

RESEARCH ARTICLE

Child Labour in Artisanal and Small-Scale Gold Mines in Uganda: Are Legal Protections Adequate?

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Abstract

Child labour is prevalent in both developed and developing countries and has become a global concern. This is because of the negative impacts that it has not only on the human rights and fundamental freedoms of children, but on their development and health due to possible exposure to hazardous substances. This article interrogates the magnitude of the problem of child labour in the gold mines of Uganda and seeks to highlight the gaps in the existing legal framework on the protection of Ugandan children from hazardous labour. It asserts that although poverty and a failed educational system are believed to be the root causes of child labour in Uganda, weak and inefficient laws coupled with a lack of coordination between institutions responsible for protecting the child contribute equally. Thus there is need for political will by the government of Uganda to help prevent the problem.

Keywords: Uganda; child labour; hazardous labour; artisanal and small-scale gold mining; weak and inefficient laws

Introduction

Child labour is a recurrent problem in Africa. It is estimated that about 72.1 million children in Africa are engaged in child labour, of which 31.5 million are involved in hazardous work.¹ The 2017 International Labour Organization's (ILO) Global Estimates on Child Labour indicate that sub-Saharan Africa is ranked with the highest incidences of child labour in the world.² Evidence suggests that child labour is caused in part by increasing poverty rates, cultural beliefs, corruption, family conditions and urban migration, including a decrease in educational standards.³ Andvig, on the other hand, observes that the absence of large-scale holdings and labour markets are contributing factors to child labour, especially as a number of African countries are still predominantly rural and depend on household production for daily subsistence.⁴ Although the problem has declined with the emergence of children's rights movements from 1989, the establishment of schools and improvements in household incomes, child labour remains a problem with immense

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1 International Labour Organization "Child labour in Africa", available at: <<https://www.ilo.org/ipec/Regionsandcountries/Africa/lang--en/index.htm>> (last accessed 19 May 2022).

2 Ibid.

3 E Ortiz-Ospina and M Roser "Child labour" (2016) *Our World in Data*, available at: <<https://ourworldindata.org/child-labor>> (last accessed 21 March 2020).

4 JC Andvig, S Canagarajah and A Kielland "Child labor in Africa: issues and challenges" (2001) (World Bank Africa Region Findings & Good Practice Infobrief no 194) at 2–3, available at: <<https://openknowledge.worldbank.org/handle/10986/9791>> (last accessed 9 November 2022).

social, economic and environmental costs and with poor health and safety consequences of some magnitude in developing countries, including Uganda.⁵ Incidences of child labour in Uganda have raised serious concerns both nationally and internationally. Reports from the Ministry of Gender, Labour and Social Development (MGLSD) show that approximately 2 million children aged 5 to 17 are involved in child labour.⁶ It is estimated that about 51 per cent of these children work under horrific conditions that are considered illegal, hazardous and extremely exploitative to their health and wellbeing.⁷

Although Uganda is a party to several international human rights instruments that prohibit child labour, it is a known fact that the government of Uganda has made little or no progress to end this illicit activity. Uganda's domestic legislation, especially those laws specifically involved in promoting children's rights, has proved to be inadequate and ineffective. For instance, gaps in the legal framework, including contradictory laws regulating the minimum age of employment, and weak and inefficient laws have caused progress against child labour to remain stalled in Uganda. In addition, the lack of coordination between institutions responsible for protecting children has contributed immensely to the persistent rate of child labour in the country. Evidence to corroborate this view is seen in the numerous and recurrent incidences of child labour in Uganda.

Uganda is among the many African countries endowed with mineral resources including gold, iron ore, uranium, nickel, cobalt and copper.⁸ Artisanal and small-scale gold-mining activities are practised throughout the country, with the Mubende, Karamoja, Mayuge, Namayingo and Bugiri districts known to be the most booming business areas, serving as a means of survival for the entire population.⁹ Mining activities in Uganda predominantly include small-scale and artisanal mining, which often operate illegally and in a disorganized manner, with very few of them officially registered with the government.¹⁰ Artisanal and small-scale gold mining often requires hard labour, and work is often done manually under dreadful conditions. The miners include all categories of people, including men, women and, regrettably, children. Children suffer the most as they are exposed to hazardous labour and toxic substances that have detrimental effects on their health, welfare and on the general development of their productive potential.¹¹ The degrading conditions under which these children are subjected to work undermine all the principles and fundamental rights based on human nature.¹² Child labour is more predominant in communities where economic realities and weak legal institutions inhibit the effective implementation of domestic and international norms and standards relating to child rights.

Over the years there has been a vast literature concerning the practice of child labour, as well as possible recommendations on how to address the problem in Uganda. Several scholars, like Kibukamusoke, Kabasiita, Ravandoust et al and Newsom, Moore and Kessler, have limited their

5 HD Hindman *The World of Child Labour: An Historical and Regional Survey* (1st ed, 2009, Routledge) at 35–48.

6 See Ministry of Gender, Labour and Social Development Report of 2012, available at: <<https://social.un.org/ageing-working-group/documents/eleventh/Inputs%20MS/Uganda%20-%20Substantive.pdf>> (last accessed 10 November 2022).

7 National Organizations of Trade Unions and Global March Against Child Labour “Ending child labour and ensuring education in Uganda: A national overview for taking action” (2017), available at: <<http://globalmarch.org/lt/National%20Paper.pdf>> (last accessed 27 May 2022).

8 I Schipper, E de Haan and S Turyahikayo “No golden future: Use of child labour in gold mining in Uganda” (April 2016) *Stichting Onderzoek Multinationale*, available at: <<https://stopchildlabour.org/assets/No-golden-future.pdf>> (last accessed 31 July 2019).

