatively impacted the livelihoods of communities in the region.³⁸⁵ A government study revealed that illegal gold mining alone had as of 2013 destroyed more than 40,000 hectares of Amazonian forest, more than the 18,000 the country had estimated in 2012.³⁸⁶ Deforestation rates due to illegal and informal mining were notably observed in Madre de Dios region.³⁸⁷ The International Commission of Jurist reported in 2016 an overlapping of extractive activities in territory suitable for agriculture, impacting on peasants that dependent on those lands for their food provision.³⁸⁸

The Ombudsman noted in 2014 that mercury-polluted water resources impacted on fish, which was the principal food source to communities in the Amazonas. 60 percent of fish that was consumed in Madre de Dios had mercury levels higher than the ones permitted by WHO standards.³⁸⁹

The Inter-American Development Bank indicated on its latest report, from 2012, that the construction of highways such as the IIRSA Interoceanica and IIRSA North, passing through the ecological and cultural sensitive Amazon, also posed a threat to indigenous communities' livelihoods as they cut designated forests preserves.³⁹⁰

Water

In Peru, the right to water is not guaranteed in the Constitution,³⁹¹ however, the Constitutional Tribunal has recognised the right to water as an innominate constitutional right.³⁹²

Although Peru had significant water reserves accounting to four percent of the planet's water availability, the Inter-American Development Bank noted in 2013 that access to drinking water was unequal between rural and urban areas, with 40 percent and 89 percent coverage respectively.³⁹³

The UN Committee on the Rights of the Child reported in 2016 that mining and hydroelectric projects polluted drinking water, impacting on the living conditions of children and their families.³⁹⁴

A 2015 submission by international organisations to the UN Human Rights Council noted that open pit mining, including in Cajamarca, polluted aquifers with toxic chemicals and heavy metals, degrading water-renewal zones, thus impacting on the right to water of local populations and the spread of diseases.³⁹⁵ The four Amazonian basins (Tigre, Corrientes, Pastaza and Marañon) were reportedly polluted with heavy metals and petroleum by-products.³⁹⁶

The Ombudsman reported in 2013 that over 3.000 tonnes of mercury were dumped in Amazonian rivers over the last 20 years as a result of informal mining, particularly in Puno and Madre de Dios regions.³⁹⁷

According to a 2014 report by the United Nations Special Rapporteur on Contemporary Forms of Slavery, indigenous women noted that they were the most vulnerable to water pollution as a result of natural resource extraction due to changes in quality and availability of water, the effects on livestock production (their source of work) and the negative effects on their health.³⁹⁸

El Comercio further noted in 2016 that 8.616 abandoned mining sites and 156 abandoned oil wells existed in 22 regions in Peru, which constituted a permanent risk for the health of local communities.³⁹⁹

The UNDP added in 2015 that water scarcity in river basins were also as a result of loss of vegetation coverage, inappropriate agriculture practices, overgrazing, illegal logging and pollution.⁴⁰⁰

According to a 2014 study published by the organisation SciLO Public Health, water pollution was also as a result of sewage discharges into rivers and failure of water treatment plants, impacting on people's

health.⁴⁰¹ This situation was particularly observed in the basins of rivers Cañipia and Salado, in Espinar, according to La Republica in 2015.⁴⁰²

Commercial activities in Lima, including manufacturing and mining, reportedly lacked wastewater treatment facilities, negatively impacting on water sources, according to America Economia in 2015.⁴⁰³ The construction of highways such as the IIRSA Interoceanica and IIRSA North, reportedly polluted water sources.⁴⁰⁴

Air Pollution

Publimetro referred in 2014 to a World Health Organization report stating that Lima was the most air-polluted city in Latin America in part due to industries.⁴⁰⁵

The Inter-American Association for Environmental Defense (AIDA) reported in 2015 that La Oroya was declared most polluted cities in the world as a result of industrial pollution caused by a poly-metallic smelter. AIDA also noted that approximately all children between 6 to 12 years in La Oroya were found with high levels of lead in their blood, adversely impacting their health.⁴⁰⁶

National legislation requires companies to register their use of mercury, including transportation and storage security.⁴⁰⁷ Every mining town has gold processing workshops, which reportedly emit mercury. On its latest report, from 2012, Scientific America noted that mercury levels in the air outside of certain gold shops, especially in the Madre de Dios region, exceeded the amounts considered safe, exposing people outside to mercury poisoning.⁴⁰⁸

According to a 2014 study published by the organisation SciLO Public Health, 2.300 premature deaths annually occurred in Lima as a result of air pollution.⁴⁰⁹

Cases

Reports of business-related human rights issues from NGOs, multilateral institutions and the media.

- *2016, International Commission of Jurists:* Local communities expressed that the mining project Kimsa Orco threatened the headwater basins of Chicha, Panda and Sondones rivers in Sucre province.⁴¹⁰
- *2014, United Nations Special Rapporteur on Contemporary Forms of Slavery:* Oil was observed in the Shanshococho, Ushpayacu and Pampaliyacu pools as a result of Occidental Petroleum's operations.⁴¹¹
- *November 2013, La Republica:* Four agribusiness companies allegedly polluted the river Moche by dumping their wastes in the river without being properly treated.⁴¹²
- *October 2013, Peru Support Group:* Excessive levels of lead and petrol derivate were found in the rivers adjacent to indigenous communities in Loreto as a result of oil drilling in the Amazon region.⁴¹³
- *October 2013, Peru 21 Noticias:* A Tribunal condemned two individuals to three years of imprisonment under charges of illegally clearing 2.5 km of forest in the National Reserve of Tambopata, Madre de Dios.⁴¹⁴
- *September 2013, Trujillo Informa:* The sugar mill Corporacion del Sur de Salamanca had reportedly drilled wells that have impacted the access to water of small-scale farmers in the Chocope district. Also, the company may not have consulted with local communities on those activities.⁴¹⁵

- *April 2013, Business and Human Rights Resource Centre:* The U.S. Supreme Court declined to review a federal appeal's court ruling that Peruvian peasants can file a lawsuit against the firm Occidental Petroleum over allegations of health problems as a result of polluting the Amazon forest.⁴¹⁶
- *March 2013, Reuters:* Pluspetrol was condemned to the payment of 11 million soles (approx. US\$33 million) in fines due to oil spills in the Amazon region that have impacted in the livelihoods of local communities.⁴¹⁷

Company Initiatives

Private-sector programmes that aim to ensure respect for human rights or contribute to development

Company Due Diligence Initiatives

Pluspetrol (2013): The company has set up a Conflict Resolution Unit where a local community, government agency or public/private institution can submit a specific complaint or dispute about the company's operations. During 2013, 17 claims were presented in relation to its operations in Camisea. Most of them related to watercourse incident and one on an immediate environmental incident response action.⁴¹⁸

Nestle Peru: The company signed an agreement with the Swiss Agency for Development and Cooperation to measure and reduce the water footprints of its operations in Lima.⁴¹⁹

Camposol: The agri-business company conducts biodiversity census on its area of influence in order to conserve the habitat of animal and plant species, and develop new species in land that is not under cultivation. The company has also established an Operations team with the objective of identifying, establishing and implementing contingency plans in the event of El Niño.⁴²⁰

PetroPeru: The state-owned oil company adopted an environmental policy in order to ensure sustainability in its operations, and a solid waste management project has since been developed.⁴²¹

Stakeholder Recommendations

'Pillars in Practice' Workshop: Participants at the multi-stakeholder workshop on human rights and business in Latin America formulated a number of recommendations for companies operating in the region:

- Businesses should design environmental management policies that integrate human rights considerations.
- Environmental due diligence processes should include a human rights perspective.
- Businesses should raise awareness of and educate their workforce on the relationship between business operations and their potential impact on the environment and human rights. Educational Programmes should be targeted at all levels of management.
- Large companies should build capacity of small and medium sized enterprises on human rights and the environment.
- Businesses should design and formulate indicators on human rights and the environment and subsequently publicly report on these.

- Businesses should create transparent mechanisms that share information with local communities on the potential human rights impacts of company operations, and enable the effective participation of communities in decisions that impact may them.
- Company chemical waste mechanisms should ensure that chemical discharge does not negatively impact on human rights.⁴²²

Human Rights Guidance for Businesses

Actions and priorities suggested by local and international stakeholders as well as company initiatives to ensure company respect for human rights and contribute to human development in the local context

Due Diligence Library

The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies

Precautionary Approach

Does the company support a precautionary approach to environmental issues?

- The company provides information to stakeholders about uncertainties and potential risks to workers, consumers, the public and the environment of the company's products and processes.
- The company identifies any soil and water contamination at its site or sites, assesses the environmental impacts and remedies any significant contamination.
- The company tries to avoid environmental damage by regular maintenance of production processes and environmental protection systems (air pollution control, waste water treatment systems etc.).
- The company conducts systematic risk assessments of materials used, products and processes to apply the precautionary approach.
- The company ensures transparency and engages in regular stakeholder dialogue with neighbours, civil society organisations and others with an interest in the company on critical environmental issues.
- If relevant, the company supports scientific research on environmental issues relating to the company's products and processes.

Emergency Response

Does the company have emergency procedures in place to prevent and address accidents affecting the environment and human health?

- The company has identified the hazardous operations and the potential consequences on human health and the environment if an accident occurs.
- The company has detailed procedures, plans, equipment and training programmes to prevent accidents and emergencies.
- The company has detailed procedures, plans and equipment to effectively respond to accidents and emergencies if they occur.
- The company trains workers to respond to accidents and emergencies, including carrying out emergency drills at least once a year involving all workers.

- Where there is significant risk of impacts on local communities, the company has a procedure that enables it to immediately notify affected local communities about industrial emergencies, and informs about emergency response, evacuation plans and medical response.

Energy Consumption and Climate Change

Does the company take measures to reduce energy consumption and emissions of greenhouse gasses?

- The company complies with regulation regarding use of energy resources and emissions of greenhouse gases.
- The company has a climate strategy that identifies opportunities to reduce the company's energy consumption and/or emissions of greenhouse gases.
- The company has initiated practical activities to reduce energy consumption and/or greenhouse gas emissions.
- The company provides information and trains employees to implement energy reduction measures.
- The company monitors its energy consumption and/or emissions of greenhouse gases.
- The company has defined a baseline for its greenhouse gas emissions, which includes a definition of the business operations and activities, and the greenhouse gases that are accounted for e.g. as described in the Greenhouse Gas Protocol.
- The company has targets for reducing its energy consumption and/or emissions of greenhouse gases.
- The company engages with the government and civil society organisations to develop policies and measures that provide a framework for the business sector to contribute to building a low carbon economy.

