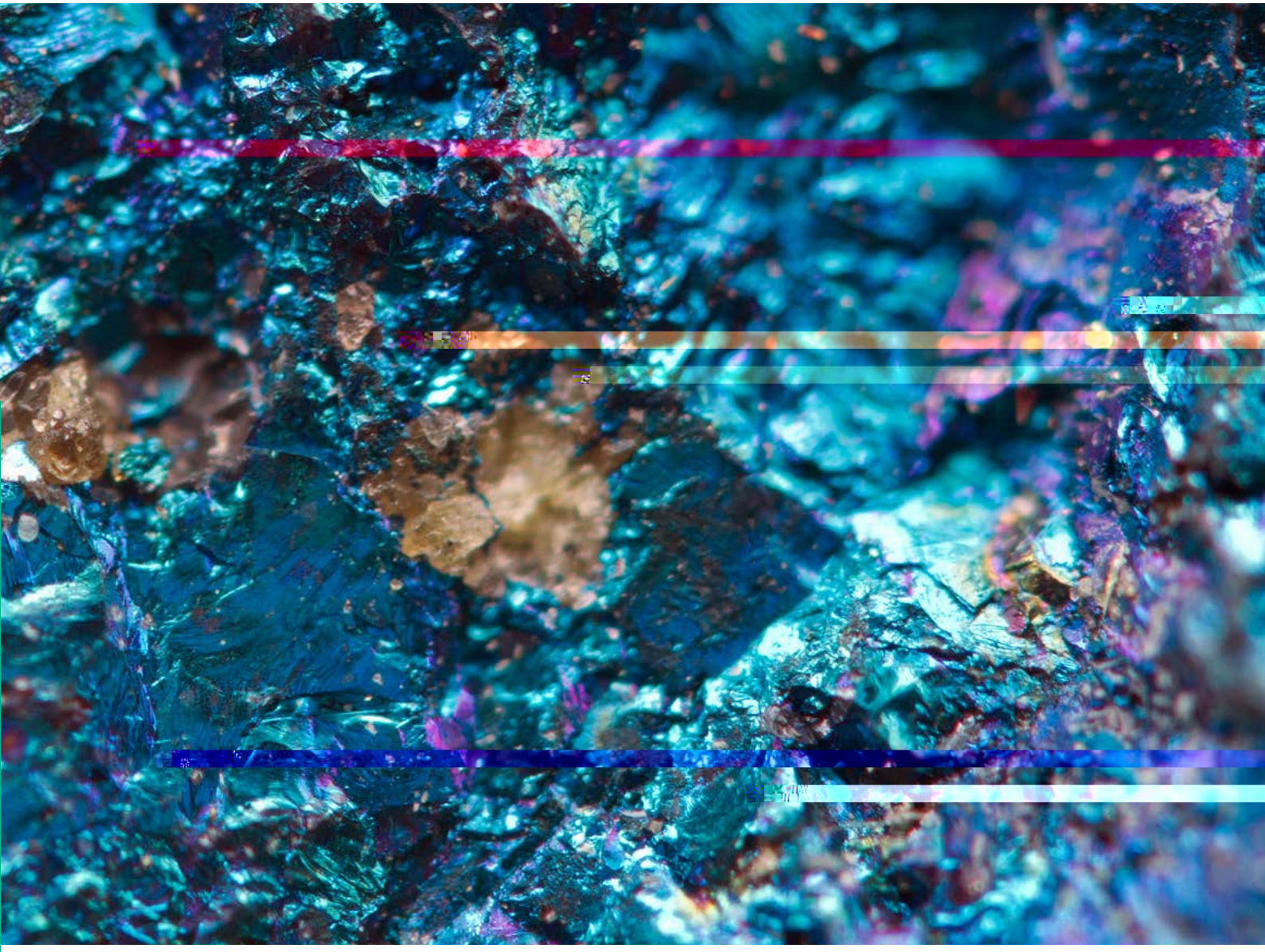
Practical actions for companies to identify and address the worst forms of child labour in mineral supply chains



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Foreword

Practical actions for companies to identify and address the worst forms of child labour in mineral supply chains (hereafter, Practical Actions) is for use by companies to help them identify, mitigate and account for the risks of child labour in their mineral supply chains. It has been developed to build on the due diligence framework of the *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas* (hereafter, the OECD Due Diligence Guidance).

The OECD Due Diligence Guidance recommends that upstream and downstream companies involved in mining and trade in minerals from conflict-affected and high-risk areas (Box 1) implement a comprehensive supply chain due diligence risk framework in order to respect human rights and not contribute to conflict through their sourcing decisions.

The *Model Supply Chain Policy for a Responsible Global Supply Chain of Minerals from Conflict-Affected and High-Risk Areas*[1] of the OECD Due Diligence Guidance identifies the worst forms of child labour as a serious human rights abuse associated with the extraction, transport or trade of minerals that companies should not tolerate, profit from, contribute to, assist with or facilitate in the course of doing business.[2] The OECD Due Diligence Guidance recommends that companies at all stages of mineral supply chains commit to eradicating the worst forms of child labour from their supply chains.

To date, there is little detail available to upstream and downstream companies on how to implement their respective due diligence of the child labour-related risks of the OECD Due Diligence Guidance. These Practical Actions draw on publications by the OECD, the United Nations, the International Labor Organization (ILO), the US Bureau of International Labor Affairs (ILAB), the International Organisation of Employers (IOE), and UNICEF to help companies integrate due diligence on the risk of the worst forms of child labour into their supply chain operations.

Table of contents

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Step 1. Establish strong company management systems 16
Step 2. Identify and assess for risks, including the worst forms of child labour 21
Step 3. Design and implement a strategy to respond to identified risks 31
Step 4. Carry out independent third- 39
Step 5. Report annually on supply chain due diligence on the worst forms of child labour ... 40

Annex I: Relevant international legal standards 47

Annex II: List of Resources (non-exhaustive) 50

Tables

1. Selected common mining and quarrying tasks, hazards and consequences 12
2. Types of information for upstream companies risk assessments 23
3. Risk indicators and potential data sources for companies 27
A.1. Definitions of child labour 48

1. Business leverage and due diligence expectations 38

1. Definition of conflict-affected and high-risk areas 4
2. Questions to check that strong management systems are in place 20
3. Conducting business partner due diligence 26
4. Child labour and artisanal and small-scale mining 34
5. Working with stakeholders in country intentional 36

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- Not all work by children is child labour[3], and not all child labour falls under the internationally recognised legal definition of the

  (see Annex I of this document) occur in mining. These activities include work underground or under water, work with dangerous machinery and tools, carrying heavy loads and work that exposes miners to hazardous substances. Children who work for third-party adults have a high risk profile when it comes to other issues such as child trafficking or the risk of sexual abuse, especially for girls. Sexual and physical abuses also covered under the definitions of worst forms of child labour are also prevalent in mining work. Table 1 provides a list of hazardous work activities in mining. Many experts note that there is very little, if any work in mining that would not be considered hazardous.

