



Ending Child Labour in Sudan's Gold Mining Industry: Progress and Challenges

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Acknowledgements

With profound gratitude, I acknowledge Allah's divine guidance and mercy, as promised in His words:

"إِنَّ مَعَ رَبِّي سَيْهْدِينَ" "Indeed, my lord is with me – He will guide me through". [Qur'an 26:62]

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Abstract

Child labour in Sudan's gold mining sector represents a complex and multifaceted challenge that severely undermines the nation's social, economic, and human rights commitments. The prevalence of children working in hazardous mining conditions stems from a combination of factors, including widespread poverty, displacement due to conflict, weak regulatory frameworks, and inadequate education systems. The artisanal and small-scale mining (ASM) sector, largely unregulated and often controlled by militias in conflict-prone areas, exacerbates the problem by making oversight and enforcement nearly impossible. The ongoing war has further deteriorated the situation, leading to increased displacement and school closures, leaving children with few alternatives but to engage in dangerous labour.

This dissertation examines this persistent challenge in Sudan's gold mining sector, which has become increasingly prevalent following South Sudan's secession in 2011. The study investigates the complex interplay between Sudan's international legal obligations and its domestic regulatory framework in addressing child labour in the mining industry, where an estimated two million people work across 16 provinces, including significant numbers of children aged 5-18.

The research critically analyses Sudan's compliance with various international instruments, including ILO Conventions and human rights treaties, while examining the sufficiency of domestic legislation such as the Mineral Wealth and Mining Development Act of 2015. Through legal dogmatic methodology, the study reveals significant gaps between international commitments and national implementation, particularly in the context of unregulated traditional mining sectors that account for 80% of Sudan's gold production.

The dissertation also explores the impact of mining labour on children's fundamental rights, especially concerning education and health, noting that approximately 19 million children are currently out of school in Sudan. Drawing comparative insights from Ghana's experience in addressing similar challenges, the research identifies best practices and potential solutions while acknowledging implementation difficulties in both contexts.

Lastly, key findings highlight the inadequacy of current legal protections, exacerbated by conflicting definitions of childhood across various laws and weak enforcement mechanisms.

The study concludes with comprehensive recommendations for legal and policy reforms, emphasising the need for harmonised legislation, strengthened enforcement capabilities, and improved monitoring systems to protect children in Sudan's mining industry.

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Acronyms

ASM - artisanal and small-scale gold mining

CLFZS - Child labour free zones

CRC - United Nations Convention on the Rights of the Child

ECOWAS: Economic Community of West African States

Galamsey - unregulated artisanal mining in Ghana

GCLMS - Ghana Child Labour Monitoring System

IABA- Integrated Area Based Approach

ICCPR - International Covenant on Civil and Political Rights

ICESCR- International Covenant on Economic, Social and Cultural Rights

ILO IPEC - International Labour Organization's International Programme for the Elimination of Child Labour

ILO No 138 - International Labour Organization Minimum Age Convention No 138

ILO No 182 - International Labour Organization Worst Forms of Child Labour 1999 No 182

ILO No 29 - International Labour Organization Forced Labour Convention 1930 No 29

ILO- International Labour Organization

IPEC- Programme for the Elimination of Child Labour

LEAP - Livelihood Empowerment Against Poverty

NAP - National Action Plan

SDGs - Social Development Goals

UNGPs - United Nations Guiding Principles on Business and Human Rights

UNICEF - United Nations International Children's Emergency Fund

Universal Declaration - Universal Declaration on Human Rights

Chapter 1: Introduction

1.0 Brief background

Sudan's gold mining industry has emerged as a crucial economic driver following the secession of South Sudan in 2011, which resulted in the loss of two-thirds of its oil reserves.¹ In less than a decade, artisanal and small-scale gold mining (ASM) has spread rapidly across the country, becoming a primary occupation for many individuals, including men, women, and children seeking to improve their livelihoods.²

Today, artisanal mines account for 80 per cent of Sudan's gold production, with an estimated two million Sudanese working in 16 of the country's 18 provinces.³ The industry has paradoxically coincided with growing poverty despite its economic importance, contributing 9 per cent of total exports in 2010 and making Sudan the third largest gold producer⁴ in Africa by 2014.⁵ Workers, including women and children, often labour in harsh conditions using rudimentary tools and dangerous substances like mercury, exposing themselves to significant health and environmental risks.⁶ While the industry has attracted many seeking economic

¹ Africanews 'Sudan's gold rush wreaks health havoc among villager' 18 July 2022 <https://www.africanews.com/2022/07/18/sudans-gold-rush-wreaks-health-havoc-among-villagers/#:~:text=18%2F07%2F2022-,Sudan,to%20humans%20and%20the%20environment.> (accessed 5 July 2024).