9 Saferworld “Mining in Uganda: A conflict sensitive analysis” (August 2017), available at: <[https://www.mining-in-uganda%20\(2\).pdf](https://www.mining-in-uganda%20(2).pdf)> (last accessed 25 February 2020).

10 Ibid.

11 International Labour Office “Global estimates of child labour: Results and trends, 2012–2016” (2017, ILO, Geneva) 23, available at: <https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_575499.pdf> (last accessed 11 July 2019).

12 Love Uganda Foundation “How child labor affects children in Uganda” (23 September 2019), available at: <<https://love-ugandafoundation.org/how-child-labor-affects-children-in-uganda/>> (last accessed 13 May 2022).

studies by focusing on child labour in the agricultural sector (tea and sugarcane plantations), sexual exploitation and child trafficking. In addition, they also considered socio-economic factors, like poverty and a failed educational system, as being some of the root causes of premature work in Uganda.¹³ There is generally very little, or no, literature with an up-to-date overview of incidences of child labour in the artisanal and small-scale gold-mining sector in the country. This is coupled with the frailty or absence of well-coordinated institutional frameworks in the country, which has heightened this bad situation. This article seeks to contribute to the existing literature by providing up-to-date data on the magnitude of child labour in Uganda. In order to provide appropriate recommendations to remedy this problem, it assesses the strengths and weaknesses of the regulatory framework governing child rights in Uganda; it presupposes that the problems stem from weak enforcement mechanisms of government policies, mismanagement of public resources and rampant corruption, which are typical in poverty-stricken states with failed educational systems. I argue that these aspects have a negative influence on the working conditions of children and escalate child labour in Uganda to high levels. In providing an updated overview of the scale of the problem, the article also interrogates the legal regime, with a view to identifying major gaps in existing legislation on child labour issues in Uganda. It begins with a clarification of the meaning of child labour, based on the ILO's standards, and, secondly, examines the magnitude of the problem of child labour in the gold-mining industry in Uganda. The discussion then attempts to identify reasons as to why the problem recurs in Uganda, a country believed to be on the right path of economic development. Finally, the article provides a conclusion and suggestions on how to abate the situation.

Child labour: A conceptual framework

Child labour is a confusing concept among scholars and academics.¹⁴ This may be attributed to the lack of an understanding of what constitutes the worst forms of child labour, coupled with the absence of a universally accepted definition of the concept.¹⁵ Nhenga recounts that human rights activists, scholars and health professionals view child labour as abusive, since it requires children to work for long hours under horrific and unhealthy conditions without any physical and social security, and with low pay.¹⁶

The Constitution of Uganda stipulates that “children are entitled to be protected from social and economic exploitation and shall not be employed in or required to perform work that is likely to be hazardous or interfere with their education or harmful to their health or physical, mental, spiritual, moral and or social development”.¹⁷ The definition of children according to the Ugandan Constitution is those below the age of 16 years.¹⁸ The fundamental human rights of labouring

13 M Kibukamusoke “A critical analysis of child labour and human resource development in Uganda” (PhD dissertation, Nelson Mandela Metropolitan University, 2010) at 8–10; M Kabasiita “Combating child labour in Uganda: Challenges and prospects from a development perspective case study, Kisenyi slum, Kampala district” (MA dissertation, University of South Africa, 2009) at 3–14; S Ravandoust et al “Decoupling of child labour policy and implementation in the Ugandan agricultural sector: Causes, drivers, and effects”, available at: <https://knowledge4food.net/wp-content/uploads/2018/08/agri-quest_Research-Paper_No14_2018_Ravandoust-et-al.pdf> (last accessed 31 May 2022); D Newsom, K Moore and JJ Kessler “The cost and effectiveness of three approaches to eliminating child labour in the Ugandan coffee sector” (June 2021), available at: <<https://www.rainforest-alliance.org/wp-content/uploads/2021/07/eliminating-child-labor-uganda.pdf>> (last accessed 8 June 2022).

14 EV Edmonds “Defining child labour: A review of definitions of child labour in policy research” (International Labour Organization / International Programme on the Elimination of Child Labour (IPEC) working paper, November 2008) (2009, ILO, Geneva) 1–2, available at: <[http://www.Defining_Child_Labour_En%20\(7\).pdf](http://www.Defining_Child_Labour_En%20(7).pdf)> (last accessed 21 March 2020).

15 Schipper, Haan and Turyahikayo “No golden future”, above at note 8.

16 TC Nhenga “Who does the law seek to protect and from what? The application of international law on child labour in an African context” (2010) 10 *African Human Rights Law Journal* 161 at 162.

17 Art 34(4) of the Constitution of the Republic of Uganda 1995, with amendments through 2018 (Act 1 of 2018).

18 Id, art 34(5).

children, including the right to play, rest, education and freedom from economic exploitation, are often violated.¹⁹ Although it is unlawful under international and Ugandan law to employ children under the age of 18 in hazardous work, there are no proper enforcement mechanisms as a result of the absence of government resources and a tolerant attitude towards child labour in many African communities, including in Uganda.²⁰ It is known that the government of Uganda continues practices that delay the advancement of eradicating incidences of child labour. For instance, even though the new Mining and Mineral Act of 2021 is applauded for benchmarking several national, regional and international best practices, such as Uganda's Vision 2040, the National Development Plan, the African Mining Vision and trends in the International Minerals Market, the government is still reluctant to prosecute, convict and even sentence public officials, including police and immigration officers, who are involved in and or promote the worst forms of child labour in the country.²¹

In Uganda as in other developing countries, child labour has been recognized as a major problem and a serious obstacle to the development of younger generations.²² According to the last National Labour Force Survey in 2018, approximately 2,057,000 children are engaged in child labour in Uganda.²³ It is reported that of these, about 15,000 children are involved in premature work in the gold-mining sector.²⁴ Most of these children work in the informal sector and especially in artisanal and small-scale gold-mining sectors. Child labour limits vulnerable children's ability to further their education and reduces the prospects of them developing themselves; this is compounded by the government's inability to adequately deal with the problem.