Water and Waste Water

Does the company take measures to reduce water consumption and treat waste water?

- The company has the necessary permits to extract water or obtain water from the public water supply and for any waste water discharges.
- The company treats waste water before discharge to reduce adverse environmental impacts. If waste water treatment takes place outside the company's premises, the company is aware of the effectiveness of the treatment.
- The company monitors waste water discharges, including types, limit values and quantities of pollutants in the waste water.
- The company has targets for reducing water consumption and/or increasing the amount of water reused or recycled in different business operations and activities.
- The company provides information and trains workers to implement measures to reduce water consumption and reduce the need for waste water treatment.
- The company's use of water and its waste water discharges do not negatively affect the sustainability of water resources, the natural environment or the availability of water for drinking and sanitation purposes.
- The company engages with national, regional and local public authorities, and civil society organisations to address water sustainability issues related to affected water resources.

Waste Management

Does the company take measures to prevent and reduce the production of waste and ensure responsible waste management?

- The company has the necessary permits for the handling, storage, recycling and disposal of waste, and, if relevant, complies with requirements for transporting hazardous waste across borders.

- The company has a strategy to manage waste responsibly and continuously attempts to prevent and reduce the production of waste.
- The company ensures that waste relevant for recycling is sorted and handed over to a recycling company.
- The company monitors the types and quantities of waste produced, including where and how waste is recycled, treated or disposed of.
- The company has targets for reducing waste production and/or increasing waste reused/recycled and measures its progress against these targets.
- The company provides information and trains workers on the safe handling, storage, transport and disposal of hazardous and special waste types.
- The company marks areas used for storage of waste, and properly labels all containers for storing waste, including a relevant symbol of danger for hazardous waste.
- The company requests recycling/treatment/disposal receipts from transport contractors.
- The company uses licensed contractors for the transport, recycling, treatment and disposal of hazardous waste.

Air Emissions

Does the company prevent, reduce and treat air emissions?

- The company has the necessary permits for emissions to air, and complies with legal requirements (e.g. air pollution standards and limit values).
- The company provides information and trains workers on how to manage air emissions.
- The company monitors the types and quantities of relevant emissions to air.
- The company treats relevant pollutants before they are emitted to the atmosphere (e.g. by using filters).
- The company continuously attempts to prevent and reduce air emissions.

Noise, Odour, Light and Vibrations

Does the company prevent and reduce impacts on the surrounding environment from noise, odour, light and vibrations?

- The company has the necessary permits for levels of noise, odour, light and vibrations, and complies with legal requirements (e.g. standards or procedures).
- The company provides information and trains workers to manage noise, odour, light and vibrations.
- The company monitors levels of noise, odour, light and vibrations on the surrounding environment.
- The company treats/minimises impacts to ensure that there are no significant levels of noise, odour, light and vibrations.
- The company continuously attempts to prevent and minimise the levels of noise, odour and light (e.g. enclosed production, shielding, etc.).
- Chemicals and Other Dangerous Substances
- Does the company minimise the use and ensure safe handling and storage of chemicals and other dangerous substances?
- The company has the necessary permits and complies with legal requirements for the handling, use and storage of chemicals and other dangerous substances.
- The company does not manufacture, trade and/or use chemicals and other dangerous substances subject to national or international bans or phase-outs.

- The company provides information and trains workers on the safe handling and use of chemicals and other dangerous substances.
- The company monitors the quantities of all chemicals and other dangerous substances used in production and maintenance.
- The company marks areas used for storage of chemical substances and products.
- The company properly labels all chemical substances and products including name of the chemical and a relevant symbol of danger.
- The company considers substitution important and continuously tries to use less harmful chemicals and substances.

Biodiversity

Does the company prevent, minimise and remedy significant impacts on biodiversity?

- The company has the necessary permits to operate in or alter the natural environment, and complies with legal requirements.
- The company is committed to operating within the framework of international conventions addressing biodiversity (e.g. the Convention on Biological Diversity, Cartagena Protocol on Bio-safety and the CITES Convention).
- The company has assessed important positive and negative impacts of its operations and activities on the natural environment and biodiversity (e.g. IUCN's Red List of Threatened Species and no alien invasive species).
- The company has previously and/or is currently taking measures to prevent and reduce the impacts of its operations and activities on biodiversity.
- The company clearly labels products containing GMOs and indicates if GMOs have been used in the production process.
- The company ensures that it has not had any unintended releases of GMOs.
- The company documents that workers have been adequately trained to handle GMOs.

Natural Resources

Does the company ensure that natural resources are used in a sustainable manner?

- The company has the necessary permits and complies with legal requirements regarding the cultivation, harvest, extraction and/or use of natural resources (e.g. wood, fish, metals, oil, coal).
- The company complies with legal requirements regarding the cultivation, harvest, extraction and/or use of natural resources (e.g. wood, fish, metals, oil, coal etc.).
- The company ensures that workers are trained in the sustainable cultivation, harvesting, extraction and/or use of natural resources.
- The company continuously attempts to prevent, minimise and remedy significant impacts on natural resources through environmentally friendly methods and alternative resource use.
- The company ensures that its use of renewable resources does not negatively affect the sustainability of the resource (i.e. the resource's ability to regenerate).
- The company demonstrates efforts to substitute non-renewable resources used in production with renewable resources.
- The company works with local and national public authorities as well as with international institutions to address sustainability issues related to natural resources (e.g. wood, water, fish, metals, oil etc.).

Environmentally Friendly Technologies

Does the company encourage the development and use of environmentally friendly technologies?

- The company uses environmentally friendly technology.
- The company regularly evaluates its processes and technologies to see if there are more environmentally friendly alternatives.
- When developing new technologies and products, the company focuses on developing environmentally friendly technology e.g. by using life cycle assessments (LCA), design for sustainability or a cradle-to-cradle approach.
- When planning new investments in technology, the company considers the best available technology and stipulates minimum environmental criteria.
- When investing in new buildings, the company implements environmentally responsible and resource-efficient materials and/or technologies.
- The company makes information describing the environmental performance and benefits of using environmentally friendly technologies available to stakeholders.

Standards & Guidance

NGO and institutional resources to enhance human rights due diligence efforts by businesses. These resources are drawn from the Business & Human Rights Resource Centre

- CEO Water Mandate (2011): Launched as a collaborative initiative of the UN, UN Global Compact, the Government of Sweden and a dedicated group of companies, the CEO Water Mandate is a public-private initiative designed to assist companies with the development, implementation and disclosure of policies and practices relating to water sustainability. It covers six core elements: direct operations, supply chain and watershed management, collective action, public policy, community engagement and transparency.
- IFC Performance Standards on Environmental and Social Sustainability (2012): The IFC Performance Standards provide directions to businesses on due diligence on environmental and social matters. Several of the standards are pertinent to environment, including: Assessment and Management of Environmental and Social Risks and Impacts (PS1), Resource Efficiency and Pollution Prevention (PS3), Community Health, Safety, and Security (PS4), and Biodiversity Conservation and Sustainable Management of Living Natural Resources (PS6).
- Institute for Human Rights and Business, Business, Human Rights & the Right to Water—Challenges, Dilemmas and Opportunities: This report summarises the views of various stakeholders on issues pertaining to the right to water, including consideration of the scope of a company's responsibility to respect the human right to water; the applicability of the human rights-based approach to management of water-related issues; and the business case for engaging with water-related issues.
- ISO 14000 Standards on Environmental Management Systems: Developed by the International Organisation for Standardisation, the ISO 14000 Standards provide businesses and organisations with a number of tools to assist in their environmental management systems. The key objective of the standards is to encourage different actors to reduce the negative impact that their activities may have on natural resources such as air, water or land.
- United Nations Special Rapporteur on the Human Right To Safe Drinking Water and Sanitation (est. 2008): Amongst a range of issues, the mandate of the Special Rapporteur includes consideration of the regulation of the private sector in the context of private provision of safe drinking water and sanitation.

- **Global Water Tool (2007):** Developed by the World Business Council for Sustainable Development, this tool is designed for companies and organisations to map their water use, including risks associated with water use in global supply chains.

Engagement Opportunities

Development initiatives by public and private actors that provide opportunities for companies to contribute to human development

Public Sector Initiatives

Eco-efficiently Guide for Businesses: The Ministry of Environment adopted the guidelines with the aim to provide companies with recommended lines of action in order to be eco-efficient in their operations. Areas include in the use of water, use of energy, means of transportation, and construction.⁴²³

Forest Investment Plan (2013): The International Sub-Committee of the Forest Investment Programme approved the amount of US\$50 million to reduce deforestation and foster a sustainable forest management. The plan is to be implemented by the Ministry of Environment in cooperation with local indigenous organisations.⁴²⁴

Training on Conservation of Forests (2013): The Ministry of Environment trained more than 120 Attorneys from the Environmental Unit at the Attorney General's Office on the conservation of forests, and on the prevention and investigation of crimes against the environment such as illegal logging and illegal mining.⁴²⁵

Early Warning Mechanism on Social Conflicts: Peru's Ombudsman implements a mechanism to contribute to the prevention of socio-economic conflicts, including in relation to the environment. Reports are to be sent periodically to relevant governmental institutions.⁴²⁶

The National Strategy of e-Governance (2013-2017): The strategy seeks to achieve inclusive access to information and public participation, especially of the most vulnerable groups, by promoting technological innovation.⁴²⁷

NGO Initiatives

Derecho, Ambiente y Recursos Naturales: The organisation works for the promotion of sustainable investment, sustainable management of Amazonian ecosystems, and to promote the integration of indigenous people's rights in policies related to socio-environmental development.⁴²⁸

Land & Property

Human rights impacts related to company acquisition, use and management of land

Operating Environment	
International Property Rights Index rank	79 (2015)
Heritage Foundation: Economic Freedom Index Property Rights score	49 (2016)
Relevant law	<ul style="list-style-type: none"> • Constitution, 1993 • Law 29785 on the Right of Indigenous or Original Peoples to Prior Consultation, 2011
Responsible ministries	<ul style="list-style-type: none"> • Ministry of Agriculture • Ministry of Culture - Department of Prior Consultation • Ministry of Justice and Human Rights- National Superintendence of Public Registries under to the • Ministry of Culture - Department of Indigenous People's Policies • Presidency of the Council of Ministers - National Technical Unit for Territorial Demarcation
Local NGOs addressing this issue	<ul style="list-style-type: none"> • Asociación Interétnica de Desarrollo de la Selva Peruana • Confederación Nacional Agraria • Confederación Campesinas del Peru • Confederación de Nacionalidades Amazónicas del Perú • Federación Nacional de Mujeres Campesinas, Artesanas, Indígenas, Nativas y Asalariadas del Perú • Organización Nacional de Mujeres Indígenas Andinas y Amazónicas del Perú

Country Context

Human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.