² MA Abduljalil 'Artisanal gold mining camps in the Butana Eastrean Sudan as migration hubs' 2023 <https://www.cmi.no/publications/8997-artisanal-gold-mining-camps-in-the-butana-eastern-sudan-as-migration-hubs> (accessed 4 July 2024).

³ n 1 above.

⁴ Ghana ranks second largest producer of Gold in Africa according to <https://energycapitalpower.com/biggest-gold-producing-countries-in-africa/> (accessed 03/08/2024)

⁵ United Nations Economic Commission for Africa 'Sudan ASM Profile' <https://knowledge.uneca.org/ASM/Sudan> (accessed 1 July 2024).

⁶ S Baldo 'Community protests in Sudan's gold mining sector: peaceful resistance and repressive responses' January 2023 <https://sudaneseonline.com/board/15/msg/Community-Protests-in-Sudan%E2%80%99s-Gold-Mining-Sector%3A-Peaceful-Resistance-and-Repressive-Responses-Suli-1673890065.htm> (accessed 4 July 2024).

opportunities, it has also raised concerns about worker safety, environmental degradation, and the involvement of children in mining activities.⁷

Child labour in the Sudanese gold mining sector has become a pressing concern. Children between the ages of 5 and 18 are subjected to various forms of exploitation, including exposure to harmful substances like mercury, lack of basic safety measures like wearing gloves or face masks, and strenuous tasks such as lifting heavy rocks and equipment. Additionally, these children often face harassment or abuse.⁸ Many of these children have dropped out of school to contribute to their family's economic situation, or they have fled conflict zones without shelter or means of sustenance, posing severe risks to their health and development.

Currently, approximately 19 million children are not attending school in Sudan, with 5.5 million of them living in regions that are relatively less impacted by conflict.⁹ This widespread school closure, coupled with the economic pressures of war and lack of alternative activities, puts these children at a higher risk of being involved in hazardous labour, particularly in the gold mining industry. In provinces less affected by conflict, where schools remain closed, children are more likely to seek employment in mining to support their families and occupy themselves despite the dangers involved.

Sudan is obligated to promote, respect, and fulfil the rights of children under various international and regional instruments it has ratified, such as the Universal Declaration on Human Rights (Universal Declaration), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the United Nations Convention on the Rights of the Child (CRC), the African Charter on Human

⁷ P Blanco 'The curse of Sudan's gold: Why one of the world's poorest countries fails to profit from vast reserves' EL PAIS (web blog) <https://english.elpais.com/international/2023-05-10/the-curse-of-sudans-gold-why-one-of-the-worlds-poorest-countries-fails-to-profit-from-vast-reserves.html> (accessed 6 July 2024).

⁸ International Labour Organization 'Child labour among forcibly displaced and host communities East Darfur and West Kordofan states Sudan' 2021. https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@dgreports/@ddg_p/documents/publication/wcms_822462.pdf (accessed 1 July 2024).

⁹ UNICEF '19 million children in Sudan out of school as conflict rages' 9 October 2023 <https://www.unicef.org/sudan/press-releases/19-million-children-sudan-out-school-conflict-rages-unicef-save-children> (accessed 5 July 2024).

and People's Rights (African Charter), and the African Charter on the Rights and Welfare of the Child (African Children's Charter). These instruments enshrine the right of children to be protected and raised in an enabling environment conducive to their development. Furthermore, Sudan has international legal obligations regarding child labour in mining industries. These obligations stem from several International Labour Organization (ILO) conventions the country has ratified. Specifically, Sudan is bound by the ILO Convention No. 59 of 1937, which sets standards for minimum age in industrial work; the ILO Convention No. 123 of 1965, which addresses minimum age for underground work; and the ILO Convention No. 182 of 1999, which focuses on eliminating the worst forms of child labour. These Conventions collectively require Sudan to enforce age restrictions in mining employment and protect children from hazardous work in this sector. For example, article 2(1) of the revised ILO Convention No. 59 of 1937 on the Minimum Age in industrial undertakings states, "Children under the age of fifteen years shall not be employed or work in any public or private industrial undertaking, or in any branch thereof".¹⁰

The regulatory framework for Sudan's mining industry is primarily established by the Mineral Wealth and Mining Development Act of 2015, which superseded its 2007 predecessor. However, both legislative Acts fall short of providing specific provisions to safeguard children from employment in the mining sector. While the 2015 Act does introduce a licensing requirement that prohibits the issuance of licenses to individuals under 18 years of age, this measure alone proves insufficient.

