

Working Conditions

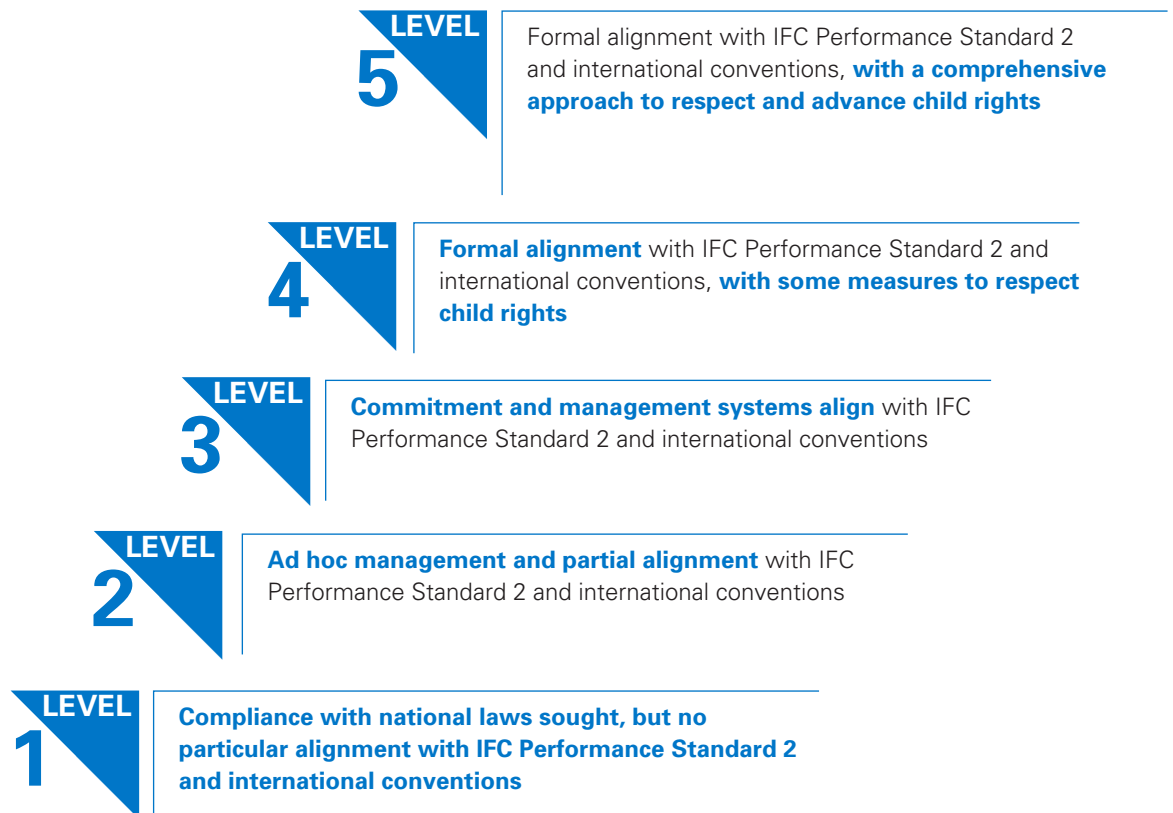
to improve or negatively affect children's living conditions, well-being and development. Therefore, all businesses should provide decent working conditions that support workers, both women and men, in their roles as parents or caregivers.³⁷ More particularly in the mining sector, specific risks relating to the industry's operations have been identified and are being addressed by companies.

³⁷ See also: United Nations Children's Fund, United Nations Global Compact and Save the Children, *Children's Rights and Business Principles*, UNICEF, Geneva, 2012, pp. 20–21.

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Where does your company stand on respecting and advancing children's rights in relation to working conditions? The figure below presents a continuum from the lowest level of compliance to the fullest measures of corporate responsibility and proactive leadership.



