

REMEDiation GUIDELINES

FOR VICTIMS OF HUMAN TRAFFICKING

IN MINERAL SUPPLY CHAINS



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Remediation Guidelines for Victims of Human Trafficking in Mineral Supply Chains

FIRST EDITION

Introduction

Global supply chains in the electronics sector are complex and involve a wide range of actors, working in multiple sites, with goods and workers crossing multiple borders. In particular, mineral supply chains are highly globalized, and responsible sourcing of minerals, including tin, tantalum, tungsten and gold (3TG), is high on the agenda of many leading downstream companies.

While the mining industry, including artisanal and small-scale mining (ASM), supports the livelihoods of millions of people globally and plays an important role in poverty alleviation and development, it can also have a negative environmental impact and contribute to human rights and labour rights abuses. Reports of human trafficking, forced labour, and child labour, have raised serious concerns for downstream companies about the social cost of doing business with the mining industry, especially within ASM.

As outlined in the United Nations' *Guiding Principles on Business and Human Rights*, businesses not only have a responsibility to prevent human rights abuses, but also to provide remedies to victims where harm has occurred. While the electronic industry has made meaningful progress to prevent human rights abuses through greater due diligence, the development of guidance and best practices to help businesses remediate adverse human rights impacts when they do occur has been limited.

Scope of the guidelines:

- The guidelines provide concrete, operational guidance to downstream companies and their business partners to ensure victims of exploitation are adequately protected and assisted where harm has occurred.
- They assume the existence of due diligence and management systems to guide corporate supply chain response. The guidelines, however, go beyond due diligence and provide practical guidance on how to take incidents forward when victims have been identified in the supply chain.
- They apply to situations where an allegation has been made and substantiated through an already existing incident review and complaint mechanism. They assume that a violation has occurred and that remediation is appropriate.
- They focus on non-State remediation mechanisms whereby businesses can work together with State and non-State actors to offer victims operational-level grievance mechanisms. The aim of these mechanisms is for individuals and communities who may be adversely impacted by business operations to lodge their grievance, resolve legitimate claims and access remedy, if appropriate.
- Their aim is to highlight best practices for companies to consider and replicate in an effort to advance remediation in their own operations and supply chains. They are not prescriptive

but serve as guidance for downstream companies and their business partners to consider in implementing remediation processes. They will be continuously reviewed, edited and updated according to best practices.

- They were developed in consultation with a number of key players who are currently active in this field, including audit programmes, smelters and refiners, governments, intergovernmental organizations, non-governmental organizations (NGOs), and IOM experts. The guidelines rely on a review of existing literature, as well as case studies and IOM's experience protecting hundreds of thousands of victims of exploitation and supporting governments and civil society organizations to better protect victims of trafficking. They take into account valuable inputs from victims and affected communities.
- The guidelines were written from the perspective of a downstream company; as a result, the remediation process outlined below focuses on the role of the audit programmes, and smelters and refiners. This by no means suggests that other actors, such as international traders and mine operators, do not have a critical role to play in remediation. Mine operators are often the ones directly responsible for the harm caused to a victim, and therefore, have an even greater responsibility in remediating harm.
- Although these guidelines were written for mineral supply chains, especially ASM, the process and principles below could be applied to other sectors, such as the garment industry, agriculture or the construction sector. The objective is to ensure that victims of exploitation have access to remediation wherever they have been harmed by exploitative business practices.
- While these guidelines focus on the issue of human trafficking (or trafficking in persons), much of its content is also applicable to a range of exploitative practices, including the worst forms of child labour, forced labour, debt bondage, commercial sexual exploitation, and contemporary forms of slavery. These terms, often referred to as "modern slavery", have various legal definitions, and often share common elements. At the end of the day, these legal terms describe situations of exploitation whereby a victim cannot simply walk away.

Structure of the guidelines

Chapter One: Provides a brief background on human trafficking in the mining industry.

Chapter Two: Outlines the businesses' responsibility for remediation, based on the review of existing international standards and guidelines.

Chapter Three: Sets forth operational remediation processes, outlining practical steps that downstream companies and their upstream partners can take to assist and protect victims of exploitation.

1 Human trafficking in the mining industry

Human trafficking results in the exploitation of adults and children within their own countries or abroad in situations where victims are unable to escape from their abuser

Human trafficking results in the exploitation of adults and children within their own countries or abroad in situations where victims are unable to escape from their abuser. Victims are often deceived or coerced about the job or the conditions of the job. They then find themselves in a situation whereby they simply cannot walk away – perhaps due to the high debts they owe, or in the more extreme cases because they are forced to stay through violence and abuse, including psychological abuse.

Victims of human trafficking can be exploited in various forms, such as forced labour,¹ sexual exploitation or forced marriage. Human trafficking affects every country, whether as country of origin, transit, or destination for victims of trafficking, as well as every industry. In a globalized economy, the demand for cheap labour and sexual services is the primary root cause of human trafficking.

The *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*, supplementing the *United Nations Convention against Transnational Organized Crime* (commonly referred to as the Palermo Protocol), defines “trafficking in persons” as follows:

Adults: “Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.”

Children: “The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if this does not involve any of the means set forth in subparagraph (a) of this article;” and “Child’ shall mean any person under eighteen years of age.”

¹ According to the International Labour Organization (ILO) Convention No. 29 on Forced Labour (1930), forced or compulsory labour is “all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily.”

States must protect victims of trafficking as part of their obligations under international law.² Protection fundamentally includes remediation, whether in the form of direct assistance to victims³ or access to legal systems for compensation and perhaps criminal penalties. The Palermo Protocol calls for States to work in cooperation with other stakeholders to consider “measures to provide for the physical, psychological and social recovery of victims of trafficking in persons.”⁴

At the national level, most countries have adopted legislation to criminalize human trafficking as a specific offence and the penalties for child trafficking are often more severe.

Mining is an industry vulnerable to trafficking

For men, debt bondage is prevalent in mines, whereby victims have accumulated debts before they even start working and then may further have no chance of leaving the area due to isolation, physical confinement, and/or social control in the mining camp. There have also been instances where women and girls are deceived by false promises of high wages, or false job offers as cooks or waitresses, but once transferred to the mining area, their identity documents are confiscated and they face threats if they try to leave their exploitative situation – situations that could include sexual exploitation inside and nearby

the mines.