The disparity between international obligations and national implementation results in a critical lack of protection for minors, allowing their continued exploitation in hazardous mining activities. This situation underscores the urgent need for comprehensive legal reforms to align domestic regulations with international standards and effectively safeguard children's rights and wellbeing in Sudan.

1.2 Problem statement

Child labour in Sudan's gold mining industry presents a multifaceted challenge that compromises children's rights and welfare. Despite Sudan's international legal obligations, the

¹⁰ International Labour Organization Convention Minimum Age Industry Act 138 of 1937 art 2(1).

current legal framework inadequately protects children aged 5 to 18 from exploitation and hazards in mining work. The core issue lies in the deficiencies of existing laws, such as the 2015 Mineral Wealth and Mining Development Act, which lacks effective enforcement mechanisms, especially in the unregulated traditional mining sector. Additionally, conflicting definitions of childhood across various laws, including the 1997 Labour Act and 2010 Child Act, leave teenagers aged 16 to 18 particularly vulnerable.

The problem persists largely because 85 per cent of Sudan's gold production occurs through illegal or traditional mining methods, operating outside regulated frameworks.¹¹ While the 1997 Labour Act prohibits child labour in hazardous work, including mining, it only protects children under 16, leaving older teens exposed. The 2010 Child Act, while addressing harmful work for children, fails to specify what constitutes such work.

Given these legislative gaps and enforcement challenges, this dissertation seeks to identify shortcomings in the current legal system and propose comprehensive solutions to protect children involved in Sudan's gold mining sector. The aim is to reconcile legal inconsistencies, strengthen enforcement mechanisms, and address the unique challenges posed by the prevalence of unregulated mining activities.

1.3 Research Objectives

1.3.1 Main Objective

The study aims to examine the challenges and progress Sudan has made to end child labour in the gold mining industry.

1.3.2 Sub-objectives

1. To assess the impact of child labour on the enjoyment of children's fundamental rights particularly the rights to education and health.

¹¹ Herbert Smith Freehills 'The Sudanese mineral law regime and potential law reform recommendations' 9 June 2021 <https://www.herbertsmithfreehills.com/notes/africa/2021-06/the-sudanese-mineral-law-regime-and-potential-law-reform-recommendations> (accessed 5 July 2024).

2. To evaluate the sufficiency of the legal framework to address child labour in the gold mining industry in Sudan.
3. To explore the best practices that Ghana has adopted to combat child labour in the gold mining sectors and the pitfalls those practices have faced, if any.
4. To develop comprehensive recommendations for legal and policy reforms that would enhance the protection of children in Sudan's mining industry.

1.4 Research questions

1.4.1 Main question

What challenges has Sudan faced, and what progress has it made in its efforts to end child labour in the gold mining industry?

1.4.2 Sub questions

1. How does the practice of child labour impact children's ability to enjoy their rights to education and healthcare?
2. To what extent is Sudan's current legal framework sufficient to address child labour in the gold mining industry?
3. What practices did Ghana adopt to combat child labour in their gold mining sector, and what pitfalls did those practices face?
4. What legal and policy reforms should Sudan implement to effectively protect children in Sudan's mining industry?

1.5 Literature review

This literature review critically examines the existing research on artisanal gold mining in Sudan, focusing on child labour, legal frameworks, and associated challenges. The synthesis reveals significant gaps in the current body of knowledge, particularly concerning children's rights and the impacts of mining on their health and education.

S. Imming's case study, *Golden Opportunities*, highlights the complex issues surrounding artisanal gold mining in Sudan, including the governance vacuum created by military control

over key mining areas and widespread human rights violations.¹² M.O. Elgizouli's *Illegal Gold Mining in Sudan* further elaborates on the severe health and environmental risks associated with traditional gold mining practices.¹³ However, while both Imming and Elgizouli address the complexities of artisanal and small scale mining (ASM) in Sudan, neither proposes comprehensive solutions or suggests legalization and monitoring mechanisms for the sector.