Tool 8 is designed to help mining companies mitigate the potential negative impacts that working conditions for parents and other caregivers can have on children, and to promote children's rights through their human resources and contractors' management. It covers the following areas: working hours, shifts and commutes; discrimination against women, parents and/or caregivers; management of on-site contractors, hazardous materials and activities; and wages and living conditions.

Most likely, international mining companies are already complying with national laws in the countries where they operate and implementing a responsible approach to labour and working conditions. Companies that have not yet integrated IFC Performance Standard 2 and related ILO conventions regarding human rights and working conditions into their systems should address that gap as a priority. The next sections offer support for integrating a child rights perspective to promote family-friendly working conditions.

8.1 Overview of the issues and related standards

UNICEF’s pilot study on children’s rights and the mining sector highlights key impacts on children specific to the industry and related to working conditions for parents and caregivers. Impacts on parents and other caregivers, with a resulting impact on the child, were found to include parents’ working conditions inhibiting their ability to care for their children physically, financially or socially; intra-employee conflict; and staff behaviour in the community.³⁸

Mining companies that seek to provide decent working conditions that support both women and men in their roles as parents or caregivers, as outlined in the Children’s Rights and Business Principles, will begin with legal compliance and then move to “pay particular attention to working conditions such as the payment of a living wage, length and flexibility of working hours, provisions for pregnant and breastfeeding women, need for parental leave, supporting migrant and seasonal workers with distance parenting, and facilitating access to good quality childcare, health care and education for dependants.”³⁹

IFC Performance Standard 2: Labor and Working Conditions provides a solid foundation for establishing corporate protection of workers’ fundamental rights. The requirements set out in this standard are, in part, guided by a range of international conventions and instruments, including those of the ILO and the United Nations (see Box 12). They not only aim to promote compliance with national employment and labour laws, but also the fair treatment, non-discrimination and equal opportunity of workers; the worker-management relationship; the protection of workers, including vulnerable categories of workers such as children; and safe and healthy working conditions.

Box 12. ILO and United Nations conventions that apply to employment and working conditions

- ILO Convention 87 on Freedom of Association and Protection of the Right to Organize
- ILO Convention 98 on the Right to Organize and Collective Bargaining
- ILO Convention 29 on Forced Labour
- ILO Convention 105 on the Abolition of Forced Labour
- ILO Convention 138 on Minimum Age (of Employment)
- ILO Convention 182 on the Worst Forms of Child Labour
- ILO Convention 100 on Equal Remuneration
- ILO Convention 111 on Discrimination (Employment and Occupation)
- Convention on the Rights of the Child, article 32.1
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

Strategies applicable to the mining sector can also be developed and enforced for improving working conditions of employees and better protecting child rights. By ensuring appropriate working hours and use of night shifts, commutes and fly in, fly out (FIFO) arrangements, non-discriminatory measures against women, appropriate management of on-site contractors and non-exposure to hazardous materials and activities – as well as adequate wages, benefits and living conditions – companies will have a direct positive impact on human rights in general and children’s well-being in particular. Additionally, these actions will increase the company’s good reputation and prevent tensions that could occur in households and communities due to difficult working conditions or discriminatory practices.

³⁸ United Nations Children’s Fund, *Children’s Rights and the Mining Sector: UNICEF Extractive Pilot*, UNICEF, Geneva, March 2015, p. 14.

³⁹ United Nations Children’s Fund, United Nations Global Compact and Save the Children, *Children’s Rights and Business Principles*, UNICEF, Geneva, 2012, p. 21.

8.2 Working hours, shifts and commutes

Terms of employment in the mining sector can require night shifts and long hours, possibly more than 60 hours a week, leaving parents little time with their children. Health risks commonly associated with long working hours and night shifts include work-related stress, impaired physical and mental performance, sleep deprivation and fatigue⁴⁰ – which can all indirectly affect children to the extent that they inhibit parents' ability to care for them.