Child trafficking, one of the worst forms of child labour under ILO standards,⁵ is also found in the mining sector and particularly in ASM.⁶ Of all the forms of hazardous work, mining is by far the most hazardous sector for children, often including work underground or under water, with dangerous machinery and tools, and sometimes, exposure to toxic and dangerous substances.

In addition, the absence of basic infrastructure around mines often leads to a high demand of alcohol and sexual services where women and girls from rural and impoverished regions or even neighbouring countries become the targets of sex trafficking.

While human trafficking, particularly child trafficking, is one of the most extreme forms of exploitation, workers in the mining industry may face other forms of abuse including violations of their labour and human rights, not all of which amount to human trafficking. Labour exploitation should be seen as a continuum, spanning from simple breaches of employment contract terms, lack of contracts, and poor working conditions, to discrimination in the workplace and other violations of the fundamental freedoms and rights at work, through to human trafficking and forced labour in the extreme.

² Several ILO Conventions are applicable, such as Convention No. 29 on Forced or Compulsory Labour (1930) and the 2014 Protocol thereto, Convention No. 105 on the Abolition of Forced Labour (1957), and Convention No. 182 on the Worst Forms of Child Labour (1999). The 1989 Convention on the Rights of the Child, and the 2000 Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography, prohibit trafficking in children for any purpose, including for sexual exploitation and forced labour.

³ Article 1 of the 2014 Protocol to the Forced Labour Convention mandates each party “to provide to victims protection and access to appropriate and effective remedies, such as compensation”. Article 3 also mandates each party to “take effective measures for the identification, release, protection, recovery and rehabilitation of all victims of forced or compulsory labour, as well as the provision of other forms of assistance and support.”

⁴ Article 6.3 of the Palermo Protocol defines assistance as: “(a) Appropriate housing; (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand; (c) Medical, psychological and material assistance; and (d) Employment, educational and training opportunities.”

⁵ Article 3 of the ILO Convention No. 182 defines the worst forms of child labour as: “All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage, and serfdom, and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; the use, procuring or offering of a child for illicit activities in particular for the production and trafficking of drugs as defined in the relevant international treaties; and work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.”

⁶ U.S. Department of State (2017): *Trafficking in Persons Report*; U.S. Department of Labor (2016): *List of Goods Produced by Child Labor or Forced Labor*.

2 The business responsibility for remedy

Businesses not only have a responsibility to prevent human rights abuses, but also to ensure remedies are available to victims where harm has occurred

The UN *Guiding Principles on Business and Human Rights* (UNGPR), which established the “Protect, Respect, and Remedy” Framework,⁷ provide that where a company has caused or contributed to adverse human rights impacts, it should ensure remediation. Businesses not only have a responsibility to prevent human rights abuses, but also to ensure remedies are available to victims where harm has occurred.

The OECD *Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas* (OECD Guidance),⁸ which aligns with the UN Guiding Principles, is the main standard governing responsible sourcing in mineral supply chains. It calls on businesses to conduct due diligence on their operations and throughout their supply chains to identify, prevent and mitigate actual or potential adverse impacts in relation to matters covered by the guidelines, and account for how adverse impacts are addressed. It encourages companies to conduct a sector-specific risk assessment as an important first step to understand and mitigate significant financial, legal and reputational risks, and demonstrate that they are doing business responsibly.

The OECD’s five-step framework for risk-based due diligence in mineral supply chains:

1. Establish strong company management systems

2. Identify and assess risk in the supply chain

3. Design and implement a strategy to respond to identified risks

4. Carry out independent third-party audit of supply chain due diligence

5. Report on supply chain due diligence

⁷ Office of the High Commissioner of Human Rights (OHCHR) (2011): *Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework*. The “Protect, Respect and Remedy” Framework rests on three pillars: the State duty to protect against human rights abuses by third parties, including business, through appropriate policies, regulation, and adjudication; the corporate responsibility to respect human rights, which means to act with due diligence to avoid infringing on the rights of others and to address adverse impacts that occur; and greater access by victims to effective remedy, both judicial and non judicial.

⁸ OECD (2016): *Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*. Third Edition.

While the OECD Guidance recognizes the importance of grievance mechanisms as part of due diligence, it does not provide guidance on implementing remediation.

In addition to risk-based due diligence, UNGP 22 states that “where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.” In other words, a company’s responsibility to respect human rights requires active engagement in remediation, by itself or in cooperation with other actors.

In assessing how to go about remediation, it is important to understand the nature of the company’s role with respect to a specific adverse impact. The below chart⁹ demonstrates the relationship between the impact and the responsibility of the company should harm occur:

If the company has...	then the company should...
...caused (or may cause) the harm...	...cease or prevent the action causing the harm, and remediate the harm.
...contributed to (or may contribute to) the harm...	...cease or prevent the action contributing the harm; use leverage to mitigate the risk that any remaining impact continues or recurs, and contribute to the remediation of the harm.
...identified a linkage between the harm and their operations, products or services, but no cause or contribution...	...use leverage to mitigate the risk of the impact continuing or recurring to the greatest extent possible.

For downstream companies in the mineral supply chain, the relationship to adverse impact is likely to be one of “linkage” and as such, the UNGP requires downstream companies to use their leverage to identify effective and sustainable mitigation measures and secure buy-in up the supply chain and beyond. While downstream

companies may have no legal obligation to remediate the harm, there are practical steps that they can take to leverage remediation by those business partners in the downstream company’s supply chain who have indeed “caused” or “contributed to” harm, or may also find themselves in a situation of “linkage”.

In many cases, for example, the harm itself occurs at the actual site of the mine, and thus, the mining companies themselves are directly causing the harm. Depending on their contractual relationship with the mine, smelters and refiners may be contributing to the harm, or be linked to the harm. In both cases, given the close business proximity of the smelter/refiner to that of the mining operation, the smelter/refiner plays a crucial role to cease or prevent the action contributing to the harm, contribute to the remediation of the harm, or use its leverage to mobilize the mine operators and other upstream partners to take remedial action.

These guidelines do not attempt to pinpoint which entity along the supply chain bears the actual legal responsibility for the harm caused as that will vary from situation to situation. Rather, the guidelines outline how remediation processes can be put in place to address the harm that has been caused by the costs of doing business in the mining industry, and how different actors can work together to provide remedies to victims of exploitation.

Defining remedies

Remediation is an “attempt to right a wrong, to correct – as far as possible – an injustice.”¹⁰ It refers to both the process, and the outcome of addressing adverse human rights impacts.

Under the UNGP, a remedy may include: “apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition.”