- ILO Convention No. 138, the Minimum Age Convention[4] sets the minimum age for work for children at 15,[5] and provides a range of protections to those working children.[6] The minimum age of 15 only applies to work that is not defined as one of the **worst forms of child labour**, including hazardous work, which is prohibited for persons below the age of 18. Annex I of this document provides more information on minimum ages and international laws.

- The ILO estimates the global number of children in child labour at 168 million children. Of this number, about **1 million children are working in mining or quarrying** in gold, tin, coal, diamonds, gems, stone and salt mines and the number is increasing.[7] Almost all child miners work in artisanal, small-scale informal mines.[8]

- Of all forms of hazardous work, mining is by far the most hazardous sector for children with respect to fatal injuries, with an average

fatality rate of 32 per 100,000 full-time worker equivalents (FTEs) for children between ages 5 and 17 years, in comparison to fatality rates of 16.8 and 15 per 100,000 FTEs in agriculture and construction respectively.[9] The United States (USDOL) 2016 List of Goods Produced with Child Labor or Forced Labor (TVPRA)[10] features 139 goods in 75 countries that USDOL has reason to believe are produced by child or forced labour; 29 of these goods are in minerals and quarrying.[11] According to the TVPRA list, child labour in gold was prevalent in Bolivia, Burkina Faso, Colombia, the Democratic Republic of the Congo, Ecuador, Ethiopia, Ghana, Guinea, Indonesia, Mali, Mongolia, Nicaragua, Niger, Nigeria, North Korea, Peru, Philippines, Senegal, Sudan, Suriname, Tanzania and Uganda.[12]

- ILO 182 - The Worst Forms of Child Labour Convention[13] 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
  - 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
- The prohibition against the worst forms of child labour is among the most well-established international human rights norms on the basis of near-universal ratification of the relevant ILO standards (ILO Convention 182 - Worst Forms of Child Labour Convention and ILO Convention 138 Minimum Age Convention) by Member States. Both conventions are also referenced in the ILO Declaration on Fundamental Principles and Rights at Work, which means that even member States that have not ratified these Conventions are expected to respect, promote and realise the principles.[14] Companies also have a responsibility under international law to respect the rights laid out in both Conventions 182 and 138 to address all forms of child labour.

- Child labour in mining is to a great extent caused by poverty. The economic drivers of child labour are complex and can include a

  small-scale mining offers quick cash returns for limited/low skill work. Poor quality of education, a far distance to school, and barriers such as having to pay for school, also contribute to increased rates of child labour. The long-term solutions to the worst forms of child labour lie in sustained economic growth leading to social progress, in particular poverty alleviation and universal education.

- enforce child-labour laws, monitor, and stop child labour greatly contributes to the prevalence of child labour in a particular context.[15]

Table 1. **Selected common mining and quarrying tasks, hazards and potential consequences**

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The OECD Due Diligence Guidance recommends that all companies in the minerals supply chain conduct risk-based due diligence to respect human rights and avoid contributing to conflict through their sourcing decisions. As an initial step, companies are recommended to understand if child labour is generally prevalent in their supply chains as this can be an indicator for the worst forms of child labour.

The OECD Due Diligence Guidance provides specific guidance to companies depending on where they operate along the mineral supply chain to support complementary and reinforcing due diligence actions in accordance with the complexity of the business relationships, company visibility into conditions of mining and trade, as well as company leverage.

The OECD Due Diligence Guidance recommends that all companies establish a system of control and transparency over the minerals in their possession. Upstream companies should set up on-the-ground assessments teams to conduct fact-based investigations on circumstances of mineral extraction, trade, handling and export from conflict-affected and high-risks areas. Downstream companies should focus on identifying the smelters and refiners in their supply chains, and assessing the due diligence practices of these smelters and refiners.

Any measures to address the worst forms of child labour should seek to avoid pushing the child into another situation of child labour, including the minimum age violation in accordance with ILO Convention No. 138. For further information on international laws on child labour please see Annex I of this document.

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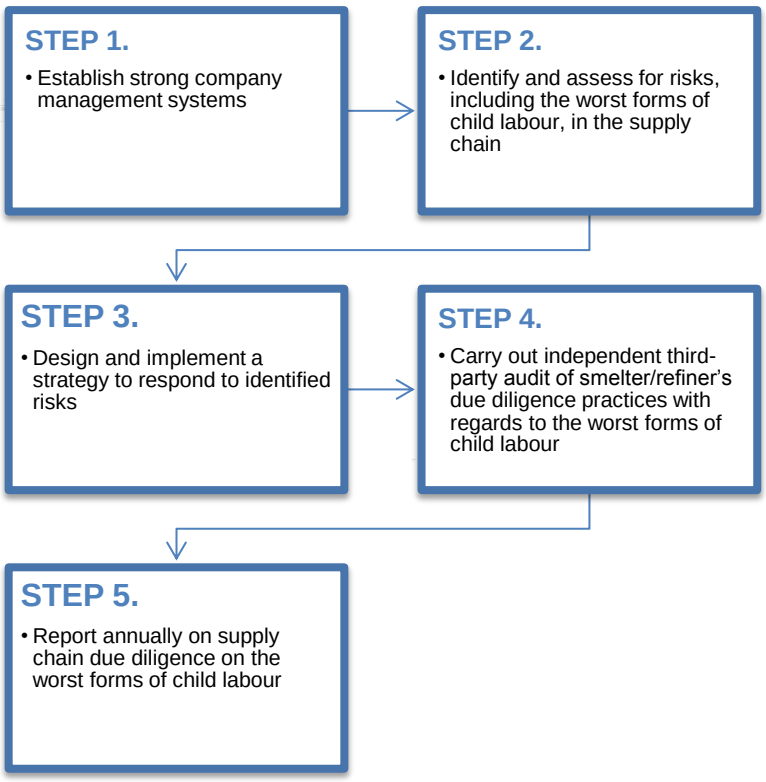
This section includes enhanced due diligence measures for companies applying each step of the five-step framework for due diligence included in the OECD Due Diligence Guidance to identify, assess and mitigate the worst forms of child labour.



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1.1 Policy commitment. When adopting a policy commitment regarding child labour, the OECD Due Diligence Guidance recommends that all companies articulate their public commitment, including

- Inclusion of trained staff knowledgeable about the issues of child labour and the complexities of how best to mitigate and address child labour, and how to integrate this into systems and procedures.

- Ensuring the availability of resources necessary to support the operation and monitoring of processes as highlighted in the OECD Due Diligence Guidance. For example, management commitment to provide capacity building and training to staff to ensure the appropriate level of competence and knowledge about the issue of child labour to develop a comprehensive programme to eradicate the worst forms of child labour in the minerals supply chain.