The ILO Convention no 138 on the Minimum Age for Admission to Employment and the ILO Convention no 182 on the Prohibition of the Worst Forms of Child Labour define child labour as work that has a negative impact on the mental, physical, social and moral development of children.²⁵ They further reiterate that child labour interferes with children's schooling or compels them to leave school prematurely, or requires them to combine school attendance with excessively long hours of heavy work. Child labour is therefore any work that is mentally, physically, socially and morally harmful to children.²⁶ In simple terms, child labour is when children below the age of 18 are engaged in work in both the formal and informal sectors under conditions that have the potential to destroy their mental and physical health.²⁷

The above definition is in line with the vision of the UN Convention on the Rights of the Child (CRC), which obliges states to safeguard children from economic exploitation and any work that is considered dangerous and interferes with schooling or that is injurious to mental health and physical development.²⁸ Based on the above, child labour can be described as work that is not in line with the principles set in the conventions and recommendations, such as the employment of a

19 I Nderi "Child labour in Uganda" (10 October 2017), available at: <<https://www.humanium.org/en/child-labour-uganda/>> (last accessed 26 February 2020).

20 "Child Voice Uganda, CBO: Ending child labour in Musoli, and Jinja, Uganda, East Africa", available at: <<https://childvoice.jinja.eu/child-labour-in-uganda>> (last accessed on 2 March 2020).

21 Ugandan Bureau of International Labor Affairs "Child labour and forced labor reports", available at: <https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2020/Uganda.pdf> (last accessed 13 May 2022).

22 Schipper, Haan and Turyahikayo "No golden future", above at note 8.

23 "Child Voice Uganda", above at note 20.

24 D O'Driscoll "Overview of the child labour in artisanal and small-scale mining sector in Asia and Africa" (1 October 2017) K4D Helpdesk Report, UK Institute of Development Studies, available at: <<https://assets.publishing.service.gov.uk/media/5a5f34feed915d7dfb57d02f/209-213-Child-labour-in-mining.pdf>> (last accessed on 2 March 2020).

25 International Labour Organization (ILO) Minimum Age of Employment Convention 1973 (no 138); International Labour Organization (ILO) Worst Forms of Child Labour 1999 (no 182).

26 J Humphries "Childhood and child labour in the British industrial revolution" (2012) 66/2 *The Economic History Review* 395 at 498.

27 ILO "Report of the thematic study on child labour and armed conflict in Uganda" (June 2004, Ministry of Gender, Labour, and Social Development, Uganda), available at: <https://www.ilo.org/ipec/Informationresources/WCMS_IPEC_PUB_700/lang--en/index.htm> (last accessed 25 November 2022).

28 UN Convention on the Rights of the Child 1989, art 32(1).

child who is underage for a particular type of work or a child who works in a non-hazardous occupation but under conditions that are considered to be hazardous for their age.²⁹ Most activities defined as child labour in Uganda take place in the mining sector. This includes working underground or under water, working with harmful equipment and tools, carrying heavy loads and work that exposes miners, particularly children, to hazardous substances.³⁰

The localized Ugandan definition of child labour differs from the definition of child labour provided by the ILO Conventions as discussed above. Although the Ugandan Constitution prevents children from being involved in hazardous work, the definition of ‘children’ only includes those below the age of 16. This legal framework contradicts the minimum age provision provided by international instruments (18 years of age). Considering that Uganda has ratified key international instruments and conventions aimed at preventing children from hazardous work, the practice of child labour remains alarming. It is evident that Ugandan domestic legal frameworks do not conform with international standards. This lack of uniformity has posed substantial problems for Ugandan children engaged in mining activities, as the legal frameworks in Uganda do not specify the exact age at which children should be prohibited from work that is considered hazardous to their health and wellbeing.

The magnitude of child labour in the gold mines of Uganda

Uganda is a land-locked country situated in the eastern part of Africa, with a diverse landscape that includes the snow-capped Rwenzori Mountains and the immense Lake Victoria. With a land area of about 241,038 square kilometres, the country is bordered to the west by the Democratic Republic of Congo (DRC), to the south by Rwanda and Tanzania, to the east by Kenya and to the north by South Sudan. Uganda has the highest growing population in the world, and stood at 48,638,752 in 2022, based on estimates from the Worldometer elaboration of the latest UN data at the time of writing.³¹ The average age of the population is 16.7 years, and recent reports reveal that the country’s gross national income per capita is lower than the average sub-Saharan country.³² Ranked 159th out of 189 countries, and 30th out of the 50 African countries, Uganda has one of the lowest Human Development Index scores, despite significant strides made over the years to reduce poverty.³³ Schipper et al report that one in every five people still lives below the poverty line (that is, on less than USD 1) a day.³⁴ This is partly because the working population is smaller than the percentage of children (classified as below 15 years of age in the non-working population) in the country. According to the Uganda Bureau of Statistics in 2020, about 78 per cent of Ugandans are under 30, while 52 per cent are below the age of 15, meaning there are 6.5 million Ugandans within the age group of 18–30, constituting 21.3 per cent of the population.³⁵ This indicates that Uganda has the largest proportion of children under the age of 15 and is a country with one of the youngest populations in the world. Most children work in the artisanal and small-scale gold-mining sectors, with no legal or regulatory protection, as national laws are in themselves insufficient and ineffective in addressing the problem.