Although wages in the mining sector are usually higher than the living wage, employment in mining can impact families in labour-sending areas due to FIFO shift rotations and long periods of parents' absence from their children. Research indicates that the indirect impacts include increases in intra-household tension and disruption of family intimacy and interpersonal communication.⁴¹ Table 17 offers details on the associated risks, questions that can support companies' identification of potential impacts, and suggested strategies and action that mining companies can take to address these issues.

⁴⁰ Mining Industry Advisory Committee, Commission for Occupational Safety and Health, 'Code of Practice: Working Hours', Department of Mines and Protection, Government of Western Australia, 2006, p. 2; open PDF from <www.commerce.wa.gov.au/sites/default/files/atoms/files/copworking-hours.pdf>.

⁴¹ See, for example: Peetz, David Robert, and Georgina Murray, 'Involuntary Long Hours in Mining', Griffith University, 2010; available at <<http://geor-ginamurray.org/articles-list/involuntary-long-hours-in-mining>>.

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Table 17. Managing employees' working hours, night shifts, commutes and fly in, fly out arrangements

<p>Risks: If the company does not pay attention to the possible impacts of working hours, night shifts, long commutes and FIFO arrangements on its employees' children, it might endanger its business stability by facing the following risks:</p> <ul style="list-style-type: none"> Increased workers' stress and fatigue, which could result in intra-household tension and violence, degrading employees' family environment. Increased likelihood of work-related accidents. It might ultimately and indirectly increase employees' discontent and workforce turnover. 	
Questions	Strategies and action
<p>Are human resources files checked to see whether staff have children or other dependents to ensure that indirect impacts on children as a result of working conditions and hours are appropriately managed?</p>	<ul style="list-style-type: none"> Take into account workers' objective circumstances such as their family situation, health, endurance, sleeping habits and personal preferences to identify workers whose family situation may require flexibility and adjustments. Engage with these workers in regard to hours and FIFO arrangements.
<p>Are inputs from employees with children, as well as safety and health representatives, sought for defining working hours, night shifts and FIFO arrangements?</p>	<ul style="list-style-type: none"> Gather employees' input on working conditions and involve employees who have children in the design of scheduling rosters to benefit all stakeholders. Consult safety and health representatives where they are available. Focus on criteria such as 'swap shifts' to meet workers' personal needs, for example, enabling husband and wife to work the same shifts; breaks between work periods (recovery time); and seasonal work arrangements.
<p>Has the company identified the number of employees with children having to combine long working hours and night shifts with demanding work?</p>	<ul style="list-style-type: none"> 'Demanding work' includes work that is physically or mentally demanding or repetitive, e.g., inadequate variation of tasks over excessive periods of time. Limit the combination of long working hours and night shifts with demanding work, especially for workers whose family situation may require flexibility.
<p>Does the company ensure that workers are allowed adequate time off to spend with their children?</p>	<ul style="list-style-type: none"> Develop policies for working hours, plans and programmes on daily work hours, maximum average weekly hours, total hours over a three-month period, and work-related travel (average weekly working hours should not exceed 48 hours). Carefully consider the scheduling of work to avoid irregular and unpredictable hours, short notice of schedule, extended overtime, on-call across shift cycle, rosters and day/night shifts worked in order to best meet workers' personal lives and body clock. For example, while some workers tolerate long rosters such as 4 weeks on, 1 week off, parents who need to spend time with their children, might find an 8 days on, 8 days off roster as being a better balance. Allow trial periods for new working-hours arrangements and evaluate them according to workers' family situation and the potential impacts on children. Offer alternatives to employees who may have difficulties in adjusting to working hours.
<p>Are managers and employees aware of the risks linked to working hours and trained accordingly?</p>	<ul style="list-style-type: none"> Provide training on the effects of fatigue and control measures. Implement initiatives to promote health and fitness.
<p>Do employers provide an appropriate level of supervision relevant to the assessed level of risk to ensure adequate family living conditions?</p>	<ul style="list-style-type: none"> Monitor work to ensure that safe work practices are followed.

⁴² Mining Industry Advisory Committee, Commission for Occupational Safety and Health, 'Code of Practice: Working Hours', Department of Mines and Protection, Government of Western Australia, 2006, p. 5.

