

Workshop:

Advancing Stakeholder Engagement and Remedy in the Mining Sector

When: 6th of February, 9am to 1pm

Where: [Inyathelo](#), 2nd Floor, The Armoury, Buchanan Square, 160 Sir Lowry Rd, Woodstock, Cape Town, 7925, South Africa

Estelle Levin-Nally keynote on Remedy in the Mining Sector

As I was coming here, I took a moment in my taxi to confirm we were in the right place. I could hear a persistent car horn but was absorbed with checking my map and the address that had been given. As I got out of the passenger seat, I turned to see an older man in a flashy Mini Cooper grimacing, shouting and giving me the finger from behind his steering wheel. I paused, frowned and said, "Is that really necessary?" and began to make my way into the parking area. As his car came close to me, he wound down the window, shouted at me, "You don't deserve to be walking on this Earth" and promptly drove away.

What an ***hole.

But I didn't shout that after him. Wow. I'm proud that I didn't. In some way I guess I was in shock. I also felt sorry for him. Blimey, what kind of day must he have had? Who had rained on his parade? Why does he think it's ok to be so intolerant and impatient of a stranger who is clearly in a situation? Would he have behaved the same had I been a man? Above all, I wanted to actually corner him and ask him all these questions and get him to reflect on his actions and hopefully apologise (as I would have done for inconveniencing him, once I'd explained my reasons and gotten his apology first!). But without the opportunity to do so, I was left disturbed, annoyed, pissed off.

This is just a small harm, a small injustice and frustration, but it led to an emotional reaction. And I couldn't get it made right. Remedy was denied me, so I have to shrug it off. This very tiny experience is a window into empathizing with the millions of people globally who suffer small and large harms by actors they cannot reach, cannot meaningfully engage, cannot demand justice from. And these feelings matter, because they accumulate and concretise into anger, fear, mistrust and resistance. That sets the stage for conflict and an inability to capitalize on the opportunity that mining should be bringing local communities.

So thanks for inviting me. I'm not going to claim to be an expert on remedy, but it's a topic I've been getting increasingly interested in in recent years and that my expert team has been doing advisory on. It's brilliant that our industry is at last waking up to the importance of remedy as a pathway to not only respecting human rights, but smoothing the path for industry to permit sooner, build and protect greater value and deliver on their social contract.

Today, standards setters and industry associations are developing operational grievance mechanisms, guidance and performance expectations on remedy; yesterday we had the first panel on remedy at the Investing in African Mining Indaba; and today we're here thanks to IRMA to talk about remedy. Bring it on!

I'm embarrassed to say that in spite of my 20 years in the industry and my focus on social and environmental justice and all the harms I've borne witness to or been told about as a researcher, I didn't really start to explore remedy until the past few years.

- I first came across human rights as being relevant to my work in 2014 when I was asked by the [Sustainable Artisanal Mining project in Mongolia to co-design the third phase](#). Thanks to the vision of Swiss Development and Cooperation, who was financing the bilateral programme with the Government of Mongolia, we had to take a human-rights based approach to our programming and this crash course left me extremely excited as I could see the impact this had on driving higher engagement from state officials and miners, and empowered both to drive more positive outcomes for business and society. We've put human rights at the heart of Levin Sources projects ever since.
- Then in 2020 I became the [human rights coordinator for the Global Battery Alliance, and led the crafting of the Human Rights Index for their battery passport](#). In doing so, we had to figure out how to measure good practice in human rights due diligence, and exploring what this looks like in remedy taught me the importance of preparedness and due process.
- In 2022 I and my team supported the OECD to draft their new Handbook for Environmental Due Diligence in Minerals Value Chains. We had a large working group of experts to support us, and built a small focus group to explore remedy - where were the good examples of how environmental remediation and remedy for associated human rights violations and occurred? We struggled to find any. Were they just elusive and unpublished, or do they not exist?

This question led me, Dr. Fabiana Di Lorenzo and Dr. Victoria Gronwald to grasp an invitation to edit a book for Springer Nature, and to deep dive into the subject of remedy. Our book is called Leadership in the Just Transition: the role of remedy in responsible minerals value chains, and a couple of the authors and peer reviewers are in the room.

So what is remedy?

Well I don't want to teach a granny to suck eggs, but here is broadly what the UNGPs says:

Remedy is the process that counteracts or makes good any human rights harms that have occurred. It can take many forms, e.g. "apologies, restitution¹, rehabilitation², financial or non-financial compensation, and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition." It involves both restoration for the affected rightsholder and mitigation plans to strengthen prevention and minimization.