- Upstream companies who are at risk for causing or contributing to the worst forms of child labour can, for example, develop a child protection Code of Conduct for all employees to sign and take disciplinary measures against any employees violating this code.

- Downstream companies should use their best efforts to identify the refiners/smelters in their supply chain and have documentation and/or systems in place to demonstrate that the refiners/smelters they are sourcing from are conducting due diligence in line with the OECD Due Diligence Guidance and that the minerals are from legitimate sources and not the product of child labour. Examples of documentation which downstream companies can obtain from upstream companies include reports generated by upstream on-the-ground assessment teams and copies of smelter/refiner due diligence audits in line with the OECD Due Diligence Guidance.

- Companies can also consider how they can help strengthen supplier capacity, particularly SME suppliers, to conduct effective due diligence on child labour (especially the worst forms of child labour) risks.

1.4 Establishing a system of controls and transparency. To adequately identify and assess the risks in their mineral supply chain, the OECD Due Diligence Guidance recommends that all companies (both upstream and downstream) establish a system of controls and transparency over their mineral supply chain. A system of controls and transparency can be either a chain of custody (document driven) system or a traceability scheme, or the identification of upstream actors in the supply chain. The implementation of a system of controls and transparency may be company-driven or conducted through an industry programme aligned with the OECD Due Diligence Guidance.[19] If a company decides to establish a system of

controls via an industry scheme or other forms of collaboration, individual responsibility for due diligence still remains with the company.

- For upstream companies, this system can be a chain of custody system or a traceability system.

– Upstream companies operating in areas dominated by informal artisanal and small scale mining, it is recommended that the initial focus be on establishing a basic chain of custody system with appropriate documents and reports versus a detailed traceability system (e.g. certification/bagging and tagging or other)

– Recommended documents to collect include information on mine of origin, certificates of origin, quantities of mined minerals, tax receipts (fees, royalties paid), and ownership information. For a full list of recommended information to collect and disclose please refer to Step 1C of the OECD Due Diligence Guidance.[20]

– Recommended documents include reports from upstream on-the-ground assessment teams which provide verifiable, reliable, up to date information on the qualitative circumstances of mineral extraction, trade, handling and export.

– Upstream companies are recommended to make all information gained and maintained pursuant to the due diligence standards of the OECD Due Diligence Guidance available to downstream purchasers and auditors and to any institutionalised mechanism in place to collect and process information on minerals from conflict-affected and high-risk areas.

- For downstream companies efforts should focus on:

– The identification of actual or likely refiners/smelters in the mineral supply chain, and if the smelters/refiners are sourcing from informal or informal mines.

– The countries and regions they actually or are likely to source from, and if upstream actors have conducted due diligence for the risk of the worst form of child labour as recommended in the *Guiding Note for Upstream Company Risk Assessments*, found in the Appendix to the Supplement on Tin, Tantalum and Tungsten in the OECD Due Diligence Guidance.

– The OECD Due Diligence Guidance recommends that information collected by downstream companies be maintained for a minimum of five years, preferably on a computerised database.

1.5 Supplier contracts or written agreements. It is important that suppliers understand that their customers are serious about addressing child labour including the worst forms of child labour and that those found in breach of company policy will face consequences. The OECD Due Diligence Guidance recommends that companies incorporate due diligence provisions into supplier contracts or some form of written agreement. Child labour specific contractual or written provisions in line with national and international law may include for example types of data disclosure that will be needed in order for the company to assess if the risk of the worst forms of child labour is prevalent. In addition it is encouraged that:

- Contracts with suppliers clearly communicate customer expectations and can have specific provisions on child labour, including the worst forms of child labour, and define penalties for breaches.

- Companies take steps to ensure that their suppliers and their staff (beyond procurement and legal) are fully informed of the contractual obligations and regularly assess that suppliers understand the policy and are complying with the policy. This can be done in-person, over the phone or during inception meetings to draw key points of the contract.

- Companies state that their suppliers should not employ on a permanent or casual basis children under the age of 18 in any hazardous work and encourage suppliers to implement an age verification system in hiring any new employees to prevent the use of child labour.

- Companies ask their suppliers to share their policies on child labour, and verify that it includes the risk of the worst forms of child labour and describes mitigating steps that the company will take to address child labour and the worst forms of child labour.

- Where a company sources from a supplier where child labour (notably the worst forms of child labour) are a risk, they consider including contractual language to undertake unannounced second or third party visits of the suppliers activities.

Box 2. **Questions to check that strong management systems are in place**

- Is responsibility for function? Is staff trained in understanding the issues of child labour and is there a commitment from management to support continued learning? Does management/staff consult experts in the region to understand the local context?
- Is there a written policy commitment against child labour in the supply chain? Does the policy explicitly reference the mining level? Does the policy reference international standards such as the UN Convention of the rights of the child and ILO Convention No. 138 on minimum age for admission to employment and ILO Convention No. 182 on the Worst Forms of Child Labour?
- Is there a process in place to identify and prioritise which parts of the supply chain could be at risk for child labour impacts?
- Does the company permit safe work for children above the minimum age, if such work exists?
- Are there procedures in place to verify the age of employees and maintain records?
- If child labour is found, is there a remediation programme in place to address it? Does the remediation programme include collaboration or coordination with other stakeholders such as the government or community actors? (*Note: Any remediation steps should take account of the impact on the well-being of the children concerned, so that children do not end up in similar or worse forms of child labour*)
- Does the policy make clear the company business partners and other parties directly linked to its operations, products or services?
- How is the policy incorporated and embedded in business relationships (e.g. with suppliers including ASM enterprises, joint venture partners, customers)?

Source: Adapted from Responsible Jewellery Council, Standard Guidance on Child Labour (2013) and ILO-IOE Child Labour Guidance Tool for Business (2015)

STEP 2

2.1 Supply chain position. With regards to identifying and assessing for the risks of child labour, including the worst forms of child labour, the OECD Due Diligence Guidance recommends that upstream companies focus on on-the-ground assessments for red-flagged mines sites, trading routes and business partners, while downstream companies focus on identifying the smelters/refiners in their supply chain and assessing the smelter/refiner level due diligence, including their on-the-ground efforts.

2.2 Upstream companies (i.e. mineral producers including artisanal and small scale enterprises[21], medium or large scale mining companies, buyers, local traders/exporters, international concentrate traders, mineral re-processors and refiners/smelters). The OECD Due Diligence Guidance recommends that:

- Upstream companies use an **evidence-based approach**[22] to assess the risks of the worst forms of child labour in their supply chain. Upstream companies may individually or collaboratively map the [23] supply chains and establish on-the-ground assessment teams to find verifiable, reliable, up-to date evidence on the qualitative circumstances of mineral extraction, trade, handling and export. On-the-ground assessments, including site visits, can be carried out by a local partner or through collaborative initiatives. Upstream companies should ensure that the on-the-ground assessment is independent, credible and robust. See Table 2 for types of information that upstream company may gather in order to assess their supply chains.