⁹ Shift (2014): *Remediation, Grievance Mechanism and the Corporate Responsibility to Respect Human Rights*.

¹⁰ UN Inter-Agency Coordination Group against Trafficking in Persons (ICAT) (2016): *Providing Effective Remedies for Victims of Trafficking in Persons*.

Victims of human rights violations, including those who have fallen victim to human trafficking, have a right to an effective remedy.¹¹ The following types of remedies may be provided to victims of trafficking:¹²

Restitution, which is concerned with restoring the victim to the original situation before the violation of their rights occurred.

Compensation, which is money paid to a trafficked person in an attempt to remedy the damage the person suffered as a result of being trafficked. Compensation has the potential to reduce the risk of re-trafficking by providing victims with financial assistance to rebuild their lives.

Rehabilitation and recovery, which can include medical and psychological care, legal and social services such as shelter, counselling, as well as assistance for the victim's voluntary return and reintegration into his/her community of origin.

Satisfaction, which involves acknowledging violation of the victim's rights and taking steps to prevent continuing violations. Measures to secure satisfaction for trafficked victims can include verification of the facts and full and public disclosure of the truth.

As a general rule, remedies available to victims should be "adequate and appropriate," "proportional to the gravity of the violation" and adapted to the circumstances of the case.¹³

Mechanisms for remediation

The UNGP outline two mechanisms that are the basis for remediation, namely: 1) State-based mechanisms; and 2) operational-level grievance mechanisms.

State-based mechanisms can be administered by the State or by a State-sanctioned independent body. They may

be judicial or not. Examples of State-based mechanisms include courts (both civil and criminal) as well as labor tribunals, national human rights institutions or other State-supported complaint mechanisms.¹⁴

The focus in these guidelines is around non-State remediation mechanisms whereby businesses can work together with State and non-State actors to provide operational-level grievance mechanisms. These mechanisms can offer the possibility of providing faster and more direct access to remedies for victims of exploitation.

Though States have the primary role in ensuring access to remediation, the UNGP encourages businesses to take on an active role in remediation, whether by providing the remedy itself, or by participating in remediation through legitimate means.¹⁵ This includes the provision of operational-level grievance mechanisms which, established within a wider system of remedy, offer a formalized means for individuals and communities who may be adversely impacted to lodge their grievance, resolve legitimate claims, and access remedy, if appropriate.¹⁶

UNGP 31 sets forth the following criteria to ensure the effectiveness of the operational-level grievance mechanisms:

Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;

Accessible: being known to all stakeholder groups for whose use they are intended, and

¹⁴ Due to costs, time and often fear, and a general lack of rule of law in the country where exploitation has happened, the right to judicial remedies may remain out of reach for most victims of human trafficking. Further, victims of exploitation often wish to avoid the shame and fear of going through a lengthy judicial process.

¹⁵ UNGP 29 states that "to make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted."

¹⁶ Operational-level grievance mechanisms can be led by the company themselves, oftentimes in collaboration with other State and non-State actors. As mentioned in UNGP 29, "[o]perational-level grievance mechanisms can be important complements to wider stakeholder engagement and collective bargaining processes, but cannot substitute for either. They should not be used to undermine the role of legitimate trade unions in addressing labour-related disputes, nor to preclude access to judicial or other non-judicial grievance mechanisms."

¹¹ According to the OHCHR *Draft Basic Principles on the Right to an Effective Remedy for Victims of Trafficking in Persons* (2014), "the right to an effective remedy encompasses both a substantive right to reparations and procedural rights necessary to access to them."

¹² ICAT (2016). Op. cit.

¹³ OHCHR (2014). Op. cit.

providing adequate assistance for those who may face particular barriers to access;

Predictable: providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;

Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;

Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake.

In line with the OECD Guidance, operators across the minerals supply chain, such as audit programmes and upstream initiatives, have established operational level grievance mechanisms.¹⁷

Providing protection and assistance as remediation for victims of exploitation

Current evidence on human trafficking, including child trafficking, and forced labour, illustrates the devastating harm and abuse suffered by victims. It is a form of violence that occurs on a spectrum. Some will suffer extreme physical abuse (such as beatings, rape and confinement), while others may be exposed to less obvious forms of violence, including physical and psychological threats to themselves or their families (particularly with child victims). Such violence results not only in physical and financial harm, but very often emotional damage in the long term. These harmful consequences have an impact on the victims themselves and can also affect the

family and the community to which they may be returning. Given the extent of harm often suffered by victims, the provision of direct assistance is critically important as the first step to the victim's safety and recovery.

In delivering direct assistance to victims, IOM advocates for a case management approach,¹⁸ which is a model of providing assistance to individuals with complex and multiple needs who may access services from a range of organizations. It allows for collaboration between multidisciplinary actors for the assessment, planning, implementation, coordination, and monitoring required to effectively meet an individual's multiple needs and promote positive outcomes for victims. Case management and service delivery can be provided by State authorities, UN agencies, non-governmental or civil society organisations and importantly, the private sector.

The IOM Handbook on Direct Assistance for Victims of Trafficking and the IOM Handbook on Protection and Assistance for Migrants Vulnerable to Violence, Exploitation and Abuse (forthcoming)¹⁹ establish the following principles of assistance:

- Do no harm
- Rights-based approach
- Non-discrimination
- Self-determination and participation
- Individualized assistance
- Gender sensitivity
- Child-centred assistance
- Continuum of care
- Informed consent
- Confidentiality, privacy, and the protection of data
- Accountability

¹⁷ Examples include the London Bullion Market Association's (LBMA) 11-Step Incident Management Process, the Responsible Minerals Initiative's (RMI) Grievance Mechanism, and the Responsible Jewellery Council's (RJC) Complaints Mechanism. The ITRI Tin Supply Chain Initiative (ITSCI) also provides a grievance mechanism through a whistleblowing policy and procedure.

¹⁸ It is also referred to as a "client-centred" or "survivor-centred" approach as it ensures the victim's participation in decision-making and choices regarding available services and programmes.

¹⁹ IOM (2007): *IOM Handbook on Direct Assistance for Victims of Trafficking*; IOM (forthcoming): *IOM Handbook on Protection and Assistance for Migrants Vulnerable to Violence, Exploitation, and Abuse*.