Land Administration

The law recognises ownership, possession rights, leaseholds and communal rights of indigenous communities and peasants.⁴²⁹ Ownership rights may be private, communal or held in partnership. Indigenous and peasant communities have the right to choose how to administer their lands. Community general assemblies were empowered to give, rent, sell or mortgage community lands.⁴³⁰

Peru is divided into 196 provinces.⁴³¹ According to latest government data from 2015, in 70 of them a formally demarcated process has not been finalised, particularly in relation to 2 to 3 regional governments.⁴³²

The lack of formal land demarcation in most of the country was reportedly a reason for land conflicts. A 2014 report by the Ombudsman noted that conflicts due to territorial demarcation represented 5.4 percent of total conflicts reported.⁴³³ Moreover, national statistics illustrated that over the last decade, 500 conflicts were reported, most of them in relation to the distribution of revenues from extractive industries among regional and local governments that lacked formal demarcation.⁴³⁴ The Ombudsman further added in 2014 that in order to prevent social conflicts, there is a need to develop guidelines to address all disputes generated due to the overlapping of rights granted to third parties in native and indigenous land.⁴³⁵

Although significant progress has been made in securing property rights over the last decade in Peru, in 2016, the Bertelsmann Foundation noted that property rights were not adequately protected because of problems in the judicial and administrative systems, including inefficiency and corruption, impeding the ability of individuals and businesses to enforce contracts.⁴³⁶ In parts of the country, few landowners had reportedly formal titles to land, or titles were unclear.⁴³⁷ The Foundation added that in areas inhabited by indigenous peoples, land titles were not defined, not clearly defined or defined in ways that were incompatible with indigenous values.⁴³⁸

According to a 2015 Land Coalition report, one of the main challenges in Peru related to the incomplete and uncertain land tenure regime, placing vulnerable population's right to land at risk, including peasants, rural and indigenous people. These problems were reportedly exacerbated due to the presence of extractive industries activities, notably in native and peasant lands.⁴³⁹

Land distribution was reportedly unequal. Only 32 percent of small farmers had titles over their land, while 64 percent of peasant communities and 94 percent of native communities did not have formal titling over their land, according to Land Coalition in 2015.⁴⁴⁰ As of 2014, 6,831 titles to those communities were granted, while 1,200 were still pending.⁴⁴¹

15 percent of Peru's territory was under operating licenses for extractive companies. In terms of hydrocarbon operations, a 2014 report by the United Nations Special Rapporteur on Contemporary Forms of Slavery noted that 88 percent of licenses areas in the Amazon region, that were currently exploited or explored, overlapped with indigenous communities' land and 32 percent with areas reserved for peoples in isolation tribes.⁴⁴²

Land Acquisition

The constitution includes the right to property and prohibits expropriation except on the grounds of national security or public need determined by law. In these cases it requires compensation of the appraised value and any damages. It further provides that 'rural and native' communities are

autonomous in the free disposal of their lands and that the ownership of their lands is imprescriptible, except in the case of abandonment.⁴⁴³ The law further provides that owners of land should be compensated for the surface use of their territories and for damages or curtailments on their rights as a result of projects, including from extractive industries.⁴⁴⁴

The National Geology Institute on Mining and Metallurgical (INGENMET), prior to granting mining concessions, verifies that local communities have not previously claimed the land.⁴⁴⁵ Notably, in 2012, the Ministry of Culture recognised the existence of indigenous peoples in voluntary isolation in five areas in the Amazon, paving the way for the creation of five reserves to protect these communities.⁴⁴⁶

In practice, according to a 2015 shadow report by Peruvian organisations, extractive companies used irregular practices such as threats, tricks, frauds and undervaluation of land price, in order to acquire property on the lands they were granted concessions, taking advantage of the lack of information and legal advice within indigenous communities.⁴⁴⁷ A 2016 International Commission of Jurist report informed on cases of forced displacement of local communities due to mining projects.⁴⁴⁸

Free, Prior & Informed Consent

Peru is one of only twenty countries that have ratified the International Labour Organization (ILO) Convention 169 on Indigenous and Tribal People, which requires consultation with indigenous and tribal peoples and requires that they are able to engage in free, prior and informed consent in matters that affect them.⁴⁴⁹

In 2011, Law 29785 on the Right of Indigenous or Original Peoples to Prior Consultation was adopted and mandates prior consent on legislation, programmes, plans and development projects that may have a direct impact on indigenous communities.⁴⁵⁰ Article 7 establishes the criteria to define whom indigenous or original peoples are, including certain peasant, Andean communities or native communities, and peoples from the Amazon.⁴⁵¹

On its latest report, from 2013, the UN Human Rights Committee noted that prior consent is required before indigenous peoples are transferred from their lands and before storage or handling of dangerous materials occurs; however, it is not guaranteed in relation to any other aspect that may have an impact on their culturally significant economic activities.⁴⁵²

The Institute of Democracy and Human Rights at the Pontificia Catholic University of Peru (IDEHPUCP) stated in 2012 that indigenous people were historically defined as peasant communities, *rondas campesinas*, native communities and peoples in voluntary isolation. These various denominations made it difficult to identify indigenous peoples. IDEHPUCP also noted that the ILO's Committee of Experts stated back in 2009 that it was not clear whom ILO Convention 169 applied to, due to the diverse denominations of indigenous peoples in Peruvian legislation.⁴⁵³ The UN Human Rights Committee added that it was unclear which indigenous communities were entitled to be consulted.⁴⁵⁴

The UN Committee on the Elimination of Racial Discrimination reported in 2014 a lack of a resource or a proper methodology for the implementation of the consultation process.⁴⁵⁵ The UN Special Rapporteur on Indigenous People's Rights stated same year that the law does not require consent as an absolute precondition in case of significant impact.⁴⁵⁶

All consultations are to be ended by the approval of an administrative measure. The Ombudsman noted in 2015 that there were constant delays in their approval, impacting on the prompt application of agreements reached.⁴⁵⁷

The Department of Prior Consultation published a database in 2013 that identified 52 indigenous communities.⁴⁵⁸ The database has the purpose of facilitating in the identification of the groups who needed to be consulted.⁴⁵⁹ Peasant communities were not recognised or counted on that database. A 2015 submission by international organisations to the UN Human Rights Council noted that as a result,

many mining projects planned in peasant communities' territories were exempted from the mandated consultation process.⁴⁶⁰ The Ombudsman added that during 2014, 9 new mining concessions were approved without any consultation based on the 'alleged absence of indigenous communities' in those areas. The Ombudsman further noted that there was no official report supporting those presumptions.⁴⁶¹

According to the organisation Propuesta Ciudadana, some companies and government actors have seen implementation of the law as obstructing investment. This has contributed to attempts to water down legislation by limiting who qualifies as indigenous and applying the law only to indigenous peoples located in the Amazon, excluding peasant communities.⁴⁶²

There were 27 on-going consultation processes in Peru, as of 2015.⁴⁶³

In practice, the UN Committee on the Rights of the Child noted in 2016 that the law 29875 does not apply to all self-identified groups of indigenous people affected by mining and hydroelectric projects.⁴⁶⁴ Indigenous women were not generally effectively included in consultations in relation to the exploitation of extractive industries in their territories, and no quota for their participation was guaranteed, according to the UN Working Group on the issues of discrimination against Women in law and practice reported in 2015.⁴⁶⁵ According to a 2013 Global Witness report, government officials were reportedly involved in corrupt practices in order to obtain indigenous people's consent over development projects such as the construction of infrastructure.⁴⁶⁶ Amnesty International reported in 2013 that failure to consult with local communities had resulted in protests across the country with reports of excessive use of force by public security forces in order to control protesters.⁴⁶⁷

Cases

Reports of business-related human rights issues from NGOs, multilateral institutions and the media.

- *February 2016, International Federation of Human Rights:* A local community member has been in a land dispute with the Yanacocha mining company over the last couple of years. In that framework, private security guards protecting the mine invaded the property and destroyed all potato plantations.⁴⁶⁸
- *October 2013, La Republica:* The Inter-American Commission on Human Rights agreed to hold a hearing in relation to a gas project's impact on the livelihood of the isolated tribe of the Kugapakori Nanti-Nahua community in Camisea.⁴⁶⁹
- *August 2013, The Wall Street Journal:* The Vice-Ministry of Culture reported that the expansions of the Pluspetrol's natural gas project activities in Camisea could have a major impact on indigenous peoples living in voluntary isolation, including potentially serious health consequences.⁴⁷⁰
- *July 2013, Amnesty International:* A local community member in Tagadero Grande, Cajamarca District, appealed a decision by a local court over a land ownership dispute with the Yanacocha Mining Company.⁴⁷¹
- *June 2013, Peruvian Times:* The government announced it would call for bids on 26 oil concession blocks in the Amazon rainforest. The plan to auction oil blocks had been delayed due to the prior consultation law.⁴⁷²
- *May 2013, Global Witness:* A bribe of 30,000 soles (approx. US\$9,000) was allegedly offered to the Federation of Native Communities of Purus Province by local authorities to get their consent on the construction of a highway across their territory.⁴⁷³

- *May 2013, Peru Support Group:* The government had granted land to the Candente Copper Mining that reportedly belongs to indigenous communities in the highlands of Lambayaque. The community has reportedly not been consulted on the project.⁴⁷⁴
- *January 2013, New York Times:* Local residents at Morococha were reportedly resisting a relocation proposed by the Chinese mining company Chinalco for the construction of an open pit copper mine. The local residents demanded the company to guarantee jobs in the new mine for residents and the payment of US\$ 300 million as compensation for destroying their land.⁴⁷⁵

Company Initiatives

Private-sector programmes that aim to ensure respect for human rights or contribute to development

Stakeholder Recommendations

United Nations Special Rapporteur on Contemporary Forms of Slavery (2014): The Special Rapporteur recommends that extractive companies adopt policies and practices to ensure that all aspects of their operations are respectful of the rights of indigenous people, in accordance with international standards and not just domestic law, including in regard to requirements of consultation and consent, and that companies conduct due diligence to ensure that their actions will not violate or be complicit in violating indigenous people's rights, identifying and assessing any actual or potential adverse human rights impacts of their resource extraction projects.⁴⁷⁶

World Bank: The organisation makes the following recommendations to companies operating in Peru:

- Ensure equal consultation with women to fulfil community demands for sustainable development;
- Support women in securing land titles and citizenship documentation so that their rights are protected or enhanced;
- Ensure women's livelihood strategies are captured in the baseline studies for resettlement.⁴⁷⁷

Human Rights Guidance for Businesses

Actions and priorities suggested by local and international stakeholders as well as company initiatives to ensure company respect for human rights and contribute to human development in the local context

Due Diligence Library

The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies

Before buying, renting, acquiring or otherwise accessing land or property, does the company ensure that all affected owners and users of the land or property, have been adequately consulted and compensated?