- Local exporters, international concentrate traders and mineral re-processors in the supply chain facilitate the assessment teams access

  diligence practices and respond to requests for assistance.

- Information provided to assessment teams include access to cross-border transporters and sites in neighbouring countries or other countries; access to all books, records and or other procurement practices to identify if the minerals are sourced from areas at risk for the worst forms of child labour and document the factual circumstances of how the minerals have been produced.

- Smelters/ identify relevant personnel to act as contact points for the assessment team and allow for the auditing of their due diligence practices by independent third parties, including through an institutionalised mechanism.

- Mine site visits and unannounced monitoring form part of refiners and smelters, as well as those companies with an operations presence in mineral producing countries, risk-based management plans. The OECD Due Diligence Guidance recommends that supply chain information be collected and updated regularly, and that validated information be integrated into supply chain transparency systems.

- Upstream companies provide the results of their risk assessments to their customers to promote transparency in the supply chain and enable due diligence actions to be implemented. Under the OECD Due Diligence Guidance, upstream companies should collect supply chain information including, for example, mine site information (if minerals come from artisanal and small-scale mines); the conditions under which the minerals have been mined, transported or processed; if any serious abuses of human rights have occurred in the mineral extraction, transport, processing or trade of the minerals, etc.

- For further information, upstream companies should refer to the *Guiding Note for Upstream Company Risk Assessments*, found in the Appendix to the Supplement on Tin, Tantalum and Tungsten in the OECD Due Diligence Guidance and the OECD *FAQ on Responsible Supply Chains in Artisanal and Small-Scale Gold Mining.*

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2.3 Downstream companies include all companies downstream of the refiner/smelter level, including metal traders and exchanges, component manufacturers, product manufacturers, original equipment manufacturers (OEMs), bullion banks and exchanges, jewelry manufacturers and retailers.

- The OECD Due Diligence Guidance recommends that downstream companies identify, to the best of their efforts, the smelters and refiners in their minerals supply chain and assess the

  identifying, preventing and mitigating Annex II risks of the OECD Due Diligence Guidance, which includes the worst forms of child labour. Companies should refer to Step 2 Section IIC of the Sup

how to assess the due diligence practices of their smelters and refiners against the OECD Due Diligence Guidance.

- Recognising the challenges posed by multiple levels of the supply chain and the indirect nature of the relationship, downstream companies may collaborate with other companies including refiners and smelters and/or stakeholders in the supply chain, to gather information and conduct due diligence in line with the OECD Due Diligence Guidance. Downstream companies are encouraged to consider how they can assist their SME suppliers with understanding what is being asked of them and how they can collect that information, for example through knowledge sharing, tool development, and capacity building.

- The OECD Due Diligence Guidance recognises that control mechanisms based on tracing minerals in a
can be more challenging after smelting, particular in supply chains that are not part of a closed-pipe system. Because of these practical difficulties, downstream companies are recommended to establish internal controls over their immediate suppliers and coordinate efforts through industry-wide initiatives to build leverage over sub-suppliers, including smelters and refiners, overcome practical challenges and implement the recommendations of the OECD Due Diligence Guidance.

Box 3. **Conducting business partner due diligence Downstream companies**

Business partner due diligence refers to the identification of potential and actual child labour impacts linked to an individual business partner. This is particularly useful for downstream companies who are not directly causing or contributing to child labour impacts, but are linked to these impacts via a business relationship. Business partner due diligence should be tailored to the context. In contexts in which child labour is primarily supply-driven, (i.e. under-age children actively seek employment) business partner due diligence may seek to evaluate the *capacity* of the supplier to identify and mitigate child labour. Conversely, in contexts in which businesses actively recruit and employ children, business partner due diligence may include an assessment of *how* and *why* suppliers recruit and hire children. Companies are encouraged to understand these drivers even in cases in which instances of child labour are not identified on-site.

Business partner due diligence with respect to child labour, may include the following:

- Asse and how this is enforced along the supply chain.
- mechanisms to ensure that children under the legal age are not employed directly or as part of the supply chain.
- Identify instances where child labour was identified by supplier and what remedial action was taken.

As with recommendations to upstream companies, staff conducting business partner due diligence for downstream companies will be more effective in their due diligence if they are familiar with the operating context, knowledgeable about child labour, and preferably, already possessing a network of community contacts.

2.4 Indicators to assess risk. Companies may consider the following indicators as they analyse and monitor their minerals supply chains for the risks of the worst forms of child labour. There are various sources of data (See Table 3) which companies can consult to build knowledge about child labour, including the worst forms of child labour, and the conditions of minerals extraction and trade in their supply chains. For a non-exhaustive list of child labour resources please see Annex II of this document.

Table 3**. Risk indicators and potential data sources for companies**

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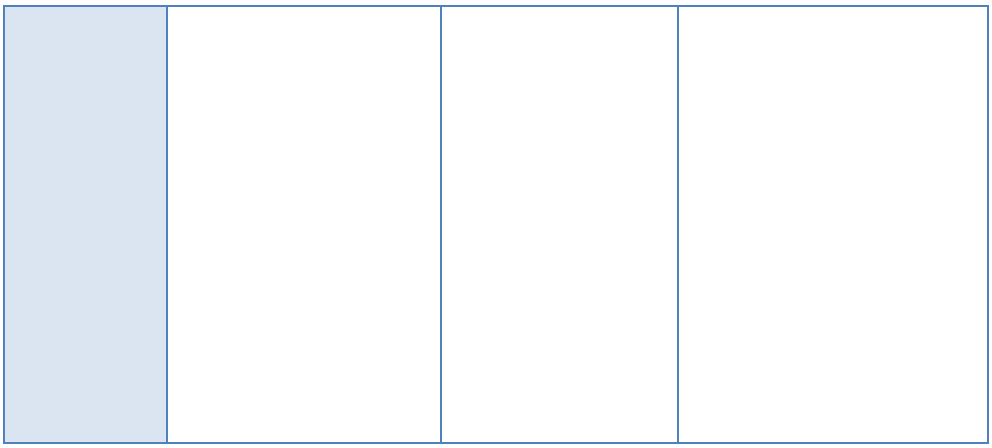

2.5 Monitoring. The OECD Due Diligence Guidance recommends that assessments and monitoring of risks, including child labour risks, be conducted regularly. Companies (both upstream and downstream) are responsible for their own due diligence but may coordinate with other companies and stakeholders to ensure effective monitoring. Companies can also stay informed of reports on child labour and assessments conducted by local and international NGOs, local media and government agencies, and investigate credible allegations of child labour reported.