While the assistance provided to each victim will depend on the individual needs of the victim, and that of their families and community, the types of assistance described below are generally relevant in trying to restore the rights of victims of exploitation:



Shelter and accommodation: This can include short-term emergency shelter and longer-term accommodation, and can be provided by government agencies, UN agencies, non-governmental organizations, family or community networks, or private individuals through hosting or rental accommodation. The needs of the victim should be the basis of the type of shelter and accommodation and considerations should be made for age, sex, family size, disabilities, sexual orientation and gender identity, safety and security, capacity and desire to live independently, and the sustainability of sheltering options.



Medical and healthcare services and counselling, including mental health and psychosocial support: There are both physical and mental health consequences associated with exploitation and thus, victims should have full access to comprehensive health care. Such health care should be based on informed consent, should be trauma-informed and culturally appropriate. In some cases, victims may require immediate health care to save their life or address life changing injuries. This could be due to an accident, an untreated illness or disease, a physical or sexual assault, or a suicide attempt. To ensure a successful reintegration process, the victim's physical and mental well-being should be a priority.



Legal assistance: Following action to address a victim's immediate needs, the victim should be informed of legal options, including participation in civil and criminal legal proceedings. Victims need to be informed of the possibility to cooperate with law enforcement agencies, the possibility of acting as witnesses in criminal proceedings, and the legal options available for their protection if they act as witnesses. Victims should also be informed about possible civil proceedings, including for the restitution of their belongings and compensation for harm and injury suffered. Victims may also need support to determine and/or regularize their immigration and labour status.



Financial assistance: Cash grants may facilitate the victim's effective reintegration, and cover basic costs such as housing, food, clothes and other necessary items, for an initial period of time. The provision of financial assistance may be particularly important when the victim has not received any payment, and/or incurred debts to secure his/her job, for instance to pay recruitment fees.



Return assistance: If victims are in another country, they may need assistance returning to their home community. Return assistance should include the safest and fastest mode of transportation and should be voluntary. Victims should be referred to any existing assisted voluntary return and reintegration programmes offered by States, IOM or other organizations.



Reintegration services: Once home, depending on their individual needs, victims should be able to access various forms of reintegration assistance. Most importantly, for adults or families of child victims, this should include livelihood support. Without access to jobs and means of earning wages, victims will be at a higher risk of further exploitation and even run a significant risk of being re-trafficked. Reintegration assistance can also include reinsertion into the educational system; vocational training; and micro-enterprise development.

Concrete guidance on how to respond to child victims can be found in the *OECD Guidance on Practical Actions for Companies to Identify and Address the Worst Forms of Child Labour in Mineral Supply Chains*.²⁰ Remediation plans for child victims should build on the aforementioned points, and consider the following:

- Safely removing the child from the mine. Additionally, employment or livelihood opportunity could be offered to an adult member of the child's family

- Clarifying identity, age assessment, arranging accommodation and determining the child's needs

- Talking to the child and to the parents or legal guardian to ensure they understand what is happening and why

- Safely reporting the case to the appropriate government agency for protective action

- Enrolling the victim in an appropriate school or vocational training or apprenticeship scheme, or arranging payment of a stipend during the exploratory phase and remediation programme (equivalent to the amount the child was earning whilst employed)

- Enrolling the child's family in an existing social protection programme to help address the root causes of child labour (for example, cash transfer programmes, school feeding programmes or other measures to mitigate income gaps for the family)

- Identifying an appropriate accommodation facility, if needed

- Consulting with the parent or guardian of each child in the design of the specific remediation programme for each child

- Obtaining signed agreements from the parent or guardian of each child and all parties to the remediation setting out the elements of each child's remediation programme (remuneration, school, etc.) and the duties of each party in ensuring the success of the remediation

²⁰ OECD (2017): *Practical Actions for Companies to Identify and Address the Worst Forms of Child Labour in Mineral Supply Chains*.

3 Operational remediation processes

The Six-Step Process helps downstream companies and their business partners respond to incidents of exploitation in their supply chain

With international principles and guidance on remediation outlined above as a framework, this Chapter sets forth a Six-Step Operational Remediation Process for downstream companies to consider when a victim has suffered harm linked to the downstream company's operations, products or services. This Chapter also summarizes optimal and expected outcomes for victims.

The operational remediation process helps downstream companies and their business partners, particularly audit programmes, smelters and refiners, identify the steps to follow, the stakeholders to engage with, and the different factors to consider, to respond to substantiated incidents of exploitation in their supply chain so that, ultimately, victims are provided with an effective remedy.

The Six-Step Process

Step 1: Verify the allegation

Step 2: Determine the type and level of response

Step 3: Design the remediation action plan

Step 4: Implement and monitor the remediation action plan

Step 5: Incident closure

Step 6: Capture lessons learned

The stakeholders and their respective roles in the remediation process are as follows:

Downstream company

As part of their due diligence, the downstream company monitors reports of exploitation in their supply chains, and follows up on credible and actionable allegations with their audit programmes for investigation and follow-up action. If the audit programme substantiates an allegation, the downstream company uses its leverage over the audit programme and smelter/refiner to ensure that remediation takes place. It can also provide the financial support necessary for the implementation of remediation action plans (RAP).

Audit programme

The audit programme supports responsible mineral sourcing in the downstream company's supply chains, including through independent, third-party auditing of smelters and refiners. When they receive allegations of exploitation, they investigate and if allegations are substantiated, they identify an external remediation facilitator to work with the smelter/refiner to design, implement, and monitor the remediation action plans. They report back to the downstream company on the progress of the remediation action plans.

Smelter/refiner

The smelter/refiner can have a direct relationship with a mine, where exploitation is most likely to occur. More frequently, however, there are other intermediary actors in-between. The smelter/refiner initiates the process for corrective remediation action upon the audit programme's request, working closely with an external remediation facilitator. They report back on the RAP progress to the audit programme. They can also provide financial support for the implementation of remediation action plans.