M.S. Ibrahim's *Artisanal Mining in Sudan* outlines the legal landscape governing mining activities, including the Regulation of Traditional Gold Mining (2012) and various international conventions.¹⁴ Nevertheless, there remains a notable lack of critical analysis regarding the effectiveness and implementation of these legal frameworks, particularly in protecting children's rights. Another article examines the complex issues surrounding artisanal gold mining in Sudan, emphasizing the lack of protection for workers.¹⁵ However, it does not specifically address child labourers or provide a legal analysis to identify gaps in protection. Similarly, while Elgizouli's paper addresses the environmental and health impacts of ASM, it does not explore the direct impact on workers at the mining sites, particularly children.

The International Labour Organization's report on *Child Labour in Mining Chains* provides comprehensive overviews of child labour issues in mining across various African countries.¹⁶ However, Sudan is conspicuously absent from this report, pointing to a critical gap in

¹² S Imming 'Golden opportunities: A case study of the Sudanese Rapid Support Forces' gold supply chain and its place within the global economy' 2023

<https://dspace.cuni.cz/handle/20.500.11956/187382> (accessed 12 July 2024).

¹³ M Elgizouli 'Illegal gold mining in Sudan: challenges and substantial solutions' <https://unctad.org/meetings/en/presentation/17oilgasmine%20mohamed%20sulaiman%20ibrahim%20s4.pdf> (accessed 13 July 2024).

¹⁴ MS Ibrahim 'Artisanal mining In Sudan opportunities, challenges and impacts' 2015 <https://www.delvedatabase.org/resources/artisanal-mining-in-sudan-opportunities-challenges-and-impacts> (accessed 13 July 2024).

¹⁵ Blanco (n 7).

¹⁶ International Labour Organization 'Child labour among forcibly displaced and host communities East Darfur and West Kordofan states Sudan' 2021

https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@dgreports/@ddg_p/documents/publication/wcms_822462.pdf (accessed 1 July 2024).

documentation and statistics regarding the number of children engaged in Sudan's mining industry. This omission hinders accurate assessment and targeted interventions.

A report from Talodi North Sudan touches on health concerns linked to increased mining activities but does not specifically focus on the impacts on children.¹⁷ This further underscores the lack of targeted research on the effects of mining on child workers' health and education in Sudan.

This review highlights significant gaps in the existing literature. There is a lack of comprehensive research that thoroughly examines children's labour rights in the mining sector, exposes legislative inadequacies, and addresses implementation gaps. No study has yet combined these elements to provide a holistic understanding of the issue in the Sudanese context, nor proposed concrete solutions or legalization strategies to improve monitoring of the sector.

Given these substantial gaps in the current literature, this paper aims to critically analyse Sudan's existing legal framework concerning child labour in gold mining, examine the impacts of mining activities on children's health and education, investigate the implementation and enforcement challenges of current regulations, and propose comprehensive solutions to address the identified gaps and protect children's rights effectively. By addressing these crucial areas, this research will contribute significantly to understanding child labour in Sudan's gold mining sector and provide a foundation for more effective policy making, enforcement strategies, and potential legalization and monitoring mechanisms.

1.6 Methodology

The methodology for this study adheres strictly to legal dogmatics, employing a doctrinal research approach to examine the legal framework governing child labour in Sudan's gold

¹⁷ Radio Dabanga 'Nuba face health problems as mining operations expand amidst Sudan war' <https://www.dabangasudan.org/en/all-news/article/local-residents-face-health-problems-as-mining-operations-expand-amidst-sudan-war#:~:text=Goldmining%20companies%20are%20accused%20of,Laffa%20mine%20has%20increased%20significantly>. (accessed 19 July 2024).

mining industry. This approach involves a comprehensive analysis of existing laws, regulations, and legal instruments related to child labour in Sudan, with a specific focus on the gold mining sector. The research includes a thorough examination of relevant case law and legal precedents, as well as a review of scholarly legal literature and academic publications. To provide context and identify potential areas for improvement, a comparative legal analysis is conducted, examining legal approaches to child labour in mining from other jurisdictions, particularly Ghana, the second leading gold importer in Africa. The methodology relies on statutory interpretation techniques to assess the effectiveness and potential shortcomings of current laws. Finally, the findings from various legal sources are synthesised to develop a comprehensive understanding of the strengths and weaknesses in Sudan's legal approach to child labour in gold mining.

