

# Principles for Worker-Driven Remedy

October 2023



Responsible public  
procurement.  
Rights of  
electronics workers.

# Principles for Worker-Driven Remedy

## WORKING DRAFT (October 2023)

### Introduction

The Right to an effective remedy is a fundamental international human right, also enshrined in the UN Guiding Principles on Business and Human Rights (UNGPs)<sup>1</sup>, adopted in 2011 (Pillar 3). It received little attention initially, but in the past few years this has started to change. There has been a growing recognition of the importance of rights-holder involvement in remedy. In 2021, the UN Working Group on Business and Human Rights noted the importance of giving rights-holders a leading role in remedy.<sup>2</sup>

We believe that remedy – as well as other practices to identify and address human and labour rights violations in global supply chains – should be *worker-driven*. Because of power imbalances between company management and workers, support by other stakeholders, including public buyers, is often needed to ensure meaningful engagement of workers and prioritisation of their needs, expectations and perspectives.<sup>3</sup> This is particularly important for vulnerable workers that lack labour law protection, including the right to freedom of association and collective bargaining<sup>4</sup>.

These Principles for Worker-Driven Remedy are based on recent developments in human rights law with reference to the International Labour Organization (ILO) Core Conventions.<sup>5</sup> They have been developed in consultation with trade unions, labour rights organisations, and public buyers.<sup>6</sup> They aim to provide a guiding framework for public buyers, their suppliers, worker rights organisations and other relevant stakeholders to address harm to workers in supply chains and may be adapted by organisations based on their mandates and key stakeholders. Further explanation about each Principle can be found in Annex 1, which offers initial operational considerations.

These Principles do not replace judicial or other civic remedies, nor should they undermine grievance mechanisms contained in collective bargaining agreements (CBAs), although they can be used to assist trade unions and other legitimate worker representatives in their efforts to strengthen such processes. Engaging in a remedy process and providing reparation in specific cases should not exonerate the businesses responsible for harm from penalties and sanctions as set out in national, regional and international law.

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<sup>1</sup> [UN Guiding Principles on Business and Human Rights](#)

<sup>2</sup> UN Working Group on Business and Human Rights, 'UNGPs 10+: A Roadmap for the Next Decade of Business and Human Rights. Raising the Ambition - Increasing the Pace' (United Nations 2021) 31; UN Human Rights Council, 'Guiding Principles on Business and Human Rights at 10: Taking Stock of the First Decade' (2021) A/HRC/47/39 para 94.

<sup>3</sup> This process would include 'meaningful stakeholder engagement', which is a key component of the due diligence process and requires dialogue in good faith, involving input from all key participants before decisions are made. For more information, see "What is 'meaningful stakeholder engagement?'" in [Due Diligence Guidance for Responsible Business Conduct](#) (OECD, 2018).

<sup>4</sup> See, for example [ILO publication: Migrant workers' rights to freedom of association and collective bargaining](#).

<sup>5</sup> [ILO core labour rights are based on the Declaration of Fundamental Principles and Rights at Work](#).

<sup>6</sup> The Principles for Worker-Driven Remedy were drafted by the Electronics Watch Working Group on Remedy. They were initially developed at a workshop in Malaysia with a number of stakeholders, and are based on the briefing '[Remedy for Human Rights Violations in Global Supply Chains: Essential Elements](#)' (July 2022) by Martina Trusgnach and Olga Martin-Ortega. They were also developed in the framework of Martina Trusgnach's PhD research at the University of Greenwich. Thanks to IndustriALL, International Trade Union Confederation, International Transport Workers' Federation, UNISON, Center for Development and Integration, Centro de Reflexión y Acción Laboral, Cividep, Periféria Policy and Research Center, Serve the People Association, Tenaganita, and the Electronics Industry Employees Union (Malaysia) for their valuable contributions. These Principles may be used by different stakeholders and will be subject to review and revisions as new insights and lessons emerge.