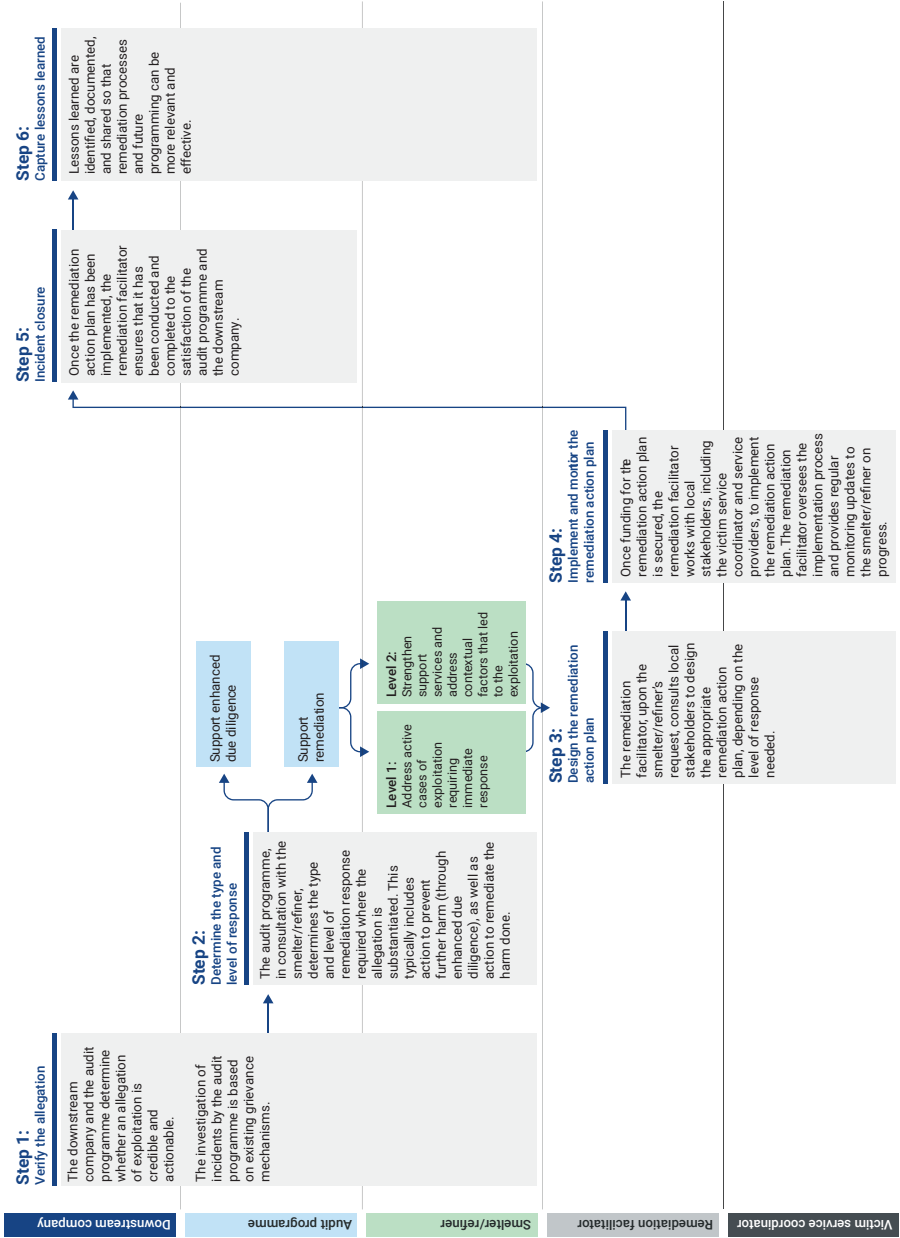
Remediation facilitator

The remediation facilitator is an entity with expertise in remediation for victims of exploitation, and a presence in the country where the incident has occurred. They advise and support the smelter/refiner to provide remediation. Acting as the entry point to the local service delivery system, they work with local stakeholders to design the most appropriate remediation action plan and they oversee the RAP's implementation and monitoring. They ensure that the smelter/refiner is kept regularly updated on progress. Depending on context and capacity, the remediation facilitator could be a local NGO, an international NGO, or a specialized international organization.

Victim service coordinator

Some instances require a specialized victim service coordinator in addition to the remediation facilitator. The victim service coordinator (or case manager) provides direct assistance and protection to the victim and coordinates between multiple service providers in the delivery of remediation assistance. They report to the remediation facilitator on all actions taken to support the victim, including on the action of other service providers. Case management and service delivery can be provided by State or local government authorities, law enforcement agencies, UN agencies, non-governmental or civil society organizations, and the private sector.

The Six-Step Operational Remediation Process



Step 1: Verify the allegation

Step 1 is carried out by the downstream company and the audit programme to determine whether an allegation of exploitation is credible and actionable. The investigation of incidents by the audit programme is based on existing grievance mechanisms.

Downstream companies should have their own internal procedures to review allegations of exploitation in their supply chain and to determine follow-up action for credible and actionable allegations:

- An allegation shall be deemed credible if it is reported by a trustworthy source, and if there is sufficient information to provide reasonable grounds to believe that a violation may have taken place. It does not mean that the allegation is true, only that it requires review and further investigation by the audit programme.
- An allegation shall be deemed actionable if it explicitly links to one of the downstream company's current or past supply chain partners.

If the downstream company determines that an allegation is credible and actionable, it notifies the relevant audit programme for further review and investigation. Allegations that are denied, or are credible but not actionable, shall be fully documented and closed.

Based on its grievance mechanism, and upon receipt of the downstream company's notification, the audit programme reviews and investigates the incident. In order to do so, the audit programme may seek the cooperation of the smelter/refiner.

If the allegation is substantiated, the audit programme further assesses whether the incident is linked to the smelter/refiner through past trading or current trading. This determines the type and level of response required in terms of risk mitigation and remediation (Step 2).

If the allegation is unsubstantiated, the audit programme informs the downstream company, so that the incident can be documented and closed.

While companies may work collectively to monitor and follow up on allegations through industry, multi-stakeholder or other collaborative initiatives, it does not absolve them from individual company responsibility to conduct due diligence in their individual supply chains.



Step 2: Determine the type and level of remediation response

Step 2 is carried out by the audit programme, in consultation with the smelter/refiner, to determine the type and level of remediation response required where the allegation is substantiated. This typically includes action to prevent further harm (through enhanced due diligence), as well as action to remediate the harm done.

If the allegation is substantiated, and irrespective of whether the incident is linked to the smelter/refiner through current or past trading, the audit programme works with the smelter/refiner to ensure enhanced due diligence. The design, implementation, and monitoring of corrective actions follow the audit programme's incident response process. This may require terminating the relationship with the mine operator or the entity that has been directly responsible for the harmful practices.

In addition, in cases where the allegation is substantiated, harm has occurred and remediation must follow. The process below goes beyond risk mitigation, and focuses instead on how to ensure practical assistance for the victims.