1.7 Limitations of Study

The research encountered significant obstacles in gathering primary data and accessing essential resources. The ongoing conflict in Sudan resulted in the collapse of official government websites, including those of the Ministry of Justice and the Judiciary. This breakdown severely limited access to legal cases and judicial precedents, potentially impacting the depth of the legal analysis.

Furthermore, the unavailability of statistics from the Sudanese Statistics Bureau posed a challenge in accurately quantifying the extent of child labour in the gold mining sector. To overcome these limitations, the study employed a multifaceted approach. Alternative legal sources were consulted to compensate for the inaccessibility of official records. The research also drew upon a diverse range of materials, including translated Arabic documents and data from international organizations, to construct a comprehensive overview of the situation.

Despite these constraints, the study strived to maintain a thorough and balanced analysis. By leveraging a variety of sources and perspectives, the research aimed to present a wellrounded examination of child labour issues in Sudan's gold mining industry, working within the boundaries of available information.

1.8 Overview of Chapters

Chapter 1: Introduction

This chapter sets the foundation for the study by providing a comprehensive background on child labour in the Sudanese gold mining sector. It includes a literature review that highlights the significant gap in research on this topic, emphasising the importance and urgency of this study. The chapter outlines the research objectives and questions, setting the stage for the subsequent chapters.

Chapter 2: Impact of Child Mining Labour on Education and Health in Sudan

This chapter begins by framing the issue of child labour within the context of children's fundamental rights. It then assesses the specific impacts of gold mining labour on Sudan children's education and health. By focusing on these crucial aspects, the chapter aims to illustrate the severe and long lasting consequences of child labour in the sector. This analysis provides a foundation for understanding why robust legal and regulatory frameworks are necessary, setting the stage for the legal discussion in the following chapter.

Chapter 3: Legal and Regulatory Framework

Building on the previous chapter's rights-based context, this section critically examines the legal and regulatory framework governing child labour in Sudan's gold mining sector. It provides an overview of existing laws and regulations while highlighting significant gaps in both legislation and implementation. By identifying these weaknesses, the analysis sets the stage for exploring potential solutions in the following chapters.

Chapter 4: Lessons from Ghana's Experiences and Challenges

This chapter critically examines Ghana's response to child labour in its gold mining sector, where, despite establishing comprehensive laws, regulations, and national action plans, implementation remains a persistent challenge. By analysing where Ghana's approaches have fallen short and faced practical challenges despite its well structured legal framework, the chapter identifies valuable lessons for Sudan to avoid similar pitfalls. These lessons from

Ghana's experience will inform more realistic and context appropriate recommendations for Sudan in the final chapter.

Chapter 5: Conclusion and Recommendations

The final chapter synthesises the findings from the previous sections to propose targeted recommendations and best practices. These suggestions aim to enhance the legal protection of children and eliminate their employment in the gold mining sector. By drawing on the impacts identified, the legal gaps uncovered, and the successful practices observed in Ghana, this chapter provides a roadmap for how Sudan can improve its approach to combating child labour in gold mining.

Chapter 2: Impact of Child Mining Labour on Education & Health in Sudan

2.1 Introduction

Child labour in Sudan's gold mining sector is a complex and multifaceted issue, exacerbated by various socio-economic and political factors. This chapter will examine how child labour in gold mining significantly undermines a range of fundamental rights.

Primarily, it infringes upon children's civil rights, such as the right to life, the right to protection from trafficking and servitude, and other social and economic rights, such as education and the right to health. Recognising that the right to health is not only a standalone right but is intrinsically connected to other essential rights, including the right to life, the right to a healthy environment, the right to an adequate standard of living, and the right to clean water. In the sense that violating the right to health impacts other rights and vice versa.

This research will concentrate specifically on examining how child labour in gold mining impacts two critical areas: the education and health of child miners. By focusing on these two aspects, the study aims to provide a comprehensive analysis of the detrimental effects of this form of child labour on the most fundamental rights of children involved in mining activities.

Laying the ground for the next chapter to thoroughly discuss the legal framework surrounding child labour in Sudan's gold mining sector and the related rights of children.