29 Kabasiita “Combating child labour”, above at note 13 at 16.

30 OECD “Practical actions for companies to identify and address the worse forms of child labour in mineral supply chains” (2017), available at: <<https://mneguidelines.oecd.org/Practical-actions-for-worst-forms-of-child-labour-mining-sector.pdf>> (last accessed 29 July 2019).

31 Worldometers “Uganda population (live)”, available at: <<https://www.worldometers.info/world-population/uganda-population>> (last accessed 10 November 2022).

32 Ibid.

33 Uganda “Countries data: Demographic and economy”, available at: <<https://countryeconomy.com/countries/uganda>> (last accessed 14 May 2022).

34 Schipper, Haan and Turyahikayo “No golden future”, above at note 8.

35 Uganda Bureau of Statistics 2020 “Statistical abstract”, available at: <https://www.ubos.org/wp-content/uploads/publications/11_2020STATISTICAL__ABSTRACT_2020.pdf> (last accessed 14 May 2022).

As mentioned above, Uganda, like most African countries, is rich in mineral resources, which poses social, economic, environmental and health problems to the entire population and particularly to children. In the 1950s and 1960s, gold mining was identified as the main source of economic growth in the country, generating about 30 per cent of Uganda's export earnings.³⁶ The economic and political instability that affected the country in the 1970s resulted in the shutting down of many industrial mines, thus opening wide the doors to artisanal and small-scale gold-mining activities.³⁷ Muhumuza reports that Uganda has experienced an explosive rush in gold mining, with 10,000 artisanal gold miners in the Mubende district, and with 15,000 to 80,000 miners at the Rupa gold mine in Karamoja.³⁸ Recent estimates are that illegal mining contributes about 3.5 per cent of the country's GDP.³⁹ This implies that there are over 50,000 to 200,000 unlicensed artisanal and small-scale miners, as the majority of the population now engage in illegal mining activities in the country, extracting some 2.8 tons of gold every year.⁴⁰ For instance, in 2015 only twelve licence holders officially registered with the government for artisanal and small-scale gold mining, and only four for large-scale mining.⁴¹ This is attributed to the lack of transparency, corruption and the over-centralized nature of the application process for licensing by the ministry in charge of mining and the Department of Geological Survey and Mines.⁴²

Child labour is a bizarre phenomenon in Uganda, especially in areas where law enforcement is weak. Recognized as a huge challenge violating the fundamental human rights of millions of children, child labour poses a threat to Ugandan children's personal and economic development. It is now in its widest operation in almost every country where artisanal and small-scale gold-mining activities are rampant. As earlier mentioned, the 2015 reports of the MGLSD and the United Nations International Children's Education Fund (UNICEF) reveal that about 51 per cent of children between the ages of 5 and 17 are compelled to work in the gold mines, of which 25 per cent are engaged in hazardous work.⁴³ This implies that on average, one in every four children undertakes dangerous work in the mines. While some of these children combine schooling (primary school) and work in the mines (often over the weekends and during holidays), the majority of them are dropouts who do not even attend school (1.4 million children aged 6–12 years old are not enrolled in schools) and who work full-time in the mines. In fact, Uganda is recorded as having the highest primary and secondary school dropout rates in the world.⁴⁴ Many of these children (70–80 per cent) work up to eleven hours a day, six days a week, "bending over makeshift gold pans, sluicing gold ore while standing ankle-deep in ponds of mercury and water".⁴⁵ This procedure requires the use of mercury (a highly toxic substance) to wash grind rocks and sort out gold particles, with no adequate protection for prevention of the effects of mercury. This exposes the children to toxic substances which have serious long-term implications for their health, including disorders of the nervous system, damage to the kidneys, the miscarriage of foetuses, and adverse effects on the digestive and

36 M Obwona, I Shinyekwa, J Kiiza and E Hisali "The evolution of industry in Uganda", available at: <https://www.brookings.edu/wp-content/uploads/2016/07/L2C_WP9_Obwona-et-al.pdf> (last accessed 5 March 2020).

37 "Confronting corruption in Uganda's mining industry" (7 August 2019), available at: <<https://www.mining-technology.com/features/featureconfronting-corruption-in-ugandas-mining-industry-5889445/>> (last accessed 2 March 2020).

38 MK Muhumuza "Mubende illegal gold miners apply for location licence" (1 April 2016), available at: <<https://www.monitor.co.ug/Business/Commodities/Mubende-illegal-gold-miners-apply-for-location-licence/688610-3141768-5v5cx/index.html>> (last accessed 2 March 2020).

39 "Artisanal and small-scale gold mining, Uganda" (21 March 2017), available at: <<https://ejatlas.org/conflict/bahi-manyi-uranium-mining>> (last accessed 02 March 2020).

40 L Ferrone and GC Gianneli "Household migration and child educational attainment: The case of Uganda" (2015, IZA discussion paper no 8927, Institute for the Study of Labour, Bonn) at 4.

41 Schipper, Haan and Turyahikayo "No golden future", above at note 8.

42 Saferworld "Mining in Uganda", above at note 9 at 8.

43 Ferrone and Gianneli "Household migration and child educational attainment", above at note 40 at 5.

44 OECD "Practical actions", above at note 30 at 15.

45 Schipper, Haan and Turyahikayo "No golden future", above at note 8.

immune systems, lungs, skin and eyes. Children also frequently suffer from severe malaria, typhoid, headaches, coughs and fever, partly caused by the dust from the grinding of stones as well as pollution from the air and water sources.⁴⁶ The most challenging health issue to children is when they suffer from cuts from rocks and still have to pan for gold with open wounds while using mercury. It is asserted that the absence of a centralized supervisory authority and inadequate funding, training and resources impede the ability of law enforcement agencies to conduct child labour inspections and investigations in the country, thereby leading to the escalation of this grave and disturbing problem.