A remediation response can include actions at two levels:

Level 1: Addressing active cases of exploitation requiring immediate response

This requires collaborating with a remediation facilitator who works with the mine operator, the victims and other affected populations, appropriate case management entities and service providers, as well as upstream programmes (where available), to identify the individualized needs of the victim(s), the services needed, and to then implement and monitor the assistance provided. This may include, for example, working with law enforcement to remove a trafficked victim from a mine and providing him/her with protective services such as safe accommodation, health care, financial assistance, legal counselling, and reintegration into his or her community of origin.²¹

Level 2: Strengthening support services and addressing contextual factors that led to the exploitation

This requires collaborating with a remediation facilitator who then works with appropriate entities to analyze and address gaps in protection responses. This may include, for example, supporting an NGO that runs a shelter for children, some of whom have been trafficked for forced labour in mines.

This also requires collaborating with the remediation facilitator to analyze and address the conditions that led to the exploitation. In mining areas where sexual exploitation and trafficking of women and girls for sexual exploitation are prevalent, this may include, for example, distributing awareness

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²¹ See Chapter 2 for guidance on the range of assistance that should be available to victims.

raising materials among miners to discourage sex with minors. Level 2 responses typically require medium to longer-term approaches.

Different levels of remediation can be mandatory or recommended, depending on:

- i. whether the incident is linked to the smelter/refiner through current or past trading;
- ii. the severity of the incident;²² and
- iii. the time lapse between the incident and the moment when the smelter/refiner stopped trading with the supplier.²³

For cases of substantiated incidents linked to the smelter/refiner through current trading, Level 1 is mandatory, and Level 2 is recommended.

For cases of substantiated incidents linked to the smelter/refiner through past trading, the following two additional criteria will determine the level of response required: (1) the severity of the incident; and (2) the time lapse between the incident and the moment when the smelter/refiner stopped trading with the supplier.

The required level of response for different scenarios is shown in the matrix below:

		Level 1	Level 2
Current trading		●	○
Past trading	Recent and severe incident	●	○
	All other scenarios	○	○

- **Mandatory**
- **Recommended**

Once the type and level of response have been determined, the audit programme notifies the smelter/refiner for follow up remediation action, as necessary.



²² Severity is defined by the type of incident/violation. Human trafficking (for sexual exploitation and forced labour) and debt bondage, which are predominantly considered core violations in corporate codes of conduct for suppliers, are severe types of incidents. The severity of an incident is also defined by high occurrence of the incident (i.e. the number of incidents: the incident is not an isolated event, but happened repeatedly over a period of time), as well as the number of affected persons (the incident may have happened once only, but it affected a large number of people).

²³ Recent incidents are those that happened less than one year before the smelter/refiner stopped trading with the suppliers, vs. incidents that happened at least one year prior. Also, the smelter/refiner should have identified the issue and cut ties well before it became public. If this is not the case, trading should be considered current, and not past.

Step 3: Design the remediation action plan

Step 3 is carried out by the remediation facilitator, upon the smelter/refiner's request. The remediation facilitator consults local stakeholders to design the appropriate remediation action plan, depending on the level of response needed.

Any Level 1 or Level 2 remediation action plan should be based on a sound analysis of the situation on the ground, done in consultation with the mine operator, the victims and other affected populations, government and non-government actors, upstream programmes (where available), and other local experts.

Recognizing that the smelter/refiner is often not present, or familiar with, the country where the exploitation has occurred, nor has technical expertise in remediation, the smelter/refiner should contact a remediation facilitator to work with to facilitate the development of the appropriate remediation action plan. This is done in consultation with the concerned stakeholders.

Working with an independent and neutral expert as the entry point to the external remediation landscape is important to ensure that remediation efforts are supported by all concerned stakeholders, are appropriate and take into account possible risks of further harm and unintended negative consequences.

Depending on context and capacity, the remediation facilitator could be a local NGO, an international NGO, or a specialized international organization, such as IOM.

Level 1 remediation action plan: Addressing active cases of exploitation requiring immediate response

In Level 1 remediation, the remediation facilitator first identifies an appropriate victim service coordinator (or case manager) on the ground to ensure that assistance is provided to victims of trafficking. The victim service coordinator should be an organization already working with victims of exploitation in that area. Depending on the local context, the victim service coordinator could be a government body, such as a ministry, a local NGO or a community or faith-based organization, or an international organization.²⁴

If the case involves a situation where there is ongoing exploitation or there are additional victims, the remediation facilitator should work with the victim service coordinator, law enforcement and relevant government authorities to ensure that victims are removed from their exploitative situation and

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²⁴ In some instances, the provision of case management is regulated and case managers may belong to professional associations, such as social workers or legal advocates, or be appointed by the State, for instance through judicial or immigration processes.

then provided with assistance.²⁵

Immediate needs and initial support: The victim service coordinator should identify issues of immediate concern to the victim and ensure that services and assistance provided are designed in accordance with the victim's wishes, interests and participation. Initial support may include short-term accommodation, meals, some clothes, medical care, and counselling. The service coordinator should aim to help the victim achieve a normalized life and self-reliance, and take steps to avoid creating a dependent situation.

Case management planning: For Level 1 response, remediation action plan should include case management plans for any identified victims. The safe, dignified and effective reintegration of victims into society is at the heart of meaningful remediation. It is important that the victim service coordinator helps the victims to set realistic goals suited not only to personal needs, skills and qualifications, but also to the opportunities available in the country, region and place of residence where reintegration will take place, in accordance with the reintegration assessment. Furthermore, the reintegration plan must be based on actual services that service delivery organizations and upstream programmes where available, can provide.

As outlined in Chapter Two, a case management plan depends on the individual needs of the victims but in general should include the following types of direct assistance:

- Shelter and accommodation
- Medical and health care services and counselling
- Mental health and psychosocial support
- Legal assistance
- Financial assistance
- Return assistance
- Reintegration services

Service delivery: Case management plans are likely to include multi-disciplinary services as rarely a single service provider can

²⁵ In countries where it may not be possible to work with law enforcement for fear of putting the victim in a more precarious situation, the remediation facilitator should work through another government authority, or a UN entity on the ground, to ensure cases are reported and properly investigated by law enforcement agencies and the victim can be taken out of the situation of exploitation. Companies should work with their legal team and familiarize themselves with local reporting requirements on suspected cases of human trafficking to law enforcement under national laws.

meet all the needs of a victim. As such, coordination is essential to ensure continuity of services and a holistic approach to addressing needs, as well as the sustainability of reintegration mechanisms. Some assistance may be provided directly by the victim service coordinator but many services may need to be provided by other organizations, including government entities, NGOs, international organizations, upstream programmes, and the private sector. Similarly, the monitoring of the remediation action plan will need to be handled by an organization within a location that the victim can access with ease.