- Prior to buying, renting, acquiring or otherwise accessing land or property, whether directly or through a third party, the company identifies all existing owners and users of the land or property, including information land users and customary owners.

- The company investigates the past usage and ownership of the land or property to ensure that past users and owners have not been wrongfully removed, and that any expropriations by the authorities have been conducted in accordance with international law.
- The company consults with affected users and owners of the land or property (including women, tenants, settlers, minorities and other vulnerable groups including indigenous peoples) and seeks their free, prior and informed consent before continuing to acquire or access the land or property.
- The company ensures that its lease or purchase of residential property and sourcing of food commodities does not considerably make housing and food scarce or too expensive for the local people.
- The company ensures that affected owners and users of the land or property are adequately compensated to help them restore their standards of living or livelihoods to the same or higher than before, and that the compensation standards are transparent and applied consistently to all communities and persons affected.

Standards & Guidance

NGO and institutional resources to enhance human rights due diligence efforts by businesses. These resources are drawn from the Business & Human Rights Resource Centre

- **FAO Voluntary Guidelines on the Responsible Governance of Tenure (2012):** Developed by the Food and Agriculture Organisation of the UN (FAO), the Guidelines promote responsible governance of tenure of land, fisheries and forests by outlining the principles and internationally accepted standards for the responsible governance of tenure. The Guidelines inform States and non-government actors on relevant policies, strategies and activities.
- **IFC Performance Standard 5: Land Acquisition and Involuntary Resettlement, and IFC Handbook for Preparing a Resettlement Action Plan (2002):** The IFC Performance Standards are contractually binding on certain projects receiving IFC finance. PS5 is accompanied by a Guidance Note and a Resettlement Handbook that gives detailed guidance on managing resettlement and associated impacts.
- **Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources (2010):** A joint initiative of UNCTAD, FAO, IFAD and the World Bank, these seven principles cover all types of investment in agriculture, including between principal investors and contract farmers. The Principles provide a framework for national regulations, international investment agreements, global corporate social responsibility initiatives and individual investor contracts.

Engagement Opportunities

Development initiatives by public and private actors that provide opportunities for companies to contribute to human development

Public Sector Initiatives

Secure Territories for Peru's Communities Campaign (2012-present): The government launched the campaign with the objective of reviving the communal land titling process as a way to recognise communities' contribution to the country.⁴⁷⁸

NGO Initiatives

Inter-ethnic Association for the development of the Peruvian jungle: The organisation brings together messages and proposals from indigenous communities of the Peruvian Amazon into decision-making instances, including international frameworks, in order to strengthen, respect and value their collective rights. The organisation further works towards raising awareness among different stakeholders, including private companies, on the need to address their negative impacts on indigenous people's territories.⁴⁷⁹

Revenue Transparency & Management

Human rights impacts related to transparency of government revenues received from business and the distribution of such revenues

Operating Environment	
World Economic Forum Global Competitiveness Ranking	69 (2014-2015)
Legatum Prosperity Index rank: Governance	83 (2015)
Ease of Doing Business Index (where 1 indicates greatest ease for doing business)	50 (2015)
Transparency International: Corruption Perceptions Index rank (where 1 indicates the lowest level of corruption)	88 (2015)
World Bank Good Governance Indicators	
Voice and Accountability	51.2
Political Stability	27.7
Government Effectiveness	43.8
Regulatory Quality	69.2
Rule of Law	33.2
Control of Corruption	32.7 (2014)
Government revenue US\$	62.34 billion (2015)
Government expenditure US\$	63.34 billion (2015)
EITI Country	Yes
Relevant law	<ul style="list-style-type: none"> • Constitution, 1993 • Law of Responsibility and Fiscal Transparency, 1999

	<ul style="list-style-type: none"> • Law of Transparency and Access to Public Information, 2002 • Government Procurement Law, 2015
Responsible ministries	<ul style="list-style-type: none"> • Anti-Corruption High Level Commission • Office of the Comptroller General • Supervising Agency of Government Procurement
Local NGOs addressing this issue	<ul style="list-style-type: none"> • Propuesta Ciudadana • Proetica

Country Context

Human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.

Corruption

The law holds public servants criminally liable for corruption only in cases that cause economic damage to the State,⁴⁸⁰ and the legislation does not criminalise cases of business-to-business corruption.⁴⁸¹ In March 2016, a new law was approved criminalising companies for acts of corruption with penalties including the payment of up to 1.700 Tax Units, suspension of their activities and the dissolution of the company.⁴⁸²

Whistle-blowers are also protected when collaborating with administrative and criminal matters.⁴⁸³

The 2015 National Survey on Corruption found that 46 percent of respondents considered that corruption was the second greatest problem affecting the country.⁴⁸⁴ The 2013 Global Corruption Barometer reported that 85 percent of respondents considered that the judiciary was the most corrupt public institution in Peru, followed by political parties, congress and the police.⁴⁸⁵

On its latest report, from 2012, the Working Group on the Fight Against Corruption stated that 4 out of 5 people considered that businesses were involved in corrupt practices and that 65 out of 100 businessmen were corrupt, particularly in the extractive sector (legal and illegal mining, energy, gas and oil).⁴⁸⁶

According to a 2013 statement by the Comptroller General, corruption was widespread in the country and approximately 10,000 million soles (approx. US\$3 million) were lost annually due to corrupt practices.⁴⁸⁷ He also noted that corruption directly affected 9.6 million of Peruvians living in conditions of poverty as revenues were diverted from development.⁴⁸⁸

Public Procurement

A new Government Procurement Law came into force in 2016 and includes principles such as freedom of participation, equal treatment, transparency, openness, competition, effectiveness and efficiency that should govern procurement processes. The new law does not mandate to publish all signed contracts or their implementation in the Government Procurement System (SEACE). The Mechanism for

Follow-Up on the Implementation of the Inter-American Convention against Corruption (MESICIC) considered in 2016 that this aspect could undermine the strength and reliability of the system.⁴⁸⁹

All contracting of up to 1,800.000 soles (approx. US\$545,000) should be done by public tender and competitive bidding, while direct contracting for works, good and services is only allowed for amounts up to 38,000 soles (approx. US\$11,500).⁴⁹⁰

Civil society organisations and private sector representatives stated to MESICIC that not all information on procurement was published in the system and that in some cases, when provided, the information was incomplete.⁴⁹¹

Companies that were condemned for acts of corruption are not allowed to participate in public tenders for a period of up to five years.⁴⁹²

Public tenders accounted to 55.4 percent of total amount awarded in 2014, compared to 36 percent in 2006. This increase was achieved as a result of the adoption of necessary measures to ensure a significant increase of money awarded through public tenders, according to MESICIC.⁴⁹³ Revenue Transparency

The constitution provides for the right to freedom of information.⁴⁹⁴ The Law of Transparency and Access to Public Information and the Law of Responsibility and Fiscal Transparency regulate access to information on government revenues.⁴⁹⁵

Peru's Transparency Standard Portal (PTE) seeks to provide access to public information from all public institutions through user-friendly uniformed formats with updated and easily understood information.⁴⁹⁶

As a result of high institutional and legal setting regarding revenue transparency, Peru was ranked 11th out of 58 countries on the latest Resource Governance Index, from 2013, particularly in relation to the existence of a comprehensive legal framework and extensive disclosure policies. The Index further noted that the rule of law was still a challenge and that the review process for resource revenues was incomplete.⁴⁹⁷

The government published licences requests and awards, as well as contracts for investment in exploration with mining companies. The Economy and Finance Ministry publishes royalties that are received and the Central Bank publishes information on mineral production. Congress, however, did not review mining receipts or audit reports, according to the Index in 2013.⁴⁹⁸

Propuesta Ciudadana reported in 2015 that since Peru became an EITI member in 2005, the access to information in relation to revenues paid by extractive companies has been progressively increasing, notably on revenue distribution to subnational governments, including cannon transferred and criteria applied to their distribution. The organisation noted however that a lack of information in relation to companies' social expenditure, concessions, contracts, EIAs and water use was still a challenge.⁴⁹⁹

The latest data available illustrated that during 2010, 37,000 requests for information were made, 648 of which did not receive a response. A common problem reported in 2013 by the Ombudsman was the delay in the delivery of the information, and that no administrative entity existed that could review denials.⁵⁰⁰

Although the law requires that social projects funded by revenue by extractive companies should be decided through public consultation processes known as Participatory Budgeting, in 2011, the World Bank noted that the majority of such projects did not go through the process. Furthermore, women reportedly rarely participated as a result of local cultural expectations, lack of skills or confidence to participate effectively, and the fact that most projects prioritised by women faced obstacles in comparison to the ones presented by men. These obstacles included a lack of support for women to formalise and strengthen their analytical and project development skills.⁵⁰¹

Access to information in relation to public expenditure has been reportedly increasing since 2000 and placed Peru as one of the most transparent countries in the Latin American region as of 2015. Propuesta Ciudadada added that almost all public institutions, 26 regional governments and 90 per cent of municipalities provided broad information on programmed and executed expenditure, investments, government providers, among others.⁵⁰²

Revenue Sharing

Companies contribute with revenue through the payment of taxes to the government. As of 2015, a 30 percent tax on all income from business activities was established.⁵⁰³ A new law which became into force in 2016 mandated mining companies to contribute with an additional 0.16 percent to the Institute that Supervises Investment in Energy and Mining in relation to the mining invoicing activities related to its regulatory scope.⁵⁰⁴