Over the years, the country has experienced a rise in gold smuggling and illegal trading, with dealers exploiting its proximity to the DRC, which produces tons of gold but has been plagued for decades with conflict, mismanagement and recurrent human rights violations.⁴⁷ Notwithstanding the gold smuggling and illegal trade, Uganda's gold export earnings peaked at 23 per cent in 2017, overtaking coffee for the first time as the top foreign exchange earner in East African countries, with the United Arab Emirates as the main export channel.⁴⁸

The legal and institutional framework regulating child labour in Uganda

Over the years, the international community has established stringent laws on combating child labour worldwide. In expressing its international commitment to abolish child labour, the government of Uganda has ratified the ILO Convention no 138 of 1973 on the minimum age for admission into employment, which obligates states to adopt national policies that aim at eradicating child labour.⁴⁹ The Convention further urges state parties to progressively increase the minimum age for admission into employment in a way that does not hinder the mental and physical development of adolescents. To emphasize, the Convention stresses that children should not be allowed to perform work that is considered dangerous, unhealthy and bad for their morale below the age of 18.⁵⁰ Uganda also ratified the ILO Convention no 182 of 1999 on the Prohibition of the Worst Forms of Child Labour, which urges member states to establish a framework to eradicate the worst forms of child labour.⁵¹ This requires targeting practices such as child slavery, forced labour, prostitution, pornography, children in armed conflict, the use of children for illicit activities including drug trafficking, engaging children in activities that can likely pose substantial threats to their health, safety and morale, and various forms of hazardous and exploitative work.⁵²

By ratifying the CRC, the government of Uganda has an obligation to protect the basic human rights of all children, including their existence and development, to guarantee their individual growth and welfare. Article 32 obliges states to protect children from economic exploitation and from work that is harmful to their physical and mental health.⁵³ In addition, Uganda is a state party to the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.⁵⁴ Despite these international commitments, child labour

46 OECD "Practical actions", above at note 30 at 38.

47 Saferworld "Mining in Uganda", above at note 9.

48 Data from the Central Bank of Uganda indicates that gold exports in 2018 amounted to USD 514 million as compared to USD 418 million in 2017, overriding the amount earned in exporting coffee (USD 436 million) in 2018.

49 Uganda ratified the ILO Convention 1973 (no 138) on the Minimum Age for Admission into Employment on 25 March 2003.

50 ILO Convention 1973 (no 138), art 3.

51 See art 1 of the ILO Convention no 182. Uganda ratified the ILO Convention 1999 (no 182) on the Prohibition of the Worst Forms of Child Labour on 21 June 2001.

52 *Id.*, art 3.

53 UN Convention on the Rights of the Child, art 32.

54 Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict 2000; Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography 2000.

remains alarmingly high across all regions in Uganda, thus posing significant threats to children's prospects of upward "social mobility" and development.⁵⁵

Regional instruments which Uganda is party to include the African Charter on Human and Peoples' Rights (Banjul Charter) and the African Charter on the Rights and Welfare of the Child.⁵⁶ The latter has provisions that guarantee the rights and welfare of children; although the Banjul Charter does not have a specific provision on child labour, the wording "every individual" can be interpreted to include children. For instance, articles 5 and 15 prohibit all forms of exploitation and degradation and provide for the "right of every individual to work under equitable and satisfactory conditions and to receive equal pay for equal work". These provisions emphasize the abolition of all forms of exploitative labour by children. Similarly, article 15 of the African Charter on the Rights and Welfare of the Child protects children from economic exploitation and places a ban on work that has the potential to interfere with the physical, mental, spiritual or social development of the younger population. Described as a gross human rights abuse, child labour not only prevents children from enjoying their childhood, but it equally denies them the opportunity to overcome generational cycles of poverty.⁵⁷ It is anticipated that if incidences of child labour are not controlled, many more children will be seriously affected by this grave human rights abuse in the near future.

As mentioned earlier, at the national level the Constitution of Uganda demands the protection of children from social and economic exploitation; it "prohibits the employment of children from work that has the potential of interfering with their education and harmful to their health or injurious to their development".⁵⁸ Article 34(7) further provides that "the law shall accord special protection to orphans and other vulnerable children".⁵⁹ In addition, article 51 specifies that "no person may employ a person of or under the apparent age of twelve years except on such light work as the Minister may, from time to time, by statutory order, prescribe". Article 55(1) also states that "no young person may be employed in any employment which is injurious to health, dangerous or otherwise unsuitable". This approach was guided by the country's commitment to the protection of children's fundamental human rights as iterated by the CRC. The question to be asked in this regard is whether the government of Uganda is actually keeping to its international commitments. To answer this question, a review of institutional and legal frameworks regulating child labour in Uganda can be carried out to assess their capability and competence.

The government of Uganda revised its Employment Act and labour laws to keep in line with the principles of the ILO Conventions no 138 and 182.⁶⁰ The revised labour laws restrict the employment of children by prohibiting them from engaging in any hazardous and injurious work below the age of 16. The minimum age for admission into employment is set at 16, and labour inspectors have the powers to monitor and ensure compliance with these provisions.⁶¹ On the other hand, section 32(3) of the Employment Act specifically set the minimum age of employment at 16, except for light work with the supervision of an adult, as determined by Statutory Order of the Minister of Labour. It obliges labour unions and employers' organizations to report to the labour officers any suspected cases of children employed below the minimum age.

55 Kabasiita "Combating child labour in Uganda", above at note 13 at 3.

56 African Charter on Human and Peoples' Rights (Banjul Charter) 1981; African Charter on the Rights and Welfare of the Child 1990.