In cases of child victims, special attention has to be given to the reintegration assistance of minors based on the best interest of the child, ensuring the consent of the legal guardian and sufficient information and counselling of the child and/or the guardian. The victim service coordinator should either be a specialized organization or government entity, or work closely with an organization specialized in the protection of child victims.

Example 1

Medical and health care services: Evidence around trafficking shows that nearly all victims of trafficking experience health problems due to the abuse they have suffered. To ensure a successful reintegration process, the victim's physical and mental well-being must be considered a priority. Without addressing the health issues, particularly mental health issues, it is near impossible to help the victim on the path to recovery. If long-term follow-up medical treatment is needed, the service coordinator should organize treatment at appropriate institutions located within easy access for the victim. As with all assistance, this should be administered only on the basis of an informed decision taken by the victim.

Example 2

Vocational training: Service delivery organizations should assist adult victims to set realistic employment goals commensurate with their abilities, skills and education level, and the available employment opportunities in the area. Vocational training, particularly with the youth older than 17 who have been out of schooling for a significant time, is an important element to be included in reintegration plans as it helps to ensure the sustainability of the social reintegration by increasing victims' chances for gainful employment and increasing their confidence and general life skills. Vocational training should be voluntary, teach the necessary skills to find employment, and be offered on a case-by-case basis in accordance with a comprehensive reintegration assessment. Vocational training is often offered by, or in cooperation with, NGOs, educational institutes, charitable organizations, community and faith-based groups, or government partners.

Example 3

Micro-enterprises and income-generating activities: Victims of trafficking typically face immediate economic hardship on their



return home, either because of the harsh economic conditions in the country, personal debt, and/or lack of professional and practical skills. Such difficulties heighten mental health issues including anxiety and depression. Income-generating activities and grants for the creation of micro-enterprises can be an effective means to increase the victim's independence and self-reliance. Small income-generating activities can help in this regard by strengthening the victim's self-confidence and autonomy and increasing the family income. To be effective, income-generating projects often need to be integrated into and supported by other protection and reintegration components, such as psychological assistance and vocational training. As always, a victim's personal and situational assessment is to be assessed to match the skills with existing opportunities in the local labour market. Most victims of trafficking will require more than just capital in order to successfully start and maintain a business. Assistance for micro-enterprises usually includes business plan training, micro-enterprise management training, and access to in-kind grants. Micro-enterprise programmes can also be complemented by an apprenticeship programme or vocational training.

Example 4 **Repayment of recruitment fees:** The payment of recruitment fees to unscrupulous recruitment agents or agencies may put migrant workers in a situation of debt bondage. Where companies come across workers in debt bondage due to recruitment fees, the repayment of such fees can be key to their long term recovery as it relieves them of the financial and emotional stress of such debt. Some downstream companies do not allow any fees to be charged to workers for recruitment; they already require their suppliers to repay all recruitment fees back to the workers.

Level 2 remediation action plan: Strengthening support services and addressing contextual factors that led to exploitation

Similar to Level 1 RAPs, Level 2 RAPs require collaboration with appropriate entities and experts on the ground to analyze gaps in responses and efforts, and/or assess the conditions that led to the exploitation. Upon request by the smelter/refiner, the remediation facilitator consults with local stakeholders such as the affected communities, governmental, non-governmental organizations and/or international organizations to identify initiatives that (i) strengthen support services, and/or (ii) address contextual factors that led to the exploitation or rights violations. Level 2 RAPs should identify clear results to be achieved, that are realistic, time-bound and measurable.

Example 1 **Skills development programmes for at-risk populations:** Evidence shows that workers with skills –and particularly soft skills– are better able to protect themselves against abuse



and exploitation. In areas where mining is prevalent and often the source of employment, companies can support skills development programmes that enhance both hard and soft skills of prospective and actual workers in order to meet the needs of the existing labour force as well as meet the demand of the labour market. Supporting skills development programmes has proved effective in addressing the vulnerability of low skilled workers to protect themselves against abuse.

Example 2 **Capacity-building for teachers on the effects of exploitation:** Children look to their teachers for guidance, and therefore educating the teachers of at-risk children about the devastating impacts of child trafficking can be key to preventing it from happening in the first instance. This can be done through professional development opportunities for teachers and educators in mining areas, through peer learning, sharing of best practices, and consulting vulnerable workers and their families in the design and delivery of training curricula.

Example 3 **Prohibit the payment of recruitment fees by migrant workers:** Some of the leading downstream companies have adopted policies to make sure that workers in their supply chains do not pay any fees for their recruitment and deployment – rather these costs are covered by the employer. While this may initially appear to be a more expensive option for companies, it needs to be considered within the context of risk management and can prove to be more cost efficient in the long-term. For example, if an unethical recruitment agency provides a worker that is not suitable for the company (does not have the required skills set for example), then there will be additional costs for the company in repatriating the worker, and then recruiting a replacement worker.

Example 4 **Implement programmes to address children who are left behind due to working parents:** Parents who work in mines all day sometimes leave their kids behind (alone or with caregivers) or worse, they bring the children with them to the work site, making them extremely vulnerable to abuse. There is increasing evidence that highlights the harmful effects on the health of children and caregivers left behind. Interventions to address the vulnerability of these children and caregivers could include supporting health promotion initiatives.

Level 1 and Level 2 RAPs need to be costed. The remediation facilitator works with the relevant stakeholders to determine the budget required to implement the RAP. The remediation facilitator submits the final RAP to the smelter/refiner, who then submits the RAP to the audit programme for review and approval.



Step 4: Implement and monitor the remediation action plan

Once funding for the remediation action plan is secured, the remediation facilitator works with local stakeholders, including the victim service coordinator and service providers, to implement the RAP. The remediation facilitator oversees the implementation process and provides regular monitoring updates to the smelter/refiner on progress.

After the RAP has been designed and approved, the remediation facilitator works with the smelter/refiner to mobilize funding, which could come from the smelter/refiner, the downstream company, other partners affiliated to the audit programme, and possibly government and development partners.

Once funding is secured, the remediation facilitator works with local stakeholders to implement the RAP.