So why is remedy so important?

1. It's one of the **3 core pillars of the [United Nations Guiding Principles for Business and Human Rights](#)**, which sets out clear guidance to governments, business and other stakeholders on how to support victims of human rights harms to access remedy.
2. As the UNGPs are being domesticated into national and international laws, then it is important for **miners to demonstrate conformance with them for compliance purposes but also to meet business partner expectations**, especially for European downstream entities and increasingly investors.
3. **Past harms leave people aggrieved, which affects trust and the willingness to participate in or support company or statutory initiatives.** Low trust elevates the likelihood of resistance and conflict and prevents the types of cooperations that can maximise positive impacts for business and society. It is also at the root of permitting delays and refusals in a number of jurisdictions (as evidenced by our work in Chile, for example) and a lack of investment (as shared by investors at Resourcing Tomorrow in December 2025), and as such is a key barrier to scaling minerals production but also to achieving project viability and financing.
4. **Equity is a basis for driving sustainable development** and without access to remedy, harms are inequitably distributed leading to greater socio-economic inequality, deepening poverty and leaving the promise of minerals-driven prosperity unfulfilled.
5. **Company directors have a fiduciary duty to conduct business ethically.** Creating harm and not repairing it is unethical.
6. Perhaps most importantly, **remedy is a pathway for healing for victims and their families.** This has inter-generational ramifications because trauma is inherited both epigenetically and behaviourally. As the descendant of Jewish refugees and married into an Irish family, I see this inherited trauma in action in my own life.

So if it's so important, then why aren't we doing it well yet in mining?

First and foremost, **rule of law is weak in many mining jurisdictions so access to justice through the courts is elusive.** Furthermore, a **global shift away from democracy towards autocracy means that some states are intentionally complicit in harms to minerals sector stakeholders in order to push forward their policy agendas;** this may be through deregulation and/or permitting state-led oppression of community activism. It's also particularly difficult for victims of harms by state-owned enterprises in weak states to access remedy, because the state is both perpetrator and protector.

Secondly, **standards have not dealt with remedy well until recently.** Downstream actors have not been using their leverage to push for remedy as part of their supply chain due

diligence efforts because the OECD Minerals Guidance excludes remedy save for an expectation for a company to have an operational grievance mechanism (but with no further detail given). Most minerals value chain actors remain wedded to the OECD Minerals Guidance 5 step framework, though fortunately some – led by standard setters who’ve seen the light – are now using the [OECD Responsible Business Conduct](#) 6 step framework as their base (which has a sixth step on remedy, thank goodness.) It is also only recently that minerals standard setters, such as [RMI](#), [ASI](#), [IRMA](#), have either added operational grievance mechanisms into their own governance frameworks or sought to align their systems to the UNGPs in order to make it possible for affected rightsholders to seek recourse through them.

Lastly, **the pathways to remedy differ within places for different people, and differ between places.** Do affected rightsholders even know they have a right to seek remedy? And do they now how to pursue remedy?

There’s still so much to do if we are going to get better at remedy in minerals value chains. **We have to make remedy a focus and a priority for all stakeholders if we are going to build truly equitable, resilient and prosperous minerals sectors and communities.** This requires dedicated conversations like we’ll have today.

So where to begin? Well here are just a few and learnings so far from our imminent book:

1. **Miners, their business partners and civil society can do so much more to support (potentially) affected rightsholders to understand how to access remedy should they be harmed.** This isn’t just about publicising the existence of a grievance mechanism, but actually educating affected communities on the variety of avenues to justice that exist, whether through the courts, OECD National Contact Points, extra-territorial law firms like Leigh Day that represent victims harmed by businesses where UK jurisdiction applies, standard setters, etc.
2. **Remedy preparedness is crucial.** If you don’t anticipate what’s likely to happen and don’t prepare for it, it’s likely to be messier and more expensive. Mines are great at emergency preparedness for health and safety issues, but what about the other potential harms like sexual and gender-based violence, community conflict, drinking water contamination?
3. **Prevention is ultimately better than remedy.** If you cut down an old growth forest, replacing it with a plantation is not going to do it!

At the end of the day, as human beings we are all seeking dignity as the basis for wellbeing. Without access to remedy, victims continue to suffer. We know we have achieved remedy when dignity is restored. Let that be front of mind as we dive in to this subject today, and going forward.