57 Kabasiita "Combating child labour in Uganda", above at note 13.

58 Constitution of the Republic of Uganda, art 34(4); Citizen's Coalition for Electoral Democracy in Uganda "Labour Rights in Uganda: A summary overview", available at: <<https://www.ccedu.org/ug/index.php/blog/36-labor-rights-in-uganda-a-summary-overview>> (last accessed 6 April 2020).

59 Constitution of the Republic of Uganda, art 34(7).

60 Employment Act no 6 of 2006, as amended by the Employment (Amendment) Act of 2018.

61 Part IV of the Uganda Revised Labour Laws.

In addition, the Children's Statute no 16 of 1996 outlines the rights of a child, including the roles that guide those caring for children. For instance, Article 9 provides that "[a] child has the right not to be made to work or take part in any activity whether for pay or not which is likely to injure the child's health, education, mental and physical, or moral development". Other efforts to further strengthen the protection of children led to the enactment of the Children Act (cap 59) as amended in 2016.⁶² Section 3(1) of the Children Act emphasizes the significance of "the rights and principles that guide a child's welfare including the child's physical, emotional and educational needs; the likely effects of any change in the child's circumstances; any harm that the child has suffered or is at the risk of suffering".⁶³ Sections 4(g) and (j) equally guarantee a child's access to "safety, privacy, information, basic social services and non-discrimination". On the other hand, section 8(1) states that "a person shall not employ or engage a child in any activity that may be harmful or hazardous to his or her health, physical, mental, spiritual, moral or social development". Section 8(2) sets out the minimum age of 16 for employing a child. Additionally, section 8(3) spells out work that may be harmful and hazardous to include any work that exposes a child to physical or psychological torture, sexual abuse or working underground and in confined spaces. This also includes working with dangerous machines, equipment and tools or manual handling or transportation of heavy loads.⁶⁴ The Children Act affirms the country's commitment to meeting the needs of its younger generations. In effect, the Act requires that the most vulnerable, poorest and most neglected children in society be well protected. Section 42A(1–4) further reiterates that "every child has the right to be protected against all forms of violence including sexual abuse and exploitation, child sacrifice and child labour" and calls on "designated child protection organizations such as police officers, probation and social worker officers handling these cases to ensure the safety and wellbeing of the children concerned". Despite these promises child labour remains a serious challenge and a common occurrence in Uganda, especially in the artisanal and small-scale gold-mining sector.

Furthermore, the government also enacted the National Action Plan for Child Well-Being (NAPCW) (2016–2021) as one of its strategies to enhance children's rights. The NAPCW provides specific guidelines on collective efforts to build a Uganda where all children can survive, grow, participate and develop their full potential and be protected from the many threats that jeopardize their future.⁶⁵ The NAPCW, among other initiatives, seeks to strengthen Uganda's national child protection unit to effectively prevent and respond to abuse, violence, exploitation and neglect perpetrated against children. This process requires the government to enact, review and enforce the implementation of existing and new relevant child protection laws, including through the development of regulations, procedures and guidelines. To this effect the policy established a National Framework for Ministries, Departments and Agencies to develop a holistic approach to address children's rights. Unfortunately, the NAPCW has proven to be ineffective, as it was only able to reduce child mortality, improve HIV treatment access and prevent malaria.⁶⁶ The number of children still exposed to abuse and exploitation has increased tremendously. Based on the above, it is evident that it will be difficult for the country to realize the goals set in Vision 2040 as well as the potential rewards of its human capital without achieving success in critical areas of child development.⁶⁷

Despite the country's stated commitment to safeguard children from engaging in hazardous work, the government of Uganda has not enacted mining laws that would protect children in

62 Children (Amendment) Act 2016.

63 *Id.*, sec 3(1)(a)(b)(c).

64 *Id.*, sec 8(3).

65 Our Children Our Future "National action plan for child well-being 2016–2021: goals, objectives and actions" (16 August 2017), available at: <<https://bettercarenetwork.org/sites/default/files/Uganda%20Child%20Well-Being%20Plan.pdf>> (last accessed 10 November 2022).

66 Better Care Network "National action plan for child well-being 2016–2021" (1 June 2016), available at: <<https://bettercarenetwork.org/library/principles-of-good-care-practices/national-action-plan-for-child-well-being-2016-2021>> (last accessed 8 June 2022).

67 *Ibid.*

this regard. Although the Mineral Policy of 2001 has a main objective to ensure the protection of children and combat child labour, the new Mining and Minerals Act 2021, which abolishes the Mining Act of 2003, still does not make provision for the eradication of child labour in the mining sector.⁶⁸ This gap in the country's existing legislation has led to widespread and increasing child-labour practices in the artisanal and small-scale gold mines. That notwithstanding, the Minamata Convention on Mercury, to which Uganda is a state party, aims at ensuring the protection of the health of all human beings and the environment from the adverse effects of mercury, particularly in the informal sector. Yet the government of Uganda is not party to the UN Environment Program Global Mercury Partnership, which assists in the enforcement and implementation of the Minamata Convention. This explains why the use of mercury is rampant in the gold mines in Uganda, leaving devastating effects on the environment and posing substantial threats to the livelihood and health of millions of children in the country.