Approximately 80% of Sudan's gold production comes from unregulated mining operations, which lack proper supervision and monitoring.¹⁸ This lack of oversight contributes significantly to the prevalence of child labour in the sector.

The complexity of the issue is further compounded by the fact that many children involved in mining do not live with their families. According to the UNICEF 2019 report, 18 per cent of children in Sudan live without a family environment, with nearly 4 per cent living away from

¹⁸ Mine 'Sudan's gold industry: opportunity amid geopolitical tension? https://mine.nridigital.com/mine_aug24/sudan-gold-industry (accessed 6 October 2024).

their parents due to their separation during armed conflicts, displacement, and harsh economic situations making children more vulnerable to exploitation and trafficking.¹⁹

This already concerning situation worsened dramatically due to the current conflict in Sudan. The country now faces the world's largest displacement crisis,²⁰ with over 6.6 million people internally displaced and more than 2 million seeking refuge in neighbouring countries.²¹ The impact on children is particularly severe, with approximately 53 per cent of internally displaced individuals being under 18 years old. Even more alarmingly, about 22 per cent of those displaced are children under 5 years of age.²²

These circumstances have significantly increased children's vulnerability to exploitation and trafficking, creating an environment where they are at heightened risk of being exploited for labour, including in hazardous sectors like artisanal gold mining.²³

Moreover, although children from both genders are involved in gold mining in Sudan, girls have additional gender-specific vulnerabilities, including the risk of physical abuse and exploitation.²⁴ They often work in environments where alcohol consumption by adult workers

¹⁹ SOS Children's Villages 'Children in Sudan left behind the world'

[https://www.soschildrensvillages.org.uk/news/children-in-sudan-left-behind-by-the-world/#:~:text=Figures%20from%20UNICEF%20\(2019\)%20show,cope%20in%20the%20current%20conflict.](https://www.soschildrensvillages.org.uk/news/children-in-sudan-left-behind-by-the-world/#:~:text=Figures%20from%20UNICEF%20(2019)%20show,cope%20in%20the%20current%20conflict.)

(accessed 28 September 2024).

²⁰ OCHA 'Sudan Report'

<https://reports.unocha.org/en/country/sudan/> (accessed 28 September 2024).

²¹ IOM 'One year of conflict in Sudan: visualising the world's largest displacement crisis'

<https://dtm.iom.int/reports/one-year-conflict-sudan-visualizing-worlds-largest-displacement-crisis> (accessed 1 October 2024).

²² As above.

²³ n 8 above.

²⁴ JA Albadawi 'Children of gold' in Sudan: molten cauldrons of dreams' Independent (web blog), 26 November 2022,

<https://www.independentarabia.com/node/396406/%D8%AA%D8%AD%D9%82%D9%8A%D9%82%D8%A7%D8%A7%D9%88%D9%85%D8%B7%D9%88%D9%84%D8%A7%D8%AA/%D8%A3%D8%B7%D9%81%D8%A7%D9%84-%D8%A7%D9%84%D8%B0%D9%87%D8%A8-%D9%81%D9%8A-%D8%A7%D9%84%D8%B3%D9%88%D8%AF%D8%A7%D9%86-%D9%85%D8%B1%D8%A7%D8%AC%D9%84->

is common, increasing their risk of abuse. Girls also engage in related jobs, such as selling food and supplies to miners.²⁵

Furthermore, a significant number of gold mines in Sudan are located in conflict zones controlled by different militias and armed groups, particularly in the states of Kordofan, Darfur, and Blue Nile.²⁶ These areas are characterised by ongoing insecurity and limited government control, facilitating the trafficking of children to work in these mines.²⁷ The U.S. Department of State's 2024 Trafficking in Persons Report highlights that children are being trafficked for forced labour in various hazardous occupations, including artisanal and small mining operations (ASM).²⁸

The ongoing conflict in Sudan further complicates the situation, with both warring parties reportedly recruiting child soldiers,²⁹ and possibly forcing them to work in the mines under their respective controlled areas. These factors combine to create a challenging environment for addressing child labour in Sudan's gold mining sector, requiring a comprehensive and multifaceted approach to tackle the issue effectively.