For Level 1 RAPs (Addressing active cases of exploitation requiring immediate response), the key issues to be resolved during implementation and monitoring include: victim safety and on-going reintegration support, medical and psychological screening and care, and legal counselling for victims on their criminal and civil court options. It is not enough to simply refer the case to a service coordinator on the ground; there should be follow up and monitoring of the case to ensure that the victim is being appropriately assisted. The victim service coordinator should monitor the activities of the organizations to which they refer victims for assistance in order to ensure the effectiveness and the quality of the services provided.

Details on the support provided by the victim service coordinator should be documented in a timely, accurate, and secure manner. Documentation should include contact details of all stakeholders involved, information on assessments, the assistance plan, information on the monitoring of the case management plan, outcomes of communications with the victims and service providers involved in the assistance plan, feedback from the victim, and any other pertinent information.

For Level 2 RAPs (Strengthening support services and addressing contextual factors that led to exploitation), any initiative aimed at addressing the vulnerability of at-risk populations or strengthening protection efforts should also be well-documented and monitored. Level 2 RAPs should define clear expected results that can be monitored and measured over time using quantitative or qualitative performance indicators. Monitoring of these performance indicators may include site visits to such initiatives or independent assessments or evaluations to ensure implementation and effective use of resources. Monitoring of wider-scale community initiatives should also include interviews with beneficiaries, local community leaders, and local government.

The smelter/refiner should keep the audit programme updated on the progress of implementation through regular monitoring reports prepared by the remediation facilitator, taking into account privacy and data protection principles. It is recommended that monitoring and reporting take place for six to twelve months post the start of the RAP's implementation, after which closure of the incident can move forward.

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Step 5: Incident closure

Step 5 ensures that the remediation action plans have been conducted and completed to the satisfaction of the audit programme and the downstream company.

Once the remediation action plan has been implemented, the remediation facilitator sends a final report to the smelter/refiner, who shares it with the audit programme to ensure appropriate closure of the incident.

- For closure of Level 1 RAPs, the smelter/refiner should document that the case has been referred to the appropriate victim service coordinator, based on the confirmation provided by the remediation facilitator. The date of the referral and a brief summary of the assistance provided to the victim should be shared with the audit programme, adhering to privacy and confidentiality principles. The summary could include a short description on the monitoring reports regarding the victim's level of integration and satisfaction with the assistance provided. It should also include a financial report that respects privacy principles.
- For closure of Level 2 RAPs, the main outcomes should be documented and verified, demonstrating how activities were completed in a timely manner and as per the budget, and that the plan's objectives were met. This would also include documentation of the monitoring process. Further, a financial report detailing the expenditures of any contribution to fund the RAP should be included as part of the closure process.

Once the audit programme has verified that the RAP has been satisfactorily completed, they submit a closure report to the downstream company, along with a recommendation that the incident be closed.

Step 6: Capture lessons learned

Step 6 ensures that all stakeholders identify, document, and share lessons learned so that remediation processes and future programming can be more relevant and effective.

While capturing lessons learned should be an on-going effort throughout the remediation process, it is advisable as part of the closure of an incident to identify, document, analyze, and share lessons learned and good practices. This will help improve management processes, and ensure that future remediation programming is more relevant and effective. If not captured, then valuable experience is lost by the key stakeholders, including downstream companies and audit programmes.

Lessons learned should include reviewing the following: whether RAP objectives were met; whether the victims were satisfied; whether the communities benefited; whether the budget was sufficient; whether there were challenges and how those challenges could be addressed in future RAPs; identification of risks and various mitigation strategies for such risks; effective monitoring tools; useful communication channels; and recommendations to improve future RAPs and remediation processes.

The learnings from the incident should also be captured within overall compliance systems so that downstream companies and their business partners can take the appropriate steps to revise due diligence and management policies and systems, and other preventive actions. This will help ensure that similar incidents can be prevented in the future.

Capturing, documenting and discussing lessons learned in a transparent and open way will benefit future programming. It will create stronger and more relevant remediation processes for all those stakeholders along the mineral supply chain, and ultimately benefit those that face the greatest vulnerability and risk in the mineral supply chain: victims of trafficking and associated forms of abuse and exploitation.

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Conclusion

In recent years, there have been many reports of workers in supply chains being abused, exploited and even trafficked. Therefore, the expectation that businesses should carry out due diligence to address adverse impacts has grown considerably. Companies operating globally are expected to carry out due diligence on their own operations and on their supply chains to identify, prevent, mitigate and account for adverse impacts, including impacts on the human rights of workers.

The OECD Due Diligence Guidance, which aligns with the UN Guiding Principles on Business and Human Rights, calls on businesses to conduct due diligence on their operations and throughout their mineral supply chains to identify, prevent and mitigate actual or potential adverse impacts in relation to matters covered by the Guidelines, and to account for how adverse impacts are addressed.

Both the OECD Guidance and the UNGP include the expectation that companies “provide for or cooperate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.” This means that businesses not only have a responsibility to prevent human rights abuses, but also to ensure that remedies are available to victims where harm has occurred.

While progress has been made on supplier due diligence to assess and mitigate risks of human rights abuses, remediation for victims remains a new area of work for the private sector. As a result, little guidance has been developed on what constitutes appropriate remedy for various circumstances.

These guidelines go beyond due diligence; they provide practical guidance to companies on how to take incidents forward when victims have been identified in the supply chain.

They have been developed specifically for downstream companies in mineral supply chains. However, the approach described by the guidelines can be also applied to upstream actors and other sectors. It is our hope that they will serve as a starting point for all companies wishing to initiate or expand their remediation work.

The guidelines do not require companies to set up new mechanisms to provide remediation. Wherever possible, they encourage businesses to get to know and rely on existing mechanisms and actors that already support remediation in a particular context. These can include State and non-State actors, as well as international organizations, who seek to assist victims of trafficking, forced labour, and child labour.

In some cases, low capacity, limited financial resources, or lack of political will can constrain service delivery to victims. Existing remediation mechanisms may not be fit-to-purpose; they may not be seen as legitimate by workers, or are simply inaccessible to migrants. In these situations, it is important that downstream companies and partners along their supply chain support or reinforce existing mechanisms – by delivering services directly to victims, providing financial support to local actors or building their capacities. The guidelines recommend ways that companies can work with partners on the ground to this end.

The guidelines have not yet been widely tested in practice. Once they have been used by different companies in different sectors and countries, they will be updated to reflect lessons learned and good practices.