Continued efforts to combat child labour have resulted in the establishment of institutional mechanisms for the enforcement of laws and regulations on child labour. For example, the National Child Labour Policy in Uganda, established under the MGLSD, is another government strategy to combat child labour. In line with the above, a draft plan of action to fight child labour was adopted by the National Steering Committee and circulated to districts. This strategy seeks to enhance coordination and networking among different key stakeholders as well as monitoring the implementation of child labour programmes in the country. However, it is common knowledge that while the MGLSD is charged with the responsibility to enforce labour laws in the country, the Industrial Court passes judgments on labour disputes that are referred to the court by labour officers. Another institution responsible for enforcing laws on child labour is the Ministry of Internal Affairs. The Ministry has the powers to enforce criminal laws on the worst forms of child labour. The Uganda Police Force's Child and Family Protection Unit (CFPU) assists with the investigation of forced labour cases, and the liaison officers handle complaints relating to the worst forms of child labour alongside the CFPU officers. Additionally, the Ministry of Local Government is in charge of supervising district labour officers conferred with the responsibility of referring cases to the Industrial Court and deploys community development officers at the district level when labour officers are not in position to address certain issues. Similarly, the Directorate of Public Prosecutions is in charge of prosecuting criminal matters that relate to the worst forms child labour, especially those referred by the Uganda Police Force. Despite these efforts, it is established that there is a lack of coordination between the various agencies responsible for dealing with child labour issues. This is due to the fact that the labour officers are placed under the district governments' authority rather than the MGLSD, which makes difficult the effective implementation of policies that seek to eliminate the recurrent practices of child labour in the country. The departments' lack of coordination in their duties has created a loophole in the monitoring and enforcement mechanism.

More disturbing is the fact that the Industrial Court, whose main goal is to issue judgments on labour dispute cases, has so far not heard any case on child labour. Recent efforts by the labour law enforcement agencies to eradicate child labour were also hindered by gaps that exist within the MGLSD, including the mode of authorizing penalty assessments. Furthermore, research indicates that the number of labour inspectors available is inadequate to manage the Ugandan workforce of more than 20 million people.⁶⁹ This equates to one labour inspector for almost 40,000 workers in the country. Based on the above, it is evident that the Ugandan government would need to employ more than 500 labour inspectors to enable them to effectively eliminate issues related to

68 Mining (Amendment) Act no 8 of 2021.

69 M de Milliano and I Plavgo "Analysing multidimensional child poverty in sub-Saharan Africa: Findings using an international cooperative approach" (2018) 11/3 *Child Indicators Research* 805 at 805–807; L Ferrone and M de Milliano "Multidimensional child poverty in three countries in sub-Saharan Africa" (2018) 11/3 *Child Indicators Research* 755 at 758.

child labour. In addition, the Police Act of 1994 allows the police force to protect the rights and ensure the safety and security of all individuals in Uganda, including children.⁷⁰ Section 21(h)(2) requires police officers to detect offenders and bring them to justice, especially those who break the law by employing children under the minimum required age. As mentioned above, there is an indication that the government is unwilling to prosecute, convict and sentence public officials, including police and immigration officers, who are involved in or enhance incidences of child labour in the country. Concerning criminal law enforcement, it can be noted that the training provided to criminal investigators is inadequate to address incidences of child labour, since police officers have little knowledge about how to handle and prosecute child labour-related cases.

Repeated efforts to combat child labour in Uganda caused the president, Yoweri Museveni, to launch the second National Plan of Action for the Elimination of Child Labour (NAP II) on 1 May 2021 to commemorate International Labour Day.⁷¹ The motivating factor for the establishment of NAP II was the outbreak of COVID-19 and the related impact on the economy, as several economic activities were put on hold. It was anticipated that given the harsh realities of the pandemic, millions of children could be forced into child labour.⁷² As rightly stated by the Minister of Gender, Labour and Social Development, Mr Frank Tumwebaze, NAP II “is a framework for the prevention, withdrawal, rehabilitation and integration of children from child labour. The successful implementation will require a multi-sectoral approach, building synergies, effective reporting and documentation, mainstreaming, innovation, participation and commitment by all stakeholders, [and a] supportive policy, legal and regulatory framework.”⁷³ In other words, NAP II is set to work in collaboration with the National Development Plan so as to create an enabling environment for the prevention, protection, rehabilitation and reduction of the risk to children removed from, pushed into or pulled back by child labour.⁷⁴ To ensure the effective implementation of the NAP II framework, the government has committed to set standards through the enforcement of policies, legal and regulatory frameworks, the creation of private–public partnerships and the reduction of child labour in households, communities and other sectors, as well as the establishment of a framework for implementation, monitoring and evaluation, with the aim to reduce child labour from 22.8 per cent to 4 per cent of the population by 2022.⁷⁵ It is asserted that the country’s commitment is reinforced by its lead role in becoming a “pathfinder country” in achieving Target 8.7 of the Sustainable Development Goals to abolish all forms of child labour by 2025.⁷⁶ However, irrespective of these new developments, not much progress has been made to address the problem. For example, and as indicated earlier, the government is unwilling to bring to justice perpetrators, including police officers, involved in or promoting the practice. The majority of the officers charged with the responsibility of combating child labour are corrupt and have indulged in illegal practices that promote and / or allow, rather than prevent, premature work among children.

In addition, another new development made by the government of Uganda in combating child labour is the establishment of a partnership with international stakeholders to implement the Acceleration Action for the Elimination of Child Labour in Supply Chains in Africa programme.

70 Police Act 1994, art 4.

71 NAP II, 2020/21–2024/25.

72 ECLT Foundation “Uganda adapts new National Action Plan for the Elimination of Child Labour to consider the harsh reality of COVID-19”, available at: <<https://www.eclt.org/en/downloads/ECLTFoundation-NAPII-LaunchPressRelease-1May2021.pdf>> (last accessed 10 November 2022).

73 ECLT Foundation “National Child Labour Action Plan takes into account COVID realities in Uganda”, available at: <<https://www.eclt.org/en/news/uganda-nap2-launch>> (last accessed 20 October 2022).