2.2 Impact on Child's Right to Education

Child labour robs children of the chance to pursue an education and develop the skills necessary for a brighter future. This situation perpetuates the cycle of poverty, rendering

[%D8%A7%D9%84%D8%A3%D8%AD%D9%84%D8%A7%D9%85-%D8%A7%D9%84%D9%85%D8%B5%D9%87%D9%88%D8%B1%D8%A9#:~:text=%D8%B9%D9%84%D9%89%20%D8%B1%D8%BA%D9%85%20%D8%AD%D8%B8%D8%B1%20%D9%88%D8%B2%D8%A7%D8%B1%D8%A9%20%D8%A7%D9%84%D9%85%D8%B9%D8%A7%D8%AF%D9%86,%D9%84%D8%B9%D9%85%D8%A7%D9%84%D8%A9%20%D8%A7%D9%84%D8%A3%D8%B7%D9%81%D8%A7%D9%84%20%D9%81%D9%8A%20%D9%87%D8%B0%D8%A7%20%D8%A7%D9%84%D9%86%D8%B4%D8%A7%D8%B7](#) (accessed 1 September 2019).

²⁵As above.

²⁶ S Baldo 'Sudan: The costs of the scramble for gold' July 2022 12.

²⁷ P Obiji 'As Sudan's latest conflict intensifies, artisanal gold miners are caught in the crosshairs' 24 May 2023 <https://www.equaltimes.org/as-sudan-s-latest-conflict?lang=en> (accessed 28 September 2024).

²⁸ US Department of State '2024 Trafficking in persons report: Sudan' <https://www.state.gov/reports/2024-trafficking-in-persons-report/sudan/> (accessed 1 October 2024).

²⁹ As above.

these children susceptible to lifelong exploitation and abuse.³⁰ In Sudan, numerous children under the age of 12 have left school to work in the mining sector, seeking to improve their families' living conditions.³¹ The severity of this problem has been acknowledged by Sudan's Minister of Labour and Administrative Reform, who revealed that a substantial number of children between the ages of five and fifteen are engaged in various forms of labour, including mining. The Minister emphasised the devastating effects of early child labour, noting that it not only jeopardises children's education but also deprives them of basic social care and exposes them to dangerous practices and risks.³²

Even before the war, Sudan was grappling with a severe learning crisis. The government's inadequate funding for education has led to school associations imposing additional fees, further discouraging children from joining school to avoid increasing financial hardship and leaning towards working in mining and other hazardous occupations to support their families.³³

A study in North Sudan's Abu Hamad and Alabidiya regions revealed that ASM significantly impacts children's education. The teachers reported declining school attendance and eventual dropouts due to mining work. Even the children working only during holidays have experienced negative effects, becoming job-focused at a young age and influencing their peers.³⁴ Additionally, the study highlighted changes in the social behaviour of students from interactions with older, and poorly educated miners. It is perceived that unlike agricultural work, which used to allow for a balance between school and labour, mining has led families

³⁰ WAF 'How child labour deprives Children of their right to education'
<https://worldaction.ca/how-child-labour-deprives-children-of-their-right-to-education/> (accessed 3 October 2024).

³¹ n 28.

³² Tasamuh news 'Sudan acknowledges the prevalence of child labour in mining and forced training'
<https://tasamuhnews.com/%D8%A7%D9%84%D8%B3%D9%88%D8%AF%D8%A7%D9%86-%D9%8A%D9%82%D8%B1-%D8%A8%D8%AA%D9%81%D8%B4%D9%8A-%D8%B9%D9%85%D8%A7%D9%84%D8%A9-%D8%A7%D9%84%D8%A7%D8%B7%D9%81%D8%A7%D9%84-%D9%81%D9%8A-%D8%A7%D9%84%D8%AA/> (accessed 3 October 2024).

³³ n 28, 48.

³⁴ I Satti 'An overview of child labor in informal mining area' 2015.

to become more lenient on children due to their financial contributions.³⁵ In another Study conducted by the International Labour Organization (ILO) in East Darfur and West Kordufan although not focused on gold artisanal mining children reported that workload negatively impacts their schoolwork.³⁶

This situation compounds Sudan's existing educational challenges, with 70% of 10-year-olds unable to read simple sentences, according to UNICEF.³⁷ Currently, this learning crisis has deepened, with 19 million school age children now lacking access to formal education due to the ongoing conflict, and over 90% of the nearly 23,000 schools are closed or inaccessible.³⁸

Although there are no specific studies on the direct impact of mining on children's right to education in Sudan, research conducted in other African countries with similar issues provides valuable insights. A study conducted in Ghana's Kwabeng township assessed the effects of small scale mining activities on students. The research found that both financial and socio-status factors of the environment significantly influence students' academic performance.³⁹ The study has shown that children's engagement in ASM negatively affects their school performance, manifesting in a lack of enthusiasm for school, distraction in class, increased absenteeism, and higher dropout rates.⁴⁰ Similar to Sudan despite farming being the primary occupation in the area, many residents, particularly the youth, have abandoned agriculture in favour of ASM activities⁴¹ because they perceive small scale gold mining as offering quicker financial gains than other occupations or activities, including education.⁴²

³⁵ As above.