- Companies with a presence on the ground, can, for example, conduct mine site visits on a regular basis. These visits can include a combination of expected and unannounced checks. Many children try to combine school and working at the mines. Monitoring can also target common periods when children are at the mine such as after school, during the weekend, and during school vacations.

- Companies can collaborate with local authorities, community-level child monitoring programs and other relevant stakeholders on the ground. An example of a collaborative model which could be replicated in monitoring for child labour risks is the *Comite Local de Suivi* (CLS) and the *Comité Provincial de Pilotage* (CPP) in the DRC and Rwanda. Another supply chain initiative that includes community-based monitoring is the International Cocoa Initiative.

2.6 Grievance mechanisms. Children may not always be able to access grievance mechanisms themselves. Grievance mechanisms therefore in addition to being child-friendly and accessible to children can be accessible to those who can raise incidences on behalf of the children, such as committees tasked with monitoring child labour, parents, teachers,

community leaders, trade unions, community members, staff who visit suppliers in the field, local NGOs and government officials.

- To ensure that incidences of child labour are reported and can be effectively dealt with, employees, suppliers, service providers and other stakeholders are encouraged to be informed about the available channels to report incidences and how child labour can be recognised.

- Outreach on the use of the grievance mechanism maybe similarly be incorporated into community training on child labour. In order to facilitate this, companies may provide training to local civil society on the use of child-friendly and accessible grievance mechanisms for civil society to then incorporate into their training.

- Due consideration should be given to anonymity, confidentiality and data protection, particularly in relation to minors.

STEP 3

3.1 Responding to adverse impacts. Actions that companies are encouraged to take are rooted in the expectations of the OECD Guidelines for Multinational Enterprises (hereafter MNE Guidelines) with regards to if a company causes or contributes to an adverse impact, or if a company is directly linked to an adverse impact[24]. Companies should provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts. The MNE Guidelines envisage a responsibility to seek to prevent or mitigate adverse impacts directly linked to operations, products or services by a business relationship, even beyond their supply chain.[25]

3.2 Responding to the worst forms of child labour. In line with the OECD Due Diligence Guidance, companies should not tolerate nor by any means profit from, contribute to, assist with or facilitate the commission by any party of the worst forms of child labour. The OECD Due Diligence Guidance recommends that companies immediately suspend or discontinue engagement with upstream suppliers where a reasonable risk that suppliers are sourcing from or linked to any party committing serious abuses is identified.[26]In practice, companies can immediately inform suppliers and urge them to take measures to end the use of child labour in their supply chains within a specified time. For example, children can be removed from performing these tasks and a plan put in place to assist the child. This could for example be referral to the appropriate local child protection authority or service provider. Companies are encouraged to take into consideration that company actions do not result in instances of the child being subject to further harm, or of child labour being ever more hidden and that the children who need support become increasingly difficult to reach.

3.3 Putting children first. Effective company actions to prevent or mitigate child labour will seek the betterment of the child, prevent the child from being pushed into a more precarious situation and avoid situations where the child is further penalised. Companies and their suppliers may consider developing operational guidelines which detail their expected actions if and when they find child labour. Such guidelines may take into account the local context and refer to experts, child protection based services or on the ground NGOs which could be contacted in instances of child labour.[27] More specifically, companies can consider a number of concrete actions, depending on the circumstance:

- Where the child is below the legal working age, withdrawal from child labour is the goal. Steps taken together with the child, family,

social worker, the relevant local and national authorities to ensure that alternatives such as free basic education, rehabilitation, social integration and/or actions to address the needs of their family, may also be appropriate where the child is below the legal working age.

- For children above the minimum age (according the national rule), who have finished compulsory schooling, remediation through engaging them in safe work is an option. This may be for example be a practical approach for working age children (according to national rule), teen parents and other children who may not be able to go back to school.

- In situations where the child is removed from the mine and the company/employer pays the school fees of the child while the child is enrolled in school (until the minimum ages), companies are encouraged to consider any unintended consequences such as more children actively seeking work in order to benefit from free schooling. As such remediation should also be done in close collaboration with other stakeholders notably the government and local community in order to address root cause issues.

- family is hired in his/her stead or cash support is provided to the family (possibly with conditions attached such as school enrolment ildren, participation in health or nutrition programmes etc.).

- The child is removed from the mine and enrolled in a transitional school for children who have fallen behind their peer group.

- social protection programme to help address root causes of child labour (e.g. cash transfer programmes, school feeding programmes or other measures to mitigate income gaps).

- The child is removed from the mine and enrolled in a vocational training / apprenticeship scheme, in accordance with the laws in the country on the age of apprenticeship.

3.4 Collaboration with other stakeholders. Child labour is a complex multi-faceted problem which has its roots in the development state of a country or region. Collaboration throughout the sector, community and area of operation is strongly encouraged. Companies can develop a comprehensive programme beyond the supply chain, in collaboration with

in-country government officials, local NGOs and local community stakeholders which could include schools, parent groups, and religious communities.[28]

- Governments are the key actors to eradicate the worst forms of child labour in mining and child labour in general. Companies can improve supply chain transparency over time and support government and community efforts to address the problem of child labour. Companies can also help improve the whole production system in mining through for example improved Occupational Health and Safety (OHS) actions, child labour prevention, decent wages as well as efforts to work with formalised artisanal mining so that there will be decent job opportunities for adults and working age youth, without using children.

- Children and their representatives are a distinct stakeholder group.[29] Stakeholder engagement with children and /or child rights advocates can improve the quality of the analysis by filling information gaps, identifying issues that have been missed by other stakeholders, providing insight into the social processes causing the child labour situations including coping strategies (and secondary impacts).

- Companies can cooperate with other companies in the supply chain or companies from other sectors operating in the local area given that child labour if prevalent in one sector, is likely to be found in other sectors in the area.

- Companies can also cooperate with workers organisations, unions and employers

  with stakeholders at the upstream level (miners) and have a positive impact on social dialogue in the country.

- Companies can consider participating in international efforts to promote child-labour free supply chains to bring pressure to governments and other stakeholders to act and to stay abreast of emerging best practices to promote sustainable solutions to address this problem. International organisations include the OECD Forum

  Programme on the Elimination of Child Labour (IPEC), and the

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Box 4. **Child labour and artisanal and small-scale mining**

Artisanal and small-scale miners may be particularly vulnerable to human rights impacts, including child labour, associated with the extraction, transport, trade, handling and export of minerals. These vulnerabilities are increased when artisanal and small-scale mining is informal and operates in the absence of an enabling regulatory environment conducive to responsible mineral production and legitimate trade.

The OECD Due Diligence Guidance aims to minimise the risks related to the artisanal and small-scale mining by proposing measures that governments, international organisations, donors, companies in the supply chain, and civil society organisations can consider to support the formalisation and legalisation of artisanal and small-scale mining. For companies, supporting such economic and development opportunities for artisanal miners in their supply chains can be an effective means of addressing root causes of risk and preventing child labour in their supply chains in the long term.