74 P Aryatwijuka “Uganda’s National Plan of Action on Child Labour will strengthen country’s prevention and protection of children at risk and working children mechanisms” (1 June 2021), available at: <https://www.ilo.org/africa/technical-cooperation/accel-africa/WCMS_799733/lang--en/index.htm> (last accessed 26 May 2022).

75 Ibid.

76 Ibid.

Unfortunately, this programme only targets children working in coffee and tea production, and excludes children trapped in artisanal and small-scale gold mining.

The implications of child labour for the livelihood of children and the overall development of the country

Weak and contradictory laws relating to child labour

A serious challenge that perpetuates child labour in Uganda is the gaps in the legal framework and the absence of a holistic legislative framework to combat recurring incidences. For instance, the fact that the new Mining and Mineral Act of 2021, amending the 2003 Mining Act, still does not have a provision that addresses child labour makes it difficult for the system to completely keep children out of the mines. Although the government of Uganda has a comprehensive list of forms of hazardous work which children below 18 should not be allowed to engage in, section 8 of the Employment of Children Regulation gives the commissioner powers to grant permission to children aged 12 to 17 to enrol in educational training or apprenticeship programmes that involve hazardous work.⁷⁷ In addition, the Education Act stipulates that children in Uganda are only expected to attend school up to the age of 13; therefore children aged 13 to 15 start working illegally since they are not compelled to attend school, nor are they officially allowed to work.⁷⁸

The 2016 Children Act, which set the minimum age for work at 16, also criminalizes the act of using children for commercial sexual exploitation; however, the law on minimum age protection is silent on children working in the informal sector.⁷⁹ These provisions are in violation of international standards and need immediate revision, as it is difficult to prevent children from carrying out premature work where national legislation on such practices is inconsistent with other legislative frameworks and international standards. These irregularities have destroyed the future development of the younger generation. The lack of harmonization of these laws leaves the impression that the government of Uganda is not serious or willing to abolish child labour.

Child growth and development

Another damaging and widespread risk that children face when they engage in premature work is the physical, psychological and emotional damage caused by hazardous work on their livelihood.⁸⁰ Although the 2016–2021 National Resistance Movement Manifesto and Uganda's Vision 2040 both aim at transforming Ugandan society from a peasant society to a modern and prosperous one, with a focus not only on boosting the economy but also on improving the wellbeing of children,⁸¹ incidences of child labour remain on the rise in the country. Child labour has the potential to harm children's sense of self-worth. Premature labour destroys children physically and mentally, thus causing some health issues which may only be realized in the long term.⁸² A country where children engage in premature work risks being underdeveloped, since the economy can only be well managed by an elite society. For instance, with a great proportion of the population of children exposed to child labour, there are high chances that the whole economy will become underdeveloped. The

77 Employment (Employment of Children) Regulation 2012.

78 Education (Pre-Primary, Primary and Post-Primary) Act 2008.

79 See the Employment Act, enacted 8 June 2006.

80 UNICEF "Situational analysis of children in Uganda" (July 2019), available at: <<https://www.unicef.org/uganda/media/5181/file/Situation%20Analysis%20of%20Children%20in%20Uganda%202019-FINAL.pdf>> (last accessed 7 March 2020).

81 Uganda's Vision 2040, available at: <<https://www.greengrowthknowledge.org/sites/default/files/downloads/policy-database/UGANDA%29%20Vision%202040.pdf>> (last accessed 12 April 2020).

82 Ecological Christian Organization "Child labour in gold mining: A study of Bugiri and Moroto Districts of Uganda" (2016) Platform for Labour Action, available at: <<https://www.pla-uganda.org/publications/6-pla-report-on-child-labour-in-gold-mining/file>> (last accessed 8 April 2020).

detrimental nature of child labour on their physical and / or mental development impedes their innovative capacity and cognitive development, and they may never have a bright future to create an impact in society. In essence, job creation and labour productivity are only possible if the future workforce is educated and acquires the necessary skills for employment.⁸³ It is a known fact that child labour and exploitative forms of labour have serious implications for physical, psychological and emotional development, which might hinder a child's ability to learn and develop intellectually.⁸⁴ These circumstances present a blurred future for a suffering child and for the economic prospects of the country.

Conclusion

Child labour is a pervasive practice in Uganda owing to the loopholes in laws regulating children's employment. With inadequate and ineffective institutional mechanisms, economic constraints, and saturated with a lack of coordination in laws regulating child labour, Uganda will remain a fertile ground for premature work for decades to come. Child labour remains rampant in communities where law enforcement is weak, and this activity can go on with little or no adherence to international and national regulatory standards on child rights. A lack of public awareness about the dangers of child labour to the personal development of children and the future economy of Uganda, as well as the unwillingness of the government to prosecute, convict and sentence public officials, including police and immigration officers, who perpetrate these activities, have further facilitated the entire process.

To speed up the eradication of child labour, children must be placed at the centre of all national policies. The government should embark on empowering children to enable them to become agents of change, as well as initiating sustainable solutions to ensure the effective prevention of child labour. In general, states, civil society, policy-makers, community leaders, religious institutions and national and international organizations should consider the protection of children from hazardous work a top priority on every policy agenda. There is also a need for political will by the government to abate this evil as well as to revise and set up the minimum age for child labour when drawing up policies to mitigate child labour in artisanal and small-scale gold mines. Overall, it is important that national laws protecting child labour be harmonized, coordinated and strictly implemented to achieve the major goal of reforming the situation.

Conflicts of interest. None.

⁸³ Aryatwijuka "Uganda's National Plan", above at note 74.

⁸⁴ Kabasiita "Combating child labour in Uganda", above at note 13 at 32.