Gestion reported in 2015 that tax evasion corresponded to approximately US\$8.3 billion during 2014.⁵⁰⁵ Mining and construction in the informal sector reportedly accounted to 80 percent of all tax evasion in the country.⁵⁰⁶

In the extractive sector, additional revenue is obtained through royalties, canons and prevailing operating rights payments.⁵⁰⁷ Royalties are to be paid to the government for the exploitation of natural resources on the basis of the value of metals extracted while canons are directed to regional and municipal governments in producing regions by setting a percentage of the company's income tax.⁵⁰⁸ The mining canon is set at 50 percent of the company's income tax, while the oil canon is set as 15 percent of the value of the production. In practice, since 2012, regions such as Piura, Tumbes, Loreto y Ucayali received an oil canon of 50 percent of the income taxes paid by companies.⁵⁰⁹ The natural gas canon is established by taking into consideration both income tax and royalties paid. Furthermore, local universities receive a percentage of all canons.⁵¹⁰

Canons and royalties are to be used exclusively for social and economic development projects in producing regions.⁵¹¹ A 2014 Inter-American Development Bank (IADB) study found that districts with mining activities in Peru were reportedly reducing their poverty rates and inequality levels. Furthermore, from 2007-2011, mining district poverty levels were reduced by 2.6 percent more compared to non-mining district rates.⁵¹² At the same time, another 2014 IADB study reported that there were cases of local governments not using all natural resource revenue due to low capacity, which impacted in the efficiency of planning and expenditure of revenues.⁵¹³

The World Bank also noted in 2011 that women had not benefitted equally from development projects financed by extractive industries. Greater priority was reportedly given to projects proposed by men such as infrastructure and projects that generated income, instead of the projects prioritised by women in the areas of health, education and nutrition, which tended to have an impact on the family as a whole.⁵¹⁴

National statistics illustrated that over the last decade, 500 conflicts were reported, most of them in relation to the distribution of revenues from extractive industries among regional and local governments that lacked formal demarcation.⁵¹⁵

According to the Geneva Centre for Democratic Control of Armed Forces in 2015, 80 percent of timber export was illegal and profit from illegal timber accounted to \$72million annually.⁵¹⁶

Cases

Reports of business-related human rights issues from NGOs, multilateral institutions and the media.

- *2015, Freedom House:* Four leaders of the Ashaninka tribe reporting on illegal logging on their land were murdered.⁵¹⁷
- *November 2013, Office of the National Comptroller:* The Office investigated a case for alleged acts of corruption in the execution of infrastructure projects in Cajamarca. The investigation involved officials as well as contractors that were supposed to deliver the services for the construction of hospitals, outside walls, among others.⁵¹⁸
- *September 2013, Peru 21:* The National Superintendence for Customs and Tax Administration imposed sanctions including fines to 3,000 businesses in Lima such as gas stations and university contractors, for evading taxes.⁵¹⁹
- *August 2013, La Republica:* 40 companies in the Export Processing Zone allegedly evaded taxes that accounted for US\$5 million.⁵²⁰
- *May 2013, Global Witness:* A bribe of 30,000 soles (approx. US\$9,000) was allegedly offered to the Federation of Native Communities of Purus Province by local authorities in order to get their consent on the construction of a highway across their territory.⁵²¹

Company Initiatives

Private-sector programmes that aim to ensure respect for human rights or contribute to development

Company Due Diligence Initiatives

Pluspetrol (2013): The company, with operations in Camisea, has a Code of Ethics that establishes the policies and procedures that guide its employee' performance under high responsible standards.⁵²² The company is also a member of EITI and had participated in the Third National Conciliation Study corresponding to 2011-2012, which included data related to earnings of the Peruvian State and payments made by the company, corresponding to income tax, mining, gas and oil royalties, special mining taxes, special mining obligations and validity rights.⁵²³

Glencore Antapaccay (2014): The mining company has set an Ethics and Conduct Committee who is in charge of handling complaints of violations of the Ethics Code or any other activity that may put in risks of negative impact to all stakeholders.⁵²⁴

Stakeholder Recommendations

Proetica and Transparency International (2011): The organisations recommend that the private sector strengthen its integrity in public procurement through various means, including by:

- Improving its understanding of the State Procurement Law,
- Adopting codes of conduct,
- Carrying out anti-corruption initiatives,

- Working with civil society to design and implement anti-corruption programmes and public awareness campaigns on the consequences of public procurement corruption,
- Engaging trade associations, sectorial organisations and chambers of commerce as vehicles to raise awareness, discuss problems and engage public officials on corruption in procurement,
- Training SMEs on bidders' rights and obligations under the State Procurement Law,
- Utilising the OSCE Administrative Tribunal and Office of the Comptroller General to report non-compliance with the State Procurement Law and to seek redress.⁵²⁵

Human Rights Guidance for Businesses

Actions and priorities suggested by local and international stakeholders as well as company initiatives to ensure company respect for human rights and contribute to human development in the local context

Due Diligence Library

The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies

Signalling a Non-Corrupt Environment

Does the company take a clear stand against corruption?

- The company's CEO, director or president has declared that the company will not engage in corruption at any time or in any form.
- The company has a policy rejecting corruption and requiring all directors, managers and workers worldwide to behave ethically and in conformity with the law.
- The company anti-corruption policy includes how to handle requests for facilitation payments, giving and receiving gifts, engaging in sponsorships, giving political contributions, and how to conduct responsible lobbying.
- The company has defined benchmarks and indicators regarding its anti-corruption initiatives and reports these to the public (e.g. in its annual CSR report)

Anti-Corruption Risk Assessment

Does the company assess the risk of corruption when doing business?

- The company evaluates the potential areas of corruption including factors such as type of transaction, countries of operation, industries, and customers or business partners involved.
- The company evaluates the risk of corruption when workers, agents, intermediaries or consultants deal with public officials (including workers of state owned companies).
- The company evaluates the risk of internal and external conflicts of interest in relation to business partners.
- The company has developed an action plan to address the risk of corruption, and has defined responsibilities for each task, as a minimum for high-risk areas.
- The company has identified internal functions with the highest risk of corruption within the company and seeks to address these weaknesses.

Awareness Raising

Does the company ensure that relevant workers are properly trained?

- The company informs all workers about its anti-corruption commitment.
- The company provides regular anti-corruption training for all relevant workers within the organisation e.g. procurement and sales staff.
- Information on disciplinary procedures for violations of company anti-corruption policies is available to workers.
- The company actively seeks worker feedback and dialogue on its anti-corruption initiatives.
- The company has and promotes a function by which workers can safely report suspicion of corruption related cases (e.g. hotline or mailbox) and allocates resources to systematically address the issues that are identified.

Anti-Corruption Procedures

Do the company's internal procedures support its anti-corruption commitment?

- The company has assigned different individuals or departments to be responsible for handling contracts, placing orders, receiving goods, processing invoices and making payments.
- The company mentions 'anti-corruption' and/or 'ethical behaviour' in its contracts with business partners.
- The company prohibits informal employment and any 'off the books' record-keeping
- The company performs internal audits and has checks in place in connection with all anti-corruption commitments.
- The company's procurement, financial and internal audit personnel have clear instructions to look for and to identify alarms, report them to management, and follow-up counter measures.
- The company requests external auditors to maintain a critical eye and follow all alarms and irregularities.
- Any alarm or irregularity reported by external auditors is systematically addressed by management.
- The company monitors compliance and continuously identifies strengths and weaknesses in the anti-corruption initiatives to remain effective and up-to-date in addressing changing risks.

Agents and Other Associates

Does the company's anti-corruption initiative cover agents, intermediaries and consultants?

- The company conducts an inquiry and/or attentiveness (e.g. financial, legal, labour, tax, IT, environment, market/commercial) on all agents, intermediaries and consultants.
- All agreements with agents, intermediaries and consultants are fully documented in written, signed contracts.
- The selection and terms of reference of agents, intermediaries or consultants are approved at the senior management level or at a level above that of the management involved in the operations for which the intermediary is hired.
- Contracts with agents, intermediaries and consultants include a section on anti-corruption and that the contract-holder must comply with all applicable laws and regulations.

- Agents, intermediaries and consultants are provided with information on the company's anti-corruption commitment, anti-corruption policies, training material on anti-corrupt behaviour and information on disciplinary procedures for violations of company anti-corruption policies.
- The company ensures that payment to agents, intermediaries and consultants are in line with standard payments for other service providers of similar ranking.
- The company only makes payments by bank transfer or check – never in cash – in the country of the agent, intermediary and consultant and never to a third party without prior examination.

Communicate

Does the company communicate progress on the Global Compact principles with stakeholders?

- The company identifies stakeholders who affect or can be affected by the company's activities, products and services e.g. a person, group, organisation, authority.
- The company communicates progress openly about how issues covered by the Global Compact principles are managed, including performance results as well as forward-looking information on strategy and management approach, challenges, and dilemmas.
- The company regularly engages in dialogue with stakeholders to keep up-to-date with stakeholder expectations.
- The company communicates openly about how issues covered by the Global Compact principles are managed including challenges, dilemmas, success and failures.
- The company's communication on progress and other performance reporting on issues covered by the Global Compact principles is publically available and communicated to external stakeholders e.g. via the company's and Global Compact website.

Joint Actions

Does the company take joint actions with others to engage in and promote anti-corruption initiatives?

- The company shares experience, procedures and challenges of corruption with other organizations i.e. the local business community, sector initiatives, networks etc.
- The company has initiated or joined initiatives with other companies in the same sector for the purpose of promoting a fair business environment.
- The company stimulates multi-stakeholder dialogue on challenges of corruption.
- The company encourages the local business community and business partners to initiate cooperation to fight corruption.

Standards & Guidance

NGO and institutional resources to enhance human rights due diligence efforts by businesses. These resources are drawn from the Business & Human Rights Resource Centre

- Transparency International Business Principles for Countering Bribery provide a checklist for companies to identify and reduce bribes and facilitation payments in their operations.
- The OECD Guidelines for Multinational Enterprises, applicable to enterprises in OECD Member States (and some others), require companies to respect human rights, including through due diligence. The OECD Guidelines constitute recommendations by OECD member states to

multinational enterprises operating in or from adhering countries. The OECD Guidelines include competition, fiscal systems and anti-corruption.