An Appendix to the OECD Due Diligence Guidance Supplement on Gold highlights the following suggested measures to create economic and development opportunities for artisanal and small-scale miners, which are broadly relevant for artisanal mining in any type of mineral:

1. Assessment of artisanal mine sites consistent with the standards in Annex II of the OECD Due Diligence Guidance.
2. Formalisation of operations, including through: (a) knowing the reasons for lack of formalisation in existing artisanal production and trading systems, in order to identify the best strategies for incentivising and enabling formalisation; (b) providing technical assistance to help formalise artisanal and small-scale miners; (c) acknowledging the diversity in the types and sizes of artisanal and small-scale mining activity; and (d) creating and participating in collaborative initiatives to establish the modalities and financing of support funds to assist with the formalisation process.
3. Legalisation of operations, including through assistance to artisanal and small-scale miners to obtain mining rights and other related authorisations through legitimate, predictable processes.
4. Assessment of trading hubs and regular mapping of transportation routes consistent with the standards in Annex II of the OECD Due Diligence Guidance.
5. Establishment of traceability and/or chain of custody systems that ensures security of shipments and enables data collection on minerals from assessed mine sites.
6. Providing financial support for formalisation, legalisation and due diligence implementation. Support may take on a variety of forms, including direct support to initiatives, low interest rate financing that incentivises

improvements, or royalties and premiums on minerals from assessed mines and transportation routes with chain of custody and/or traceability systems in place.

7. Promoting and taking part in programs to directly and competitively market ASM minerals from assessed mine sites. Facilitate contacts and build partnerships between artisanal and small-scale producers operating on assessed mine sites, smelter/refiners, and downstream companies to enable direct marketing of minerals from assessed mine sites passing through secure and verifiable transportations routes.
8. Support the establishment of a grievance mechanism and take steps to enable artisanal and small-scale producers to access this mechanism so they may alert companies and government authorities of concerns related to the extraction, transport, trade, handling and export of minerals.
9. Fostering cooperation between customs and other authorities of exporting and importing countries.

3.5 Working with suppliers actions for upstream companies. There are many actions which upstream companies can take with their suppliers to promote awareness about the risks of child labour and the worst forms of child labour, and importantly how suppliers can take action to mitigate and prevent these risks. Such actions may include:

- policies, what constitutes hazardous labour for children and the worst forms of child labour in mining, and actions that the company is taking to identify, assess, mitigate and prevent child labour.
- Asking suppliers to put up signs at their concessions to say that children under the age of 18 should not be working in the mines. Training staff on child safeguarding policy, and the mechanisms to report instances of child labour - to inform mine managers, machine owners and others in charge of mines about the prohibition on child labour.
- Conducting regular site visits where the mineral is sourced from and asking suppliers to put up signs at their depots to say that they will not purchase minerals from children under the age of 18 or minerals mined by children under the age of 18.
- Recognising if certain children are habitually at the mines, despite efforts to deter them, and ensuring these children are referred to specialist support services or programmes.

- Requiring trading companies and buying agents to use human rights criteria when purchasing minerals.
- Building capacity of suppliers to identify and mitigate risks of child labour, including the worst forms of child labour, in their supply chains.
- Identifying and reducing the business reasons for child labour for example providing machinery for pumping water, grinding ore or transporting minerals to limit the types of work that could be taken on by children.
- Sponsoring the introduction of processing methods that reduce mercury use and ensure safe practices or, preferably, provide safe alternatives to mercury.
- Engaging and including suppliers in local community efforts to address the issues of child labour.
- Considering making operations on the ground (e.g. services) accessible to vulnerable populations as an alternative non-hazardous income generation opportunity.

Box 5. **Working with stakeholders in the source country**

- **Identifying local, national and international initiatives** to combat or monitor child labour in the mining sector. Such initiatives may be government-led, industry-led or civil society led, or multi-stakeholder. Mapping existing initiatives, their objectives, and their general impact will help a company understand how it can feed into existing strategies to prevent the worst forms of child labour and mitigate the risk of child labour in the supply chain.
- **Lobbying governments** to meet regulatory gaps and promote an enabling environment for adherence to the ILO Minimum Age Recommendation No. 146 (supplementing the ILO Minimum Age Convention No. 138).
- efforts for the progressive **professionalisation and formalisation** of the ASM sector through promoting the establishment of cooperatives, associations or other membership structures[1] or through working with local **government** agencies to promote collection of required information to establish transparency (chain of custody

support organisation of small producers to help facilitate formalisation and create an enabling environment for the promotion, creation and development of cooperatives and associations.

- **Supporting programming** by international agencies, local authorities, NGOs and other stakeholders, that address the root causes of child labour in communities affected by mining as a means to support long-term sustainable solutions.

- Where child labour affects more than the mining sector within a region, consider **coordination and collaboration across sectors** to harmonize approaches and indicators for tracking child labour impacts.

- Establishing **backwards and forwards linkages** with local business and sourcing locally can help increase the social and economic benefits of mining and contribute to the elimination of child labour.

3.6 Working with suppliers actions for downstream companies. Down
affect change in the supply chain rests on its leverage.

- Downstream companies should use their leverage with existing suppliers or other business relationships to encourage them to prevent and mitigate adverse impacts. Downstream companies may also consider what practical help (e.g. training, capacity building, sharing of information/research on child labour, letters of support, name of NGOs working on addressing child labour issues, examples of tools etc.) they can provide to their suppliers to promote risk-based due diligence and awareness of child labour risks in the supply chain.

- leverage does not change the expectation to prevent and mitigate adverse impacts it may affect how a company seeks to prevent or mitigate adverse impacts in its supply chain. See Figure 1 for considerations on how to prevent or mitigate risks associated with suppliers or business relationships depending on company leverage. Essential to exercising leverage over upstream suppliers, is fact-based and current knowledge of high-risk regions and the nature of those risks. Downstream companies may want to obtain independent third-party data to hold the supply chain accountable.

Figure 1. **Business leverage and due diligence expectations Downstream companies**

Business leverage

STEP 4 (

4.1 Due diligence is an ongoing and dynamic process. Under Step 4 of the OECD Due Diligence Guidance, companies are recommended to carry out an independent third party audit of smelters and refiners due diligence with regards to Annex II risks, which includes assessing how smelters and refiners have identified, assessed and mitigated the risks of child labour, notably the worst forms of child labour. Audits can be conducted via an industry scheme, so long as such a scheme is aligned with the OECD Due Diligence Guidance. For details on the scope and activities of the audit, companies should refer to Step 4 of the OECD Due Diligence Guidance.