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# Principles for Worker-Driven Remedy

Worker-driven remedy is based on the following Principles:

- 1. Respect for human rights law**
- 2. Workers at the core**
- 3. Protection and promotion of trade unions, worker representatives and human rights defenders<sup>7</sup>**
- 4. Timely and urgent action**
- 5. Transparency**
- 6. Removal of barriers to worker participation**
- 7. Worker participation in design and implementation**
- 8. Shared responsibility and meaningful engagement of stakeholders**
- 9. Provision of various reparation measures**
- 10. Inclusion of backward- and forward-looking measures**

*Overall, effective remedy requires:*

### **1. Respect for human rights law**

Remedy is a right for all those who have suffered harm (rights-holders). An approach to remedy based on human rights law<sup>8</sup> recognises that it should not be treated as discretionary. Instead, remedy should be provided as an obligation and responsibility by states and businesses that cause, contribute, or are directly linked to the harm (duty bearers) towards rights-holders. Those who buy goods and services from such businesses are also responsible for ensuring remedy for harm caused in the production of goods and provision of services. Remedy comprises two dimensions, namely the process to seek and provide remedy, as well as the substantive reparations that follow – hereinafter referred to as 'remedy processes' and 'remedy outcomes.' Both dimensions need to be satisfied for remedy to be considered effective.

### **2. Workers at the core**

To be effective, remedy should have rights-holders – workers in the supply chain and affected communities – at its core. The determination of appropriate remedy should not be a top-down process. It should be based on the rights of those directly affected by the harm – workers and affected communities – and reflect their needs, expectations, and perspectives. Any decisions about what constitutes appropriate remedy should be facilitated through trade unions and worker representatives, where they exist. Particular attention should be given to vulnerable groups of workers<sup>9</sup>, to ensure their needs, expectations and perspectives, which may be different from those of other workers, are addressed.

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<sup>7</sup> Throughout the text, when referring to 'trade unions' these should always be understood as independent, freely chosen and democratic, in line with ILO Conventions 87 and 98. 'Worker representatives' should be understood as freely chosen, democratically elected representatives of independent worker organisations established to represent workers where trade unions cannot represent them.

<sup>8</sup> The legal basis for remedy is summarised in '[Remedy for Human Rights Violations in Global Supply Chains: Essential Elements](#)', University of Greenwich, Business, Human Rights and the Environment Research Group, commissioned by Electronics Watch.

<sup>9</sup> Vulnerable workers include migrants, women, racial, ethnic minorities and LGBT+ workers.

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### 3. Protection and promotion of trade unions, worker representatives and human rights defenders

Trade unions are formed by workers to protect and advance their collective rights and interests in the workplace. Independent, freely chosen and democratically elected trade unions, worker representatives and human rights defenders play a crucial role in protecting workers' rights and securing remedy for violations. Specific attention should be given to the harm arising from attacks on them<sup>10</sup> and remedy should be provided. Dismissals, arrests of worker leaders and union busting<sup>11</sup> not only violate internationally agreed labour laws, but also make it harder for workers to access remedy and to prevent harm.

### 4. Timely and urgent action

Remedy should be provided in a timely manner, to ensure it does not escalate and result in further harm. A timeline for remedy should be agreed on by parties involved in the process. Some cases require immediate action to cease the harm, such as those that pose a risk to the life and health of rights-holders (e.g. forced labour, child labour, sexual harassment), as well as attacks against trade unions, worker representatives and human rights defenders.

### 5. Transparency

Remedy must be transparent. Workers, trade unions, worker representatives and human rights defenders must have access to all relevant information in their own language, in places that are visible, easy to access, and in a format they can understand in order to effectively participate in the remedy process. This includes communication and documentation on how the remedy process is handled and what outcomes are achieved. Relevant information must also be communicated to other stakeholders, including public buyers, to ensure their meaningful engagement where needed.

*Effective remedy processes require:*

### 6. Removal of barriers to worker participation

Workers, trade unions, worker representatives and human rights defenders face a wide variety of barriers to participating in the process of remedy. Among others, barriers include time and income constraints, fear of retaliation, language, onerous burdens of proof, and the lack of transparency in global supply chains. These barriers must be addressed to ensure that workers, trade unions, worker representatives and human rights defenders can meaningfully participate in the remedy process. They should have access to appropriate advice, expertise, and legal assistance to ensure that they have knowledge of their rights, as well as resources, to participate in remedy. Confidentiality throughout the remedy process should be assured, and where appropriate, the identity of affected workers should not be disclosed. Additional measures should be taken to address added vulnerabilities suffered by workers that are subjected to discrimination on grounds of their identity or status<sup>12</sup>.