8.3 Discrimination against women or parents/caregivers

In the traditionally male-dominated mining industry, women may be discriminated against during both recruitment and employment – and policies that fail to protect women may also put fathers and other caregivers at risk, as well as children.

For women, discrimination may be related to pregnancy or the fact that they have reached childbearing age. After delivery of a newborn, mothers may not receive the minimum 14 weeks maternity leave advised by ILO Convention 183. Table 18 discloses recommendations that companies can follow to avoid discriminatory practices against women and caregivers, and generally contribute to children’s well-being.

Table 18. Avoiding discrimination against women and parents/caregivers

<p>Risks: Discrimination against women or parents and other caregivers might endanger a company’s business stability by facing the following risks:</p> <ul style="list-style-type: none"> • It might be accused of acting against human resources regulations, or face the risk of being brought to court (e.g., ILO conventions). • It might result in the company losing human resources capacities and skills. • Its local and international reputation might be tarnished. 	
Questions	Strategies and action
<i>Does the company avoid discrimination during recruitment processes?</i>	<ul style="list-style-type: none"> • During recruitment interviews, ensure that applicants are not questioned on marital status, intent to have children or the number of children that they currently have. Include clauses to this effect in human resource managers’ contracts and/or train the company’s human resources department.
<i>Are employees guaranteed parental leave, including in cases of adoption?</i>	<ul style="list-style-type: none"> • Ensure that female employees are allowed no less than 14 weeks’ maternity leave per child in accordance with ILO Convention 183. • Encourage fathers to take paternity leave, which is recognized to have positive impacts on children’s development.
<i>Are female applicants respected in their choice to get pregnant?</i>	<ul style="list-style-type: none"> • Ensure that applicants are not required to take pregnancy tests, have abortions or sign agreements not to get pregnant by including clauses in human resource managers’ contracts.
<i>Does the company provide for grievance mechanisms if workers or applicants witness discrimination against women?</i>	<ul style="list-style-type: none"> • Ensure that discrimination against women can be reported easily and anonymously.

8.4 Working conditions in the supply chain and management of on-site contractors

Potential issues around working conditions and child rights can also be a concern in the company's supply chain. Integrating child rights considerations into supply chain due diligence is essential for the prioritization of actual and potential child rights impacts. If no human rights or social impact due diligence process for the supply chain exists, the company should consider establishing that process first, or simultaneously, with child rights considerations. *Demonstrating Value: A guide for responsible sourcing*, developed by the International Council on Mining and Metals (ICMM), offers support for initiating this process.⁴³ A number of resources are also available for more specifically managing risks around child rights and working conditions in the supply chain.⁴⁴

In addition to risks related to working conditions in the supply chain, employing on-site contractors for high-intensity project phases such as construction entails potential child right risks that are prevalent in the mining industry and deserve special attention. Table 19 describes several actions and strategies that companies can take for addressing the risks around child rights in the management of on-site contractors.

⁴³ International Council on Mining and Metals, *Demonstrating Value: A guide for responsible sourcing*, ICMM, London, 2015; available at <www.icmm.com/en-gb/publications/demonstrating-value-a-guide-to-responsible-sourcing>.

⁴⁴ See: UNICEF, 'Supply Chains for Children: Resources', <<http://supplychainsforchildren.org/en/resources>>.

Table 19. Managing working conditions of on-site contractors and related risks around child rights