4.2 Refiners and smelters should take steps to verify that their due diligence practices are in accordance with the recommendations of the OECD Due Diligence Guidance. With regards to the worst forms of child labour, the OECD Due Diligence Guidance recommends that audits cover relevant policies and procedures, refiner/smelter controls over their supply chain (i.e. chain of custody documentation on minerals in possession or other traceability information, including an evaluation of the quality of said documentation; information on the working conditions in the mines of origin, and other evidence based facts on the conditions of mineral extraction, trade, handling and export, notably serious abuses associated with the extraction, transport or trade of minerals as defined in the *Model Supply Chain Policy*, *Annex II* of the OECD Due Diligence Guidance), information disclosed to downstream companies and communications with suppliers etc. See also Appendix to Supplement on Tin Tantalum and Tungsten of the OECD Due Diligence Guidance, *Guiding Note for Upstream Company Risk Assessment*. The audit can also assess if child

identified, assessed and mitigated in accordance with the OECD Due Diligence Guidance.

4.3 The OECD Due Diligence Guidance recommends that third-party audits be conducted by competent and accredited third-parties knowledgeable and experienced in human rights risks assessments, including child labour verification, in the supply chain. See Step 4.3 of the OECD Due Diligence Guidance for further detail.

4.4 Downstream companies can participate and support the independent third-
and are encouraged to do so through industry programmes. When downstream companies participate in multi-stakeholder initiatives or

collaborative initiatives to conduct child labour due diligence, such multi-stakeholder initiatives should be periodically reviewed to ensure that they are aligned with the OECD Due Diligence Guidance recommendations.

STEP 5

7

5.1 The OECD Due Diligence Guidance recommends that all companies provide a publicly available annual report on their due diligence actions and steps to inform consumers and the public at large that they are implementing due diligence as recommended by the OECD Due Diligence Guidance. Companies should be accounting, by public reporting, for all the risks listed in the *Model Supply Chain Policy*, *Annex II* of the OECD Due Diligence Guidance, including the risks of the worst forms of child labour. Annual reporting on due diligence can be part of existing company reports on corporate responsibility or corporate sustainability.

5.2 The aim of reporting is to generate public confidence in the measures companies are taking to promote responsible sourcing from conflict-affected and high-risk areas. Companies are encouraged to describe the steps they have taken to assess and mitigate the worst forms of child labour in their supply chains. This can include detailed descriptions on a number of areas detailed below. In addition, where relevant, companies can describe milestones and a timelines on when they expect to see progress.

- *Company management systems* what systems, including management structures, staff training and supply chain due diligence policies and processes are in place to ensure that minerals sourced do not involve the worst forms of child labour? How has the company established a system of controls and transparency (i.e. a chain of custody or a traceability scheme, either on its own or in collaboration with other stakeholders) over the mineral supply chain? Does the company have clarity over its supply chain including sources and key customers?

- *Risk assessments of the supply chain* how does the company assess the risk of child labour in its supply chain? What types of information is gathered? In line with the OECD Due Diligence Guidance, upstream companies are recommended to identify where minerals are mined, processed, transported and traded, by whom and under what conditions (including whether serious abuses have occurred). Companies should publish the risk assessment itself, with

due regard taken of business confidentiality and other competitive or security concerns.

- *Managing the risk* Companies are encouraged to include a summary report on the strategy for risk mitigation in the risk mitigation plan. What steps are taken to manage the risk of child labour? How does the company prioritise to address the worst forms of child labour? What measures does the company take if it becomes aware of human rights abuses taking place in connection with its suppliers? What time bound limits are set to ensure that remedial action takes place? How are local government and community stakeholders involved? How is progress measured?

- *Reports* Companies may share investigative reports and audits of smelters and refiners in their supply chains, as well as any other audits conducted at segments of their supply chain that are considered most at risk for child labour. Refiners and smelters can publish the third-party audit reports of their due diligence efforts. Reports should take due regard of business confidentiality and other competitive or security concerns.

3

1. OECD Due Diligence Guidance, *Model Supply Chain Policy, Annex II* item 1 (iii), explicitly cites

   operating in, conflict-affected and high-risk areas, we will neither tolerate nor by any means profit from, contribute to, assist with or facilitate the commission by any party of the worst forms of

2. See ILO Convention No. 182 on the Worst Forms of Child Labour (1999).
3. working age, young people should be introduced to decent work, but still need protection from hazardous work and other worst forms of child labour.
4. See www.ilo.org.
5. In some developing countries, the minimum age is 14 years of age but this is exceptional.
6. ILO Convention No. 138.
7. ILO, Child Labour in the mining sector.
8. For more information about sourcing from ASM, please refer to the OECD FAQ Responsible Supply Chains in Artisanal and Small-Scale Gold Mining
9. A.G. Fassa: Health benefits of eliminating child labour (Geneva, ILO, 2003).
10. See www.dol.gov.
11. US Department of Labor, List of Goods Produced by Child Labor and Forced Labor.
12. See www.dol.gov.
13 ILO Convention No. 182 Worst Forms of Child Labour.
14. ILO Conventions and Recommendations on child labour
15. ILO-IPEC Guidelines for Developing Child Labour Monitoring Processes (2005); Siddiqi, Faraaz and Harry Anthony Patrinos, Child Labour: Issues, Causes and Interventions. Human Capital and Development Operations Policy, HCO Working Papers. See also, *Findings on the Worst Forms of Child Labor*, an annual report that focuses on efforts of 137 countries and territories to eliminate the worst forms of child through legislation, enforcement mechanisms, policies, and social programs. It also presents findings on the prevalence of the worst forms of child labour, specific suggestions for government action, and individual country assessments. (www.dol.gov).
16. rt or trade of minerals:1)
    While sourcing from, or operating in, conflict-affected and high-risk areas, we will neither tolerate nor by any means profit from, contribute to, assist with or facilitate the

    Diligence Guidance, *Model Supply Chain Policy, Annex II*.

17. In many countries hazardous child labour will be defined in national legislation or through social dialogue involving workers' and employers' organizations and government. Where a list of hazardous activities does not exist, the company can consult the ILO, medical personnel or health and safety experts.

18. Obeying domestic laws is the first obligation of companies. The OECD Due Diligence Guidance is not a substitute for nor should they be considered to override domestic law and regulation. While the OECD Due Diligence Guidance extends beyond the law in many cases, they should not and are not intended to place a company in situations where it faces conflicting requirements. However, in countries where domestic laws and regulations conflict with the principles and standards of the guidance, companies should seek ways to honour such principles and standards to the fullest extent which does not place them in violation of domestic law. It is very unlikely that companies will be in a position of facing conflicting requirements when observing minimum age standards that go beyond national legal requirements.

19. For more detail please refer to Annex I of the OECD Due Diligence Guidance Step1. Establish strong company management systems. Detailed recommendations per supply chain actor can be found in each of the supplements under Step 1 C.