### 7. Worker participation in design and implementation

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<sup>10</sup> In some cases, threats and harm may also be directed to their family members.

<sup>11</sup> Union busting is actions taken by employers or states to break and remove a trade union. Such actions may include establishing employer-controlled unions, or 'yellow unions,' in order to secure a non-unionised workforce.

<sup>12</sup> See footnote 9.

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As appropriate, workers, trade unions, worker representatives and human rights defenders should take part in the design of remedy mechanisms<sup>13</sup>, and may have a formal role in their governance, implementation, and monitoring. Channels must be in place for workers, trade unions, worker representatives and human rights defenders to report on their level of satisfaction with the remedy process and its outcomes. Considerations should be given to scheduling of meetings, particularly for workers and trade union leaders with family or other responsibilities. Where remedy is deemed by them to be unsatisfactory, further actions should be taken to address outstanding issues. Participation of other stakeholders in the design and monitoring of remedy mechanisms should be considered to ensure their meaningful engagement where needed.

### **8. Shared responsibility and meaningful engagement of stakeholders**

All supply chain actors that cause, contribute, or are directly linked to harm are jointly responsible for remedy. These actors include commercial entities and public procurement agencies. Responsibility should not be outsourced to third parties, nor delegated to suppliers. Where human rights abuses occur, each organisation in the supply chain should shoulder an appropriate proportion of responsibility to ensure that remedy is provided. Other stakeholders in global supply chains, such as civil society organisations, governments and investors may also play a valuable role in driving effective remedy. Opportunities for joint action and potential synergies among different stakeholders should be considered, especially where additional leverage is possible.

*Effective remedy outcomes require:*

### **9. Provision of various reparation measures**

The appropriate reparation measures depend on the context and severity of harm. They must be based on the rights and reflect the short and long-term needs, expectations and perspectives of rights holders affected by the harm. They should be co-defined by workers, supported by trade unions, worker representatives and human rights defenders. Reparation measures may include, but are not limited to, compensation, restitution, rehabilitation, satisfaction, including apologies, and guarantees of non-repetition. These should be considered as complementary and cumulative, rather than choices or alternatives to one another.

### **10. Inclusion of backward-looking and forward-looking measures**

Reparation must include both backward-looking and forward-looking measures. These should be defined according to the short and long-term needs, expectations and perspectives of rights holders affected by the harm, supported by trade unions, and worker representatives and human rights defenders. Backward-looking reparations should address immediate harm as well as long-term consequences on workers, including health and safety concerns. Forward-looking reparations should aim to change the conditions or practices that caused the harm to prevent and ensure that similar harms do not arise in the future.

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<sup>13</sup> Remedy mechanisms based on the UNGPs refer to the various avenues that individuals, groups, and communities affected by business-related human rights abuses can use to seek redress, justice, and reparation. These mechanisms can take various forms, such as judicial and non-judicial mechanisms.

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### ANNEX 1: Further Explanation of the Principles

This Annex details several operational considerations which can support an effective implementation of the Principles.<sup>14</sup>

#### 1. Respect for human rights law

States have obligations to protect human rights. Businesses have the responsibility to respect human rights. Both these duties include providing remedy for harm. As state actors, public buyers also have certain responsibilities towards their supply chain as recognised by the UN Guiding Principles on Business and Human Rights.

All kinds of businesses can cause, contribute, or be directly linked to human rights violations. These include financial organisations and investors, manufacturing businesses, brands, small enterprises, recruitment agencies, and subcontractors.

All rights-holders that are harmed during commercial operations should receive effective remedy. Among others, rights-holders may include workers, their families, and communities, freely chosen worker representatives and trade unionists, and human rights defenders.

Meaningful stakeholder involvement, including by public buyers, is also required to ensure that effective remedy is achieved in practice.