<p>Risks: Impacts of subcontractors’ irresponsible employment practices on child rights: There is a risk that subcontractors do not have family-friendly human resources policies in line with ILO standards, allowing for family leave, maternity and paternity leave, full access to statutorily required benefits, and other practices considered to support work-life balance and family life. Lack of such policies and/or their enforcement can prevent parents from being able to adequately care for their children.</p>	
Questions	Strategies and action
<p><i>Does the company contractually exert leverage on contractors on specific requirements around working conditions?</i></p>	<p>Include requirements around working conditions and child rights in contracts with contractors, such as:</p> <ul style="list-style-type: none"> • <i>Compliance clauses and consequence of non-compliance</i> – Clause language can be detailed, outlining specific child rights risks to be managed by the contractor or supplier, given the activity, geographical area, etc. Or it can be applicable to all and generally require compliance with international child rights standards (United Nations, ILO, etc.). More specific clauses may be more arduous for the company to develop but are more effective in communicating expectations and educating the supplier about what is required. Consequences of failure to fulfil contract requirements should be clearly spelled out. • <i>Reporting</i> – Contracts should ideally outline periodic reporting requirements on compliance with working conditions and child rights clauses. These should specify KPIs against which the supplier is to be assessed.
<p><i>Does the company follow up with contractors to ensure that established working conditions and child rights standards are adhered to and engage them for training, capacity building and information sharing?</i></p>	<ul style="list-style-type: none"> • Developing internal systems for effective enforcement of contract requirements, including monitoring and accountability mechanisms, is a vital part of this process. Procedures should be established and staff dedicated to reviewing subcontractor reports, arranging audits and drawing conclusions – flagging problems with management, and issuing follow-up actions such as improvement plans or contract termination. • <i>Ad hoc site visits and third-party audits</i> – Contracts can also include the right of the company to conduct unannounced site visits. Some longer-term contracts might include requirements for a third-party independent assessment/audit, which includes child rights as a component.
<p><i>Does the company work jointly with its contractors to improve performance?</i></p>	<p>A simple audit approach is usually not enough to achieve a sustainable improvement in contractors’ behaviour. A variety of additional strategies exist for improving contractors’ compliance with social standards, including working conditions and child rights. These can include:</p> <ul style="list-style-type: none"> • The shift from pass/fail compliance to comprehensive continuous improvement programmes; • Replacing audits with collaborative assessment and root cause analysis; • Integration of grievance mechanisms; • The integration of capacity-building approaches for contractors, e.g., requiring all new subcontracted staff hired for construction to participate in child rights training; • Different forms of partnerships between companies and civil society organizations, including public reporting and sharing of risk assessments and performance; • Providing commercial incentives to suppliers for improvements in social performance, such as price, volume, duration and supplier preferences; • Developing metrics to help suppliers identify the business case for better social performance; • Efforts by companies to use their leverage to address systemic issues; • Industry-wide collaboration to tackle systemic issues.

Box 13. Mining companies procuring from artisanal and small-scale mining (ASM) operations

Industrial mining companies occasionally procure minerals from ASM operations concurrently with their operations, particularly in the gold, silver, cobalt, copper, diamond, cassiterite, wolframite and coltan industries. Procuring from artisanal and small-scale mining operations entails significant risks around working conditions and child rights.

ASM operations, especially when informal or ‘illegal’, have a heightened risk of human rights abuses, including child rights abuses such as child labour, exposure to physical or emotional violence, and lack of a safe and clean environment. A recent Amnesty International report confirms, for example, that artisanal mining for cobalt in Katanga, Democratic Republic of the Congo, is not properly regulated and prevalently uses child miners, who can experience serious health effects, abuse by security guards and illegal taxation.[1] Children can commonly be involved in support services such as mineral sorting and processing, transport, and provision of water and food. Children might also be forced into prostitution near mine sites by armed groups or traffickers who collect a fee for their ‘service’ from the mine workers.

Mining companies directly sourcing minerals from ASM operations should therefore conduct extensive due diligence on working conditions and child labour. There is existing guidance[2] for conducting such a due diligence process and for ultimately determining an appropriate purchasing programme. This may include the provision of support towards formalization and recognition of legal licensing.

[1] Amnesty International, *“This Is What We Die For”: Human rights abuses in the Democratic Republic of the Congo power the global trade in cobalt*, Amnesty International, London, 2016; available at <www.amnesty.org/en/documents/afr62/3183/2016/en>.