Engagement Opportunities

Development initiatives by public and private actors that provide opportunities for companies to contribute to human development

Public Sector Initiatives

Public Management Barometer: The General Comptroller developed the tool in order to support decentralised governments in their efforts to make their management more transparent, as well as to provide the general public with a tool for a more efficient public accountability. The Barometer contains information related to budgetary implementation, acquisitions, investments, etc.⁵²⁶

Hello Corporate Comptroller: The General Comptroller provides to businesses and businesses trade associations with the tool that wish to confidentially submit information on allegedly unlawful or arbitrary acts in the public sector.⁵²⁷

International Workshop on Best Practices in the Corporate Sector (2013): The High-level Commission for Anti-Corruption organised the event with the objective of sharing best practices in relation to integrity standards in the corporate sector in order to prevent corruption in the country.⁵²⁸

Open Government Plan (2012-present): The government of Peru, in its capacity of member of the Open Government Partnership adopted the Plan by which it established commitments in four pillars: Improving transparency and access to public information, promoting citizen participation, increasing public integrity and improving e-government.⁵²⁹

National Programme on Mining Royalties: The programme seeks to work with local governments and civil society to build capacity in investment management and execution, and to establish effective transparency and social accountability mechanisms. It does this by informing citizens and civil society of mining royalty flows and municipal investment, encouraging public debate on municipal investment, establishing communication channels with the population and awareness raising activities.⁵³⁰

NGO Initiatives

Proetica: The organisation has three main objectives: to consider, identify and expose major corruption issues affecting its areas of intervention, influence political decision making to combat corruption, and build the capacity of state institutions and NGOs to fight against corruption.⁵³¹

Security & Conflict

Human rights impacts related to company interaction with public and private security providers and related to the impact of business on societal conflict.

Operating Environment	
Failed States Index	98 (2015)
Legatum Prosperity Index: Safety & Security	101 (2015)
Freedom House: Map of Freedom - Political Rights (On a scale of 1 through 7, where 1 indicates the highest level of freedom)	2 (2015)
Freedom House: Map of Freedom - Civil Liberties (On a scale of 1 through 7, where 1 indicates the highest level of freedom)	3 (2015)
Relevant law	<ul style="list-style-type: none"> • The Constitution, 1993 • Law 28879 on private security providers, 2006
Responsible agencies	<ul style="list-style-type: none"> • Ministry of the Interior - Department of Fundamental Rights' Protection for Governance • National Superintendence for the Oversight of Security Providers, Arms, Munitions and Explosives for Civilian Use
Local NGOs addressing this issue	<ul style="list-style-type: none"> • FEDEPAZ • Instituto Peruano de Educacion en Derechos Humanos y la Paz

Country Context

Human rights issues of relevance to businesses. The information in this section is gathered from publicly available sources and stakeholder consultations.

The constitution guarantees the right to life, identity and physical, psychological, and moral integrity, and prohibits the arbitrary or unlawful deprivation of life, torture and other cruel, inhuman or degrading treatment or punishment.⁵³²

Public Security Forces

The Peruvian National Police is the primarily body responsible for the security of citizens. Over the last couple of years, the armed forces have increasingly conducted joint operations with the police.⁵³³

The executive has issued a series of decrees that according to Freedom House in 2015, limited police and military responsibility in cases of injury or death during demonstrations.⁵³⁴ A law adopted in 2014 exempted members from the security forces from responsibility for violence undertaken while fulfilling their duties.⁵³⁵ At the same time, a law was adopted in 2015 with the aim to limit the use of force by the police.⁵³⁶

The UN Human Rights Committee noted on its report, from 2013, that law enforcement officials and members of security forces used excessive force, including the use of lethal weapons in the context of social protests.⁵³⁷ Human Rights Watch (HRW) stated in 2015 that many of those clashes resulted in the death of protesters, particularly in relation to mining and large-scale development projects.⁵³⁸ Allegations of torture and ill-treatment by state officials were also reported.⁵³⁹

The latest National Coordination for Human Rights (NCHR) report noted that during 2012, 800 cases of abuse by public security forces were reported and 57 percent of the cases were related to socio-economic conflicts.⁵⁴⁰ The Ombudsman claimed that the high amount of abuses committed by public security officials in relation of protests could imply a State policy of criminalising those activities rather than just misconduct of certain officials.⁵⁴¹

The Ombudsman further reported that although the national police committed in 2011 to abstaining from providing services to private companies, as of 2012, those services continued to occur.⁵⁴² Moreover, a 2013 report by the Institute of Democracy and Human Rights at the Pontificia Catholic University of Peru (IDEHPUCP) reported that companies, particularly from the extractive sector, contracted police forces for the provision of security services at their operation sites.⁵⁴³ The report further stated that cases of public security officials using companies' vehicles in order to reach protesters had been reported and that this type of relation between public security officials and companies de-legitimised the police's functions and created mistrust among the local communities.⁵⁴⁴ The UN Special Rapporteur on Contemporary Forms of Slavery also referred to those episodes in 2014.⁵⁴⁵

There were approximately 70,000 inmates distributed in 67 detention centres throughout the country.⁵⁴⁶ Peru 21 reported in 2015 that there was a 125 percent overcrowd population at detention centres, among the highest in the region. The provision of basic services at detention centres was inefficient and there were instances of inmates that were forced to pay in order to have access to a bed.⁵⁴⁷ The widespread use of pre-trial detention (54 percent of inmates as of 2015), has resulted in the high level of overcrowd.⁵⁴⁸

Private Security Force

Law 28879 passed in 2006 regulates private security providers in Peru.⁵⁴⁹ A 2013 report by IDEHPUCP noted that private security companies in Peru were prohibited from providing services that risked national security; performing functions assigned to armed forces or national police; and hiring or training mercenaries. However, there was no regulation on the use of force by these entities.⁵⁵⁰

An estimated 757 private security providers and 82.000 private guards existed in Peru as of 2015.⁵⁵¹ That number surpassed the actual figure of public security officers at the time.⁵⁵²

The government reported in 2014 that over the last 13 years, it has only imposed 86 sanctions to private security guards, implying that abuses were minimal.⁵⁵³

The latest report by the UN Special Rapporteur on the use of Mercenaries from 2007 stated that private security companies hired off-duty public security personnel, who used official State property, including uniforms, weapons and ammunition.⁵⁵⁴ Moreover, the report further noticed that although the law limits the use of war material to members of the Armed Forces, private security companies had reportedly been able to purchase unlimited quantities of it.⁵⁵⁵

Social Conflict

The UN Committee against Racial Discrimination reported in 2014 cases of violent conflicts as a result of opposition from local communities, including indigenous people, to natural resource exploitation.⁵⁵⁶

Indigenous people reportedly considered that the government response to their protests was disproportionate.⁵⁵⁷ The Geneva Centre for Democratic Control of Armed Forces noted in 2015 that as a result of social conflicts, the government has imposed 'state of emergency status' in some provinces, impacting on their rights to freedom of assembly.⁵⁵⁸ A 2014 submission by international organisations to the UN Human Rights Council stated that the government violently repressed protests, causing serious injuries and killings.⁵⁵⁹ The UN Committee on the Rights of the Child also expressed in 2016 concern at reports of violence against children, including their killing, committed by public security forces in the context of social protests.⁵⁶⁰

According to a 2014 report by the UN Special Rapporteur on Contemporary Forms of Slavery, indigenous people did not reject extractive operations; they were generally only requesting their rights to be respected, including over their ancestral lands and resources, and their own development priorities.⁵⁶¹ The Ombudsman also noted in 2015 a direct link between the right to consultation with indigenous people and social conflicts.⁵⁶²

During 2014, 1.902 social protests occurred. The Ombudsman reported in 2015 that 58 percent of conflicts resulted in at least one episode of violence. Accordingly, 16 civilians were killed and 160 were injured as a result of social conflicts, particularly in Piura, Madre de Dios, Cusco and Apurímac.⁵⁶³

Socio-environmental conflicts corresponded to 60 percent of all conflicts during 2014 (168 cases), of which 70 percent corresponded to mining activities and 12 percent to the oil and gas sector in Ancash, Apurímac and Cusco.⁵⁶⁴ The Ombudsman also reported that conflicts over land demarcation and local government management corresponded to 5,4 percent of all conflicts.⁵⁶⁵

In the framework of a hearing at the Inter-American Commission of Human Rights in 2015, the National Coordination for Human Rights and the Centre for Justice and International law noted that factors that contributed to the use of force during protests included the use of lethal weapons and war weapons, the presence of the militarised police force in charge of fighting terrorism, and the existence of agreements between the police and private companies.⁵⁶⁶

A 2014 Inter-American Development Bank study found that the progressive increase in mining revenues has also resulted in the rise of social conflicts in some areas.⁵⁶⁷

Cases

Reports of business-related human rights issues from NGOs, multilateral institutions and the media.

- *April 2015, Servindi:* NGO representatives requested the company Newmont Mining Corporation to stop all intimidation and harassment on community members who opposed the mining project in Cajamarca. The company reportedly used the police and its private guards to harass and intimidate anyone who opposed its activities.⁵⁶⁸
- *May 2015, Actualidad Ambiental:* The clashes between the police and local community members in the proximities of La Islay that demonstrated against the mining project Tia Maria has resulted in hundreds of detentions, injured, and 5 people being killed.⁵⁶⁹
- *2013, International Commission of Jurists:* Two people were killed and many others injured as a result of clashes between public security officers and local communities in the Espinar area. The protesters were demanding the suppression of Xstrata Tintaya operations due to water pollution.⁵⁷⁰
- *January 2013, Business and Human Rights Resource Centre:* More than a dozen peasants were injured as a result of protests in relation to Candente Cooper mine activities impacting their access to food and water.⁵⁷¹

Company Initiatives

Private-sector programmes that aim to ensure respect for human rights or contribute to development

Company Due Diligence Initiatives

Newmont Yanacocha (2014): The mining company is a member of the Voluntary Principles on Security and Human Rights. The company has also set up a Security Committee in order to prevent events or incidents that can have a social impact, and seeks to ensure that recommendations on security are implemented, especially in the event of a crisis. Training on security is also provided to employees and contractors and during 2014, more than 68,000 hours were used for that purpose.⁵⁷²

Repsol Peru: The company has committed to the Voluntary Principles on Security and Human Rights in relation to contracts with public security forces and private security providers.⁵⁷³ During 2012, 217 private guards and 125 police officers were trained including in the VPs and the Firearms and the Use of Force from the Oil and Gas Producers Association, with the objective to respect human rights while conducting their duties.⁵⁷⁴

FreePort MacMoRan-Cerro Verde Mine (2014): The mining company is committed to the UN Guiding Principles on Business and Human Rights. Accordingly, the company provided its employees in Cerro Verde with training on conducting specific human rights and security risk assessments using the Voluntary Principles on Security and Human Rights Implementation Guidance Tools as a reference. The company was also in the process of developing a custom tool for risk based supply chain due diligence, which will include information gathering regarding human rights.⁵⁷⁵

Stakeholder Recommendations

Institute of Democracy and Human Rights at the Pontificia Catholic University of Peru (IDEHPUCP):
IDEHPUCP recommends that extractive companies:

- Adopt protocols on the use of force when contracting private security services;
- Contact relevant actors in the community when conducting risks assessments, including community leaders, public security officials, ronderos and civil society organisations in order to maintain a broad dialogue from an intercultural perspective. Such a framework for dialogue could also become a suitable vehicle for sharing information on the Voluntary Principles on Security and Human Rights.⁵⁷⁶

'Pillars in Practice' Workshop:⁵⁷⁷

- Businesses should introduce human rights concepts in their CSR policies;
- Businesses should adopt corrective measures to be applied in the event of a human rights violation by private security personnel;
- Businesses should design human rights certification schemes for private security providers;
- Where rights of individuals or communities are violated, businesses should address grievances and integrate lessons from these experience into due diligence systems in order to prevent adverse human rights impacts in the future.