#### 2. Workers at the core

Remedy should be driven by the rights-holders affected by the harm. These Principles refer to worker-driven remedy for accessibility of language, and because workers are those most often affected by business-related abuse in global supply chains.

Workers are not homogenous, but may differ based on their age, gender, worker status – including whether they are migrant, temporary, regular, informal, documented or undocumented workers – or because they belong to other vulnerable groups. This necessarily shapes their experiences of harm as well as their needs – both short and long term – expectations and perspectives in terms of remedy. As such, each case and context should be recognised and reflected in remedy efforts.

Particular attention should be given to women workers who are exposed to specific risks and challenges in global supply chains. Gender inequalities and social norms are factors contributing to gender-based violence in the workplace and perpetuating a culture of sexual harassment. Women are also subject to reproductive health harms such as miscarriage and infertility when exposed to toxic chemicals and arduous work when pregnant. Working hours that require women to travel late at night subject women to high risks of sexual abuse, and women with family responsibilities may be subject to dismissal or loss of wages if they cannot take on irregular working shifts or care responsibilities.<sup>15</sup>

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<sup>14</sup> The OECD Guidelines for Multinational Enterprises on Responsible Business Conduct provides a useful background reference.

<sup>15</sup> Care responsibilities may include housework and childcare as well as caring for elderly and disabled family members.

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To tackle these issues and ensure appropriate and tailored remedies, women workers and their representatives should take an active part in the remedy process starting from its design, to establish a safe place and trusted process where women and other vulnerable workers such as those in the LGBT+ community will feel confident to speak up and report gender-based violence, harassment, and other harms.

### 3. Protection and promotion of trade unions, worker representatives and human rights defenders

Freedom of association and the right to collective bargaining are core 'enabling' labour rights<sup>16</sup> for workers. Where workers have an independent, trade union, their representatives can raise grievances on behalf of their members and collectively negotiate better terms and conditions, including wages, working hours, health and safety, as well as remedy for rights abuses. Yet in many countries trade unions are not accessible to workers due to strict laws or anti-union policies. Even when unions exist in the country, the ability of workers to join a union or elect representatives could be weakened by union busting or poor labour laws.<sup>17</sup> This can particularly affect agency workers, migrant workers and women workers, who are either absent or under-represented in some unions. This under-representation of vulnerable workers must be addressed, as all workers' claims should be treated fairly and equally, in alignment with these Principles. 'Yellow unions', or worker committees established or supported by management, undermine workers' rights. However, where both independent trade unions and genuine worker-organised committees are present, cooperation between the two should be encouraged. Special care should be taken to ensure that worker committees (e.g. established by migrants, women or other groups) do not undermine the functions of recognised unions, where they exist in the same workplace.

### 4. Timely and urgent action

Abuses are often interconnected and mutually reinforcing. Inadequate wages may lead workers to accept more dangerous tasks or work excessive overtime, and 'minor' harms, when widespread or routinised, may enable 'extreme' ones to take place. For example, exposure to toxic chemicals may not cause illness in the short term but can be life-threatening over an extended period. At the same time, experiences of abuse are not static, and workers may experience different harms at different points in time. For example, contingencies such as illnesses can have a disproportionate effect on workers in already precarious situations and with little to no savings, pushing them into extreme exploitation due to the need to borrow at high interest rates offered by their employers or managers. In this position, managers can gain greater power over the workers, which may lead them to impose even harsher working conditions and lower wages. Businesses sometimes instil fear, weaken resolve, and erode the collective strength of trade unions by dismissing their representatives or leaders. In such cases, where union busting has occurred, remedy measures must include the reinstatement of union leaders as quickly as possible to sustain the investment the union has made in trying to achieve recognition or a collective bargaining agreement.

All harm must be remedied in a timely manner, to ensure it does not escalate and harm workers further. Urgent action is required when there is a risk of gross human rights violations or when

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<sup>16</sup> [ILO core labour rights are based on the Declaration of Fundamental Principles and Rights at Work.](#)

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unaddressed abuses are likely to severely impact the rights of workers; when violations constitute a criminal offence (e.g., forced labour, child labour, sexual harassment) or when they involve attacks against worker representatives and unions.