20. Step 1C of the OECD Due Diligence Guidance provides examples of types of documentation which different types of upstream companies including local mineral exporters, international concentrate traders, smelters and refiners are recommended to collect and disclose to downstream purchasers and/or any institutionalised mechanism.

21 . According to the OECD Due Diligence Guidance, artisanal and small-scale producers such as individuals, informal working groups or communities are not expected to carry out due diligence in line with the OECD Due Diligence Guidance but they are expected to remain involved in due diligence efforts of their customers and formalise so they can carry out due diligence in the future.

22 . An evidence-based approach means that the conclusions of the company risk assessment should be corroborated by verifiable, reliable, up-to-date evidence, which should be gained through on-the-ground research carried out by an on-the-ground assessment team. For more details please see the Appendix to Supplement on Tin, Tantalum and Tungsten, *Guiding Note for Upstream Company Risk Assessment*, of the OECD Due Diligence Guidance.

23. Red flags are indicators which trigger the application of the OECD Due Diligence Guidance. For details of the types of red flag locations, suppliers and circumstances, please see p. 33, 79, 80 of the OECD Due Diligence Guidance.

24. The OECD Guidelines for Multinational Enterprises (OECD Guidelines), Chapter II: General Policies, item 11 and 12. According to the OECD Guidelines, a company *causes* services of the company and the adverse impact. Causation can occur through action as *Contributing to* should be interpreted as a substantial contribution, meaning an activity that causes, facilitates or incentivises another entity to cause an adverse impact. A company can also *contribute* or services can also to an adverse impact through a business relationship. This concept is

broad and covers adverse impacts associated with business relationships, for example in

25. OECD Guidelines for Multinational Enterprises, Chapter II: General Policies,

26.

ANNEX I:

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International law and policy on child labour is premised upon the belief that each child has inherent dignity and worth as a human being, and that the effective elimination of the worst forms of child labour requires immediate and comprehensive action, taking into account the importance of free basic education, the need to remove the children concerned from all such work and to provide for their rehabilitation and social integration while addressing the needs of their families.

The definition of child labour is derived from the United Nations Convention on the Rights of the Child, ILO Convention No. 138, Minimum Age Convention and ILO Convention No. 182, Worst Forms of Child Labour Convention (see Table A.1). According to the ILO, child labour refers to work that (i) is mentally, physically, socially and morally dangerous and harmful to children; (ii) interferes with their schooling by depriving them of the opportunity to attend school, by obliging them to leave school prematurely, or by requiring them to attempt to combine school attendance with excessively long and heavy work (iii) work that is done by children who are below the minimum age (set at 15 years old).

Table A.1. **Definitions of child labour**

1. The minimum working age is usually set by the national legislation, and must be respected. According to international standards, it is at least 15, which is typically the age when compulsory

- 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

- 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

ILO Convention No. 138, the Minimum Age Convention sets the minimum age for work for children at 15, and provides a range of protections to those working children.[1] The minimum age of 15 only applies to work that is not defined as one of the worst forms of child labour (prohibited until age 18). Companies have a responsibility under international law to respect the rights laid out in both Conventions in order to address all forms of child labour. Any measures to rescue a child from the worst forms of child labour should not lead to pushing him or her into another situation of child labour, including the minimum age violation in accordance with ILO Convention No. 138. It is also an obligation under Convention No. 182 (Article 7(2) (c)) to ensure access to education (or training according to age) for children removed from the worst forms of child labour. The UN Convention on the Rights of the Child protects children from economic exploitation, physical and sexual violence, and environmental pollution, and spells out their right to education.[2] Two other international laws provide specific protections against child trafficking, forced labour, and the sale of children.[3]

Many activities in artisanal mining are considered hazardous as it includes work underground, under water, carrying heavy loads, work with dangerous machinery and tools and working with toxic chemicals such as mercury and cyanide. The ILO includes in its definition of hazardous child

children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health [4].

1. ILO Convention No. 138.

2. Convention on the Rights of the Child, articles 24, 28, 32, 34, 39.

3. Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime; Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

4. ILO Recommendation 190 to C182, Section II Hazardous work, item 3d.

ANNEX II

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- OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas
- OECD FAQ on Responsible Supply Chains in Artisanal and Small-Scale Gold Mining
- OECD Minerals Implementation programme main webpage

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- United Nations Convention on the Rights of the Child
- United Nations Global Compact
  Principle 5 on Child Labour
- International Labour Organisation (ILO) Convention 182
  Worst Forms of Child Labour Convention, 1999
- International Labour Organisation (ILO) Recommendation 190
  Worst Forms of Child Labour Recommendation, 1999
- International Labour Organisation (ILO) Convention 138
  Minimum Age Convention, 1973

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- Better Sourcing Program
- International Programme on the Elimination of Child Labour (IPEC)
- ILO-IPEC Countries Dashboard database
- ILO-IOE Child Labour Guidance Tool (2015)
- International Cocoa Initiative

- International Institute for Environment and Development
- ITRI Tin Supply Chain Initiative (iTSCi) Incident reports (tin mines, annual summaries available online
- National Resource Government Institute mining sector tools
- Responsible Jewellery Council Standards (2013)
  Section COP 17 on child labour
- Save Act Mine online database on mines in DRC
- The Consumer Goods Forum
- UNICEF - Child Labour Resource Guide
- '
- United States Department of Labor Bureau of International Labor Affairs
- United States Department of Labor, Bureau of International Labor Affairs
  Toolkit for Responsible Business

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- Alliance for Responsible Mining
  http://responsiblemines.org/
- Amnesty International
  www.amnesty.org
- Berne Declaration
  www.bernedeclaration.ch
- Global Witness
  www.globalwitness.org
- Human Rights Watch
  www.hrw.org
- Natural Resources Defence Council
  www.nrdc.org
- Pact
  www.pactworld.org
- Plan International
  https://plan-international.org
- Save the Children
  www.savethechildren.net

- Solidaridad
  www.solidaridadnetwork.org
- Terre des Hommes
  www.terredeshommes.org
- Somo
  www.somo.nl
- World Vision International
  www.wvi.org

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- African Resources Watch DRC -
  www.afrewatch.org
- BanToxics Philippines
  http://bantoxics.org
- Bon Pasteur DRC -
  www.buonpastoreint.org/ic-fr
- DRC -
  http://children-voice.org
- New Light Children Center Organization NELICO Tanzania -
  http://nelicotz.org
- Fund for Environmental Action and Childhood - Colombia
  www.fondoaccion.org
- Mi Sangre Foundation - Colombia
  http://fundacionmisangre.org

- ILAB projects in
  - Burkina Faso
  - Colombia
  - Ghana
  - Philippines
- ILAB global project on occupational safety and health incl. Mongolia
- iTSCi and Pact project on addressing the Worst Forms of Child Labour in ASM