Human Rights Guidance for Businesses

Actions and priorities suggested by local and international stakeholders as well as company initiatives to ensure company respect for human rights and contribute to human development in the local context

Due Diligence Library

The following recommendations have been developed by The Danish Institute for Human Rights through research and engagement with companies

Does the company take steps to ensure that company security arrangements are in accordance with international principles for law enforcement and the use of force?

- The company regularly conducts security risk assessments, and ensures that company security arrangements, including the deployment of private guards or public security personnel, are proportionate to the security risk.
- Company security risk assessments include the risk of human rights abuses by private and public security personnel.
- The company selects private security firms based on information about professional ability, level of staff training, quality of equipment, past involvement in human rights abuses, links with political factions or organisations and other relevant criteria.
- Contracts with private security firms include requirements related to international human rights standards for law enforcement and use of force; require the investigation and discipline of any unlawful or abusive conduct by security guards; and allow for termination of the contract in case of such conduct.

- There is a manual defining the duties of security personnel, and all security personnel receive training on rules of conduct based on international human rights standards for law enforcement and the use of force.
- Where public security personnel are assigned to company facilities, the company seeks to ensure transparency concerning its interactions with public security agencies, and the company communicates to the relevant public security agencies its desire that security functions be conducted in accordance with international human rights standards for law enforcement and the use of force.
- The company has a procedure for recording security-related incidents, including a mechanism for handling complaints from staff or local communities related to the conduct of security personnel, and forwards credible allegations of human rights abuses to the relevant authorities.
- The company has a procedure for monitoring and evaluating its security arrangements, including the proportionality of the security arrangement; impact on local communities; impact on existing local tensions or conflicts; security incidents recorded; and credible allegations of human rights abuses by company security personnel. Representatives from the local community are consulted as part of the monitoring.

Standards & Guidance

NGO and institutional resources to enhance human rights due diligence efforts by businesses. These resources are drawn from the Business & Human Rights Resource Centre

- International Alert, Conflict Sensitive Business Practices: Guidance for Extractive Industries (2005): International Alert is a peace-building NGO working with civilians and other affected stakeholders in conflict areas. This Guidance is intended for companies in the extractive industries sector, providing advice on conflict-sensitive business practices and the ways in which they can contribute to peace-building.
- International Alert and Fafo Institute, Red Flags: Liability Risks for Companies Operating in High-Risk Zones (2008): The Red Flags address illicit business activities under international and national law. The initiative's objective is to clearly define what types of activities, when committed or aided by businesses, represent breaches of international humanitarian law and international criminal law.
- International Commission of Jurists, Report of the Expert Legal Panel on Corporate Complicity in International Crimes (2008): This three volume report outlines the ICJ Expert Legal Panel's findings and recommendations with regard to corporate legal responsibility for complicity in international crimes, under both civil and criminal law.
- The Dodd-Frank Wall Street Reform and Consumer Protection Act (2010): Section 1502 of the Act requires public and private companies to disclose the use of any conflict minerals in their products. This promotes greater transparency and dissuades companies from engaging in trade that may support regional conflicts.
- International Committee of the Red Cross, Business and International Humanitarian Law (2006): The Guidance explains the obligations of businesses under international humanitarian law, including noting relevant distinctions between international human rights law and international humanitarian law.

Engagement Opportunities

Development initiatives by public and private actors that provide opportunities for companies to contribute to human development

Public Sector Initiatives

Training of Police on Human Rights: The government, in cooperation with the International Red Cross, organises seminars with the aim of providing public security officials with knowledge on how to respect human rights while performing their official duties.⁵⁷⁸

NGO Initiatives

FEDEPAZ: The organisation works toward the universal access to justice of the most vulnerable populations including those victims of torture, native communities and those affected by extractive activities.⁵⁷⁹

Access to Remedy

Bodies to which victims of corporate human rights abuses can file grievances and seek redress.

Judicial Mechanisms

The International Commission of Jurists (ICJ) reported in 2013 that lengthy and complicated procedures as well as a lack of financial resources were in many cases factors that deterred victims from pursuing their complaints within the judicial system.⁵⁸⁰ Access to justice was also obstructed by economic, cultural, geographic and lingual factors. Judges and lawyers reportedly lacked knowledge on international and national law regarding the adverse human rights impacts of companies.⁵⁸¹

The Bertelsmann Foundation reported in 2016 that the government did not interfere in the judiciary or put pressure on judges. Nevertheless, the judiciary was characterised by corruption, inefficiency, and had insufficient territorial and functional representation.⁵⁸² Freedom House added in 2015 that the judiciary was highly distrusted.⁵⁸³

Indigenous people reported obstacles to access to justice including cultural and linguistic barriers, the lack of interpreters qualified to assist them and a shortage of funds, which limited their ability to have a defence.⁵⁸⁴ According to a 2014 report by the United Nations Special Rapporteur on Contemporary Forms of Slavery, the courts allegedly refused to prosecute police and other state officials that commit abuses against indigenous people in the context of social conflicts.⁵⁸⁵

The UN Working Group on the issues of discrimination against Women in law and practice reported in 2015 that women, particularly indigenous women and those living in rural areas, faced obstacles to access formal justice including high costs, distance and linguistic barriers; lack of knowledge of their rights; distrust in the judicial system; their re-victimisation; and the threats of social sanctions or stigma as a result of approaching the judicial system.⁵⁸⁶

Furthermore, the administration of justice and responsible authorities were still influenced by conservative views that prioritised family union preservation over the protection of women's rights such as in case of gender violence.⁵⁸⁷ The UN Committee on the Elimination of Discrimination against Women expressed concern that in cases of gender violence, women faced difficulties including discrimination, prejudice and gender insensitiveness from the judicial authorities and prosecutors, with the result of discouraging them from accessing to justice.⁵⁸⁸

Labour Courts

The Procedural Labour Law creates a hierarchy of courts to resolve labour disputes. Peace Courts hear small-claims cases regarding wage and compensation payments, appeals of disciplinary sanctions, employment rights of domestic workers, and issues related to the private pension system. The Labour Courts of First Instance receive cases regarding dismissals, wages and compensation cases that are more significant than small-claims, non-compliance with labour law cases, accusations of employer hostility, and internal work disputes. The Labour Branches of the Superior Court have jurisdiction over labour issues relating to public interest claims and social security funds. The Constitutional and Social Rights Branch of the Supreme Court is the court of final appeal on labour law issues.⁵⁸⁹

Since 2010, labour trials are conducted orally.⁵⁹⁰ The government reported in 2015 that the process reduced the average length of proceedings. The International Trade Union Confederation reported

however that due to lack of resource and adequate staff, judicial labour proceedings remained lengthy.⁵⁹¹

Constitutional Court

Cases involving the constitutionally defined right to equality before the law and the prohibition of discrimination may be taken directly to a constitutional court.⁵⁹²

According to Freedom House in 2015, the Constitutional Tribunal was relatively independent.⁵⁹³

Criminal Courts

The National Penal Court is the highest court dealing with human rights cases against military personnel. Latest data provided by the National Coordination of Human Rights reported that only 17 convictions were issued on cases of torture over the period of 2004 to 2011.⁵⁹⁴

In 2012, the UN Special Rapporteur on Contemporary Forms of Slavery stated that the lack of a definition of forced labour in the Penal Code prevented prosecutors from investigating the crime under the proper offence.⁵⁹⁵

Environmental Courts .

Two High Courts in charge of exclusively investigating environmental cases were established in Piura (with jurisdiction in Piura, Tumbes, Sullana, Lambayeque and Cajamarca) and Cusco (with jurisdictions in Cusco, Madre de Dios and Puno).⁵⁹⁶ Until July 2013, the judiciary investigated 796 cases of crimes against the environment.⁵⁹⁷

Extra-territorial Jurisdiction

The Trade Promotion Agreement signed between the governments of Peru and the United States in 2009 includes the respect for labour rights. In that regards, the Office of Trade and Labour Affairs (OTLA) at the US Department of Labor can receive claims in relation to alleged violations of the agreement by the Peruvian government. The OTLA should hold labour consultations between the parties, and if no agreement is reached, the Council on Labour Affairs takes part, or an arbitration process is initiated. In 2015, Peruvian NGOs presented a claim in relation to labour laws violations in the agriculture and textile sectors.⁵⁹⁸ The claim stated that the government of Peru has put in place special labour regulations that did not guarantee all labour right, labour inspections conducted were inefficient, and the government did not properly address serious violations of labour rights that occur in those two sectors.⁵⁹⁹ Non-Judicial Mechanisms

National Human Rights Institution

The Ombudsman, Peru's NHRI, has the mandate to investigate cases of discrimination including in the workplace, particularly of persons living with HIV/AIDS, persons with disabilities, indigenous peoples, women and migrants.⁶⁰⁰

During 2014, the NHRI received 31,189 complaints, of which 75 percent were concluded. Most cases related to the right of due process in public administration (28 percent), followed by the right to social security (10 percent), right to education (9,3 percent), right to health (7 percent), and labour rights (5 percent).⁶⁰¹