A timeline for remedy should be agreed on by all parties involved in the process, which include workers, their freely chosen representatives, including trade unions, and any stakeholder, including public buyers, who is engaged in the process.

### **5. Transparency**

Transparency is necessary to ensure that trade unions or other worker representatives can participate in remedy on equitable terms. It can help ensure accountability by all parties and encourage buyers and employers to resolve issues quickly and satisfactorily before they are escalated, as well as allow external actors to review and scrutinise the remedy process. It will provide other workers with the trust and confidence they need to raise grievances in a timely manner. Relevant information must be communicated to other stakeholders, including public buyers, to ensure their meaningful engagement where needed.

### **6. Removal of barriers to worker participation**

Workers' freely chosen trade unions or other worker representatives can face several different barriers to participation in a remedy process. These must be appropriately addressed to ensure remedy is effective. Below is a non-exhaustive list of measures that should be considered:

- Precautionary measures must be taken to ensure the affected workers are not adversely affected by the remedy process and do not experience further harm, including loss of earnings or time. This includes trade union leaders who work full or part time. Workers and their legitimate representatives must have access to appropriate advice, expertise, and legal assistance free of charge, to ensure that they have knowledge of their rights, capacity and resources to participate in remedy. Access to such advice/assistance should be free-of-charge, with companies / employers / perpetrators bearing the costs (e.g., providing a 'voucher' for independent legal assistance).
- Confidentiality throughout the remedy process should be assured, and where appropriate, the identity of affected workers should not be disclosed. Intimidation and threats of retaliation, including union busting, violence or threats of violence and blacklisting, must be prohibited – for example through non-retaliation policies to cover the entire supply chain – and prohibitions must be enforced. Workers must not be subject to onerous burdens of proof, such as the requirement to provide detailed evidence demonstrating the harm they have suffered, where this is not feasible or will lead to further trauma.
- Safeguarding of women who have suffered sexual harassment and abuse in the workplace, often by their superiors, requires additional measures to keep them safe from further harm, help them deal with trauma and prevent reprisals. Such measures should include psychological support and the provision of safe spaces for women to discuss gender-related rights violations.

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- Migrant workers face language barriers, limited knowledge about their rights, and threats arising from their precarious status as immigrants. In many cases they are refused by law the right to form or join an independent trade union, or when they can join, to hold official positions in their chosen trade union. Additional measures must be taken to protect all vulnerable workers that face discrimination and additional risks of abuse and exploitation on grounds of their identity and status, and ensure they have equal access to remedy when they suffer harm.
- Women workers may be subject to more extreme power imbalances due to gender discrimination. They may be subject to verbal and sexual harassment from male managers, threatened and coerced into sex to secure their jobs, hours, or wages. Women are also subject to reproductive health harms such as miscarriage and infertility when exposed to toxic chemicals and arduous work when pregnant. Working hours that require women to travel late at night subject women to high risks of sexual abuse, and women with family responsibilities should not be subject to negative impacts, such as dismissal or loss of wages if they cannot do irregular working shifts.
- Remedy provision should take account of national laws, such as the kafala system and immigration regulations, that result in additional harm to workers, including the criminalisation or forced deportation of workers. Records should be kept to ensure that harmed workers can be traced even when they have returned to their country of origin or left their workplace, and appropriate measures taken to ensure they receive the remedy to which they are entitled (e.g. in cases of wage theft).

### **7. Worker participation in design, implementation and follow-up**

Workers' freely chosen trade unions or other worker representatives should have a formal role in the entirety of the remedy process, including the design, governance, implementation, and monitoring of remedy mechanisms. They must participate in the negotiations relating to the nature and options for remedy outcomes, to ensure that remedy is based on their rights and reflects their needs, expectations, and perspectives, rather than being predominantly driven by the interests of other stakeholders, such as businesses.

All remedy processes must be monitored independently of the businesses involved in the harm, to verify if effective remedy is implemented in practice, including through social dialogue with trade unions, and take action if the outcomes are unsatisfactory. Trade unions and workers' representatives must have access to the monitoring results and be formally invited to provide their own conclusions and proposals for corrective plans and for future steps.