[2] Particularly: Organisation for Economic Co-operation and Development, *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*, 3rd edition, OECD Publishing, Paris, 2016; Hidrón, Clara, and Ronald Koepke, *Addressing Forced Labour in Artisanal and Small-Scale Mining (ASM): A practitioner’s toolkit*, Alliance for Responsible Mining, November 2014; and Communities and Small-Scale Mining, International Finance Corporation Oil, Gas and Mining Sustainable Community Development Fund and International Council on Mining and Metals, *Working Together: How large-scale mining can engage with artisanal and small-scale miners*, ICMM and World Bank, n.d.

8.5 Hazardous materials and activities

A women who is pregnant or breastfeeding may be exposed to materials and activities that threaten her reproductive health or that of her child. In extreme situations, for both women and men, dangerous working conditions may lead to injury or death, and employment benefits may not be available to single-parent families. Table 20 presents a series of actions and strategies that can be taken to manage employees’ exposure to hazardous materials.

8.6 Wages, benefits and living conditions

Difficulties for children will be compounded when a company does not provide its employees with a living wage in the area of operation, and housing provided for employees and their families does not meet adequate standards. These issues are summarized in Table 21.

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Table 20. Managing employees' exposure to hazardous materials

<p>Risks: If the company does not ensure the health and safety of workers and their children, it might endanger its business stability by facing the following risks:</p> <ul style="list-style-type: none"> • Increased likelihood of accidents, which could tarnish its reputation locally and internationally. • Legal proceedings that could lead to financial losses. 	
Questions	Strategies and action
<i>Does the company guarantee that pregnant or breastfeeding women are not exposed to hazardous materials?</i>	<ul style="list-style-type: none"> • Ensure that pregnant or breastfeeding women are not exposed to hazardous materials by clearly indicating the risks (warning signs), and by proposing alternative tasks to women during their pregnancy.
<i>Are children accompanying parents on mine sites carefully looked after in order to avoid accidents?</i>	<ul style="list-style-type: none"> • If the presence of children within construction sites is a product of accompanying parents, then ensure that construction sites are facilitated with 'safe spaces' where children can play and be cared for by professionals. Parents should also be informed and sensitized about the risks and the relevance of such spaces.
<i>Are the communities around mine sites aware of the associated risks, e.g., dust, chemicals, noise, extreme temperature, heavy materials?</i>	<ul style="list-style-type: none"> • Implement training sessions, site visits and workshops to raise awareness among communities on risks associated with mine sites (see Tool 2. Stakeholder Engagement).
<i>Does the company assess and monitor employees' health to avoid the aggravation of potential diseases, and possible effects on children?</i>	<ul style="list-style-type: none"> • Assess and monitor employees' health with doctors, who should take into account the workers' family environment and the potential impacts of employees' health on this environment.
<i>Is a policy in place to provide compensation for workers and their families in case of accidents?</i>	<ul style="list-style-type: none"> • Develop a clear compensation policy, which should take into account the familial environment and households' needs, and ensure that a work-related accident does not lead to a significant degradation of household income.

Table 21. Managing employees' wages, benefits and living conditions

<p>Risks: If companies do not consider issues linked to wages, benefits and living conditions, they might endanger their business stability by facing the following risks:</p> <ul style="list-style-type: none"> • Workers and their children's economic and social environment might be negatively impacted, which could result in tensions with the local communities. • The company might face legal proceedings as a result of non-compliance with national legislation and international standards. 	
Questions	Strategies and action
<i>Are workers' incomes sufficient to guarantee decent living conditions for children?</i>	<ul style="list-style-type: none"> • Ensure that workers are paid a living wage for them to be able to meet their children's basic needs as well as send them to school. This implies assessing what a living wage should be in the context of an operation and applying the findings to all employees of the company, including the low-skilled workforce.
<i>Does the company provide housing for workers that is adequate in terms of size, security and proximity to shops, hospitals and schools?</i>	<ul style="list-style-type: none"> • Ensure employees' housing provides adequate accommodations for workers, for instance, by carrying out polls (or simple questionnaires) among employees on that issue.