In terms of cases of discrimination, the NHRI received during 2014 82 cases, of which 54 were admitted. Cases included dismissals on grounds of pregnancy, discriminatory job advertisings, access to education, and mistreatment of persons living with HIV-AIDS.⁶⁰² The NHRI also acts as a mediator in cases of social conflicts in order to prevent its escalation and impact on fundamental human rights of individuals and communities.⁶⁰³ During 2014, the Office intervened in 280 social conflicts.⁶⁰⁴

Its Office for Children and Adolescents reported cases of child labour violations, and in cases, joint inspections conducted by the Ministry of Labour and Employment Promotion.⁶⁰⁵

The NHRI also has the mandate to supervise the government's actions in relation to illegal and informal mining with the aim of protecting the environment and the human rights of communities that may have an impact on their operations.⁶⁰⁶ As of January 2014, the Attorney General's Office had investigated 445 cases related to illegal mining while the Unit on Environment at Madre de Dios location reported 35 cases of money laundering related to illegal mining in that region.⁶⁰⁷

Administrative Mechanisms

The Law on Occupational Health and Safety establishes that the Ministry of Labour has the duty to investigate and impose sanctions regarding non-compliance with national legislation, particularly in relation to the mining sector. According to the ICJ, its capacity was limited due to the lack of resources and inspectors, and fines applied were oftentimes not enforced.⁶⁰⁸

The Ministry of Labour and Employment Promotion has set an online mechanism to report on cases of labour violations.⁶⁰⁹ During 2014, it received 4,329 complaints and took part in 346 cases of conciliation, of which 21 reached an agreement.⁶¹⁰

The Ministry of Environment has created a hotline for reporting cases of violations of environmental law. Moreover, the Environmental Procurator in the Ministry of Environment is able to receive complaints and follow-up with the relevant judiciary mechanisms on those cases.⁶¹¹

The Environmental Assessment and Oversight Agency has set an Environmental Complaint's National Information Service for any person to report on a possible environmental violation through the website, by email or in person.⁶¹²

Anti-Corruption Mechanisms

The Office of the Special Anti-Corruption Procurator at the Ministry of Justice and Human Rights investigates cases of corruption.⁶¹³ During 2014, approximately 4,500 cases were registered, of which 2,000 were concluded. During the same year, 2,946,000 soles (approx. US\$892,000) were obtained as civil compensation from persons convicted on corruption cases, an increase of 11 percent on the amount when compared to 2013 figures.⁶¹⁴

In 2011, the law was reportedly an obstacle in the way of prosecutions in cases of corruption by public servants due to the requirement of proof of damage to the State in order to investigate, pursue and punish crimes of corruption.⁶¹⁵

The National Superintendence for Customs and Tax Administration has established an online complaints system for alleged cases of tax evasions.⁶¹⁶ Likewise, the Office of the National Comptroller created a complaints system for cases of corruption related to the public sector.⁶¹⁷

The Minister of the Interior has established a hotline and an email to report on cases of corruption involving public security officers, governors and any other public official working at the Ministry.⁶¹⁸

Attorney General's Office

The Attorney General's Office has established Specialised Units including in the following areas: 28 Units on Environment, located across the country, with the mandate to investigate crimes against the environment;⁶¹⁹ 8 Specialised Units on Trafficking in Persons distributed in the following cities: Iquitos, Tacna, Cusco, Puerto Maldonado, Lima, Callao and Puno;⁶²⁰ a Specialised Unit for Corruption Cases in relation to Public Officers; and a Specialised Unit on Fiscal Offenses.⁶²¹

The Office also coordinates with the National Police in the investigation and prosecution of cases related to violations of child labour laws.⁶²²

Arbitration-Based Mechanisms

National legislation allows for arbitration in cases of conflicts resulting from collective bargaining between employers and trade unions. This process acts as an alternative to calling a strike.⁶²³

According to a 2013 report by the ICJ, companies in conflict with other companies mainly used arbitration.⁶²⁴ The Bertelsmann Foundation added in 2016 that arbitration has been widely used to address contractual disputes in the private sector, and with the intervention of chambers of commerce.⁶²⁵

The National Resolution's Court of Water Disputes has the mandate to ultimately resolve administrative claims and appeals against decisions issued related to water allocations.⁶²⁶

The Technical National Directorate on Land Demarcation within the Presidency of the Council of Ministers has the mandate to conduct arbitration processes on disputes over territorial boundaries between regional and local governments.⁶²⁷

In 2012, the Presidency of the Council of Ministers created a National Unit for Dialogue and Sustainability to mediate in cases of social conflicts.⁶²⁸ Furthermore, part of their work is based on conflicts related to the presence of companies, particularly extractive industries, in the Andean and Amazon regions, where poverty, exclusion and the persistent of social gaps were great.⁶²⁹

During 2015, the Office participated in 105 spaces for dialogue and intervened in 41 social conflicts. Most conflicts related to mining activities, followed by the hydrocarbon and energy sector, and territorial demarcation.⁶³⁰

Police-Based Mechanisms

The Police has established an Anti-trafficking Directorate. Its headquarter was in Lima, with a smaller branch in Iquitos.⁶³¹ The Directorate also receives complaints in relation to child labour.⁶³²

The Ministry of Interior has established a hotline to report on cases of trafficking.⁶³³ The Ministry has also set up a system known as the RETA PNP in order to register trafficking complaints, as well as labour and sexual exploitation.⁶³⁴

From 2009 – 2014, more than 2.000 cases of trafficking were reported to the authorities in Madre de Dios, Cusco, Piura y Puno.⁶³⁵ During 2014 alone, the police investigated 105 potential trafficking cases while the government initiated 20 new prosecutions. 19 individuals were convicted, as compared to 41 during 2013.⁶³⁶

Operational-Level Mechanisms In relation to operational-level grievance mechanisms, a 2012 Harvard Kennedy School study found that some mining operations in Peru had developed participatory processes in an effort to work with and empower communities to address environmental impacts. The

processes included participatory environmental monitoring processes and environmental committees involving community representatives.⁶³⁷

Informal Justice Mechanisms

Rondas Campesinas

Informal community justice systems such as Rondas Campesinas, which are social organisations made up of volunteer community members that exercise functions of local government and justice, have been used to defend land and water resources on behalf of local communities, especially where extractive companies are located.⁶³⁸ They have also reportedly enforced labour rights in relation to violations committed by employers.⁶³⁹

Communal Justice

The constitution provides for communal justice, particularly in relation to indigenous peoples and peasant communities. In 2013, the ICJ reported the use of communal justice had contributed substantially to access to remedy for local communities where no judicial mechanisms were in place.⁶⁴⁰

Centre for Intercultural, Community and Peasants Issues

In 2013 the Attorney General's Office created the Centre with the aim of strengthening informal justice.⁶⁴¹

International Mechanisms

UN Human Rights Council

The Human Rights Council has established Special Procedures that are independent human rights experts with the mandate to report on human rights from a thematic or country-specific perspective. They can act upon information received on alleged violations of human rights and send communications to States and non-State actors asking for clarification and action.⁶⁴² One of those Special Procedures is the Working Group on the issue of human rights and transnational corporations and other business enterprises.⁶⁴³

Inter-American Commission on Human Rights

The Inter-American Commission on Human Rights is a principal and autonomous organ of the Organization of American States whose mission is to promote and protect human rights. Furthermore, it has established an individual petition system,⁶⁴⁴ by which the Commission investigates a human rights violation and makes recommendations to the State responsible to restore the enjoyment of rights whenever possible, to prevent a recurrence of similar events, to investigate the facts and make reparations.⁶⁴⁵ The system has been used numerous times by victims in Peru, including in relation to extrajudicial executions and disappearances; activities of a Smelter in La Oroya, and a submissions by the National Association of Ex-Employees of the Peruvian Social Security Institute.⁶⁴⁶

The World Bank Inspection Panel

The Panel that has the mandate to receive complaints from communities who have been or are likely to be affected by a World Bank-financed projects.⁶⁴⁷ The mechanisms has been used one time in 2009 in relation to the lack of citizen consultation and that the EIA was not conducted or approved by the competent authority in the Lima Urban Transport Project.⁶⁴⁸

The Inter-American Development Bank Independent Consultation and Investigation Mechanisms (ICIM)

The ICIM is an independent accountability mechanism that investigates allegations by groups or persons of communities that believe have been harmed by Bank-financed projects due to non-compliance with the IDB's operational policies.⁶⁴⁹ The mechanisms has been used two times: The first one in relation to the Support for the Disaster Risk Management Policy and the second one, in relation to the Rural Land Titling and Registration Project.⁶⁵⁰

The Organization of Economic Cooperation and Development National Contact Point

Peru, as a candidate for membership in the Organisation for Economic Cooperation and Development, has established a National Contact Point (NCP) at PROINVERSION, the national agency in charge of promoting private investment. This body has the capacity to receive complaints about company practices, including in relation to human rights abuses.⁶⁵¹

The Guidelines are recommendations addressed by governments to multinational enterprises and they provide voluntary principles and standards for responsible business conduct. The Guidelines include chapters on the following topics: Human Rights (Chapter IV); Employment and Industrial Relations (Chapter V); Environment (Chapter VI); Combating bribery, bribe solicitation and extortion (Chapter VII); Consumers Interests (Chapter VIII); Science and Technology (Chapter IX); Competition (Chapter X); and Taxation (Chapter XI).⁶⁵²

In 2014, a case was presented in relation to mining workers' rights due to the closure of a mine managed by a subsidiary of a multinational Swiss company.⁶⁵³

The International Finance Corporation Compliance Advisor Ombudsman

Adverse impacts related to projects financed by the International Finance Corporation or Multilateral Investment Guarantee Agency of the World Bank can be mediated and/or investigated by the Compliance Advisor Ombudsman (CAO). CAO's mission is to address complaints by people affected by IFC/MIGA projects, and to enhance the social and environmental accountability of both institutions. The CAO has indeed both a dispute resolution function and an investigatory one.⁶⁵⁴

The Office has been used numerous times including in relation to the Yanacocha mining project in Cajamarca; an hydrocarbon project in Canaan; and an agribusiness company in the Ica valley.⁶⁵⁵

International Labour Organization

Trade unions and employers' organisations can submit complaints to the International Labour Organization's Committee on Freedom of Association.⁶⁵⁶ As of 2016, 8 cases were active and 19 under follow-up.⁶⁵⁷ The ILO's Committee on Representations had, as of 2016, 3 pending cases.⁶⁵⁸

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