Grievances may be individual or collective and may affect different groups of workers in different ways. Where collective action is involved for a group of workers, there should be representation of workers that reflect the diversity of the group as described in Principle 2.

Workers should also have access to a range of grievance mechanisms that are trusted and easily accessible to them.

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### **8. Shared responsibility and meaningful engagement of stakeholders**

Global supply chains comprise many different stakeholders, all of which share a responsibility to ensure effective remedy is achieved. This includes those with significant leverage such as buyers (including public buyers), investors and regulators. Poor purchasing practices that squeeze labour costs, lack of accountability and monitoring measures, discriminatory laws and social norms may be directly or indirectly responsible for harm caused. The important role of stakeholders such as civil society organisations and trade unions that represent and seek remedy for vulnerable workers should be recognised.

### **9. Provision of various reparation measures**

In most circumstances, a 'bouquet of remedies' is needed to ensure effective remedy is achieved. The measures necessary in each circumstance will depend on objective as well as subjective factors – the most important of which are the rights, needs, expectations, and perspectives of those affected by the harm.

Any outcome must not be decided on unilaterally by businesses and must be thoroughly justified, reflecting on how it meets the rights, needs, expectations and perspectives of workers affected by the harm. It must not fall below internationally recognised human and labour rights standards.

### **10. Inclusion of backward- and forward-looking measures**

Backward- and forward-looking reparations serve different aims and are both necessary and mutually reinforcing. Backward-looking measures are often victim-specific measures and are important to acknowledge and minimise the harm suffered. Forward-looking measures include addressing the future needs of those who have already been harmed, as well as preventing future harm. They should aim to promote dialogue and resolution of issues that arise before they escalate, reconciliation between parties involved in the harm. They should prevent future harm, by putting in place necessary policies and systems that ensure compliance and avoid the risk of recurring violations and grievances.

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### ANNEX 2: Definition of Reparation measures

**Restitution** entails measures to restore the victim of harm to the state before the violation ('status quo ante') by eliminating the consequences of the violation. This may include, for example, reinstatement of employment or return of property.

**Compensation** is reparation, often in monetary form, to be provided for a damage which can be economically assessed. It must be fair and proportional to the severity of the violation. Compensation can be awarded not only for physical harm, material damages and loss of earning, but also for lost opportunities (such as employment, education and social benefits), loss of earning potential, and any expense incurred in for assistance (including legal, expert, medical, psychological or social support), and psychological harm. For example, this reparation measure has been awarded for anxiety, distress, isolation, confusion and neglect, abandonment, feelings of injustice, impaired way of life, harassment and humiliation.

**Rehabilitation** aims to restore the individual's health and reputation after a violation of their human rights. This reparation measure recognises that it may take time for affected rightsholders to recover from the harm suffered, and that medical and psychological care as well as legal and social services may be needed to facilitate such recovery.

**Satisfaction** can involve a variety of reparative measures to acknowledge the harm that has been done and the role of the perpetrators. For example, measures can include the cessation of the harm, fact finding, public acknowledgement of responsibility, apologies, and sanctions against those responsible. While important, measures of satisfaction are mostly symbolic, and can be perceived as an 'empty gesture' if not accompanied by more concrete actions to actively repair the harm.

**Guarantees of non-repetition** are structural measures and reforms that aim to change the conditions that led to the violation and prevent it from reoccurring. For example, they can include the promotion and enforcement of codes of conduct and ethical norms, and the reform of laws, institutions and practices which have been instrumental to causing the harm.

It should be noted that this list of measures provided by human rights instruments is non-exhaustive, and other measures may be needed to repair a harm, depending on the circumstances of the harm and the needs (both short and long term), expectations and perspectives of affected rights-holders. For example, reparation may be achieved through community-wide socio-economic measures, which aim to promote societal reconciliation after abuse targeting a marginalised social group. These may include the strengthening of infrastructure or the implementation of basic services and social programs, such as the maintenance of roads, sewer systems and water suppliers, the creation of health centres, and the provision of adequate education.