³⁶ n 8, IIII.

³⁷ UNICEF 'It's time to go back to school to learn: A message from eight-year old Hanan'
<https://www.unicef.org/sudan/its-time-go-back-school-learn> (accessed 2 October 20224).

³⁸ Learning passport 'Sudan's 19 Million Learners are Facing the World's Worst Education Crisis'
<https://www.learningpassport.org/stories/sudans-19-million-learners-are-facing-worlds-worst-education-crisis#:~:text=Over%20the%20past%20year%2C%20this,education%20crises%20in%20the%20world>(accessed 3 October 2024).

³⁹ S T Annan, B Y Boasu, A A Poku, & R Addae 'Small scale mining and ccademic performance of Ghanian students at the basic level' 19 April 2024.

⁴⁰ As above.

⁴¹ Annan (n 39) 585.

⁴² Annan (n 39) 586.

The study about the Kwabeng township revealed that the surrounding environment plays a crucial role in either encouraging or discouraging children to attend school or opt for mining instead. Thus, community and peer pressure often push students into the gold mining sector.⁴³ Some children are considered the primary breadwinners for their families and must work to cover the living and housing expenses.⁴⁴ The research highlighted that involvement in mining activities disrupts students' academic performance by affecting them both physically and psychologically. Students engaged in mining often experience fatigue and memory issues, impacting their ability to concentrate and learn effectively. Many of these students either fail to attend school regularly or arrive late due to their work commitments.⁴⁵ Consequently, even the students who strive to continue their academic pursuit, their performance at school is significantly impacted by their physical and psychological well-being.⁴⁶

2.3 Impact on the Child's Right to Health

The prevalence of child labour in ASM presents severe health and safety concerns, particularly in Sudan.⁴⁷ The ILO has identified mining as the most hazardous sector for child workers due to immediate physical dangers such as mine collapses, equipment injuries, and drowning.⁴⁸ In Sudan minors are assigned dangerous tasks such as excavating unstable pits and labouring in

⁴³ Annan (n 39).

⁴⁴ Annan (n 39) 586.

⁴⁵ Annan (n 39) 587.

⁴⁶ As above.

⁴⁷ Albadawi (n 24).

⁴⁸ ILO 'Child labour in mining, poor working conditions take centre stage in inter-regional meeting'
<https://www.ilo.org/resource/news/child-labour-mining-poor-working-conditions-take-centre-stage-inter>
(accessed 29 September).

dimly lit underground shafts that can reach depths of 7-8 meters for extended periods,⁴⁹ and handling heavy ore loads.⁵⁰

These activities expose children to immediate life threatening risks such as pit collapses, drowning, and fatal falls. The danger is compounded by children's physical limitations and lack of safety training.⁵¹ Beyond these immediate risks, children face devastating long term health effects from exposure to toxic substances, especially mercury, lead, and arsenic, which can cause permanent neurocognitive impairments,⁵² severe organ damage, impaired sensory functions, and potentially lead to coma or death.⁵³ Inhalation of mine dust can lead to silicosis and lung cancer.⁵⁴ Children's developing bodies are especially vulnerable to these neurotoxic effects.⁵⁵

⁴⁹ alrakoba 'From the memoirs of a returnee from (gold)...the young man Yassin: For this reason (...) we buried the bodies of our colleagues inside the well..!!!'

<https://www.alrakoba.net/458051/%D9%85%D9%86-%D9%85%D8%B0%D9%83%D8%B1%D8%A7%D8%AA-%D8%B9%D8%A7%D8%A6%D8%AF-%D9%85%D9%86-%D8%A7%D9%84%D8%B0%D9%87%D8%A8-%D8%A7%D9%84%D8%B4%D8%A7%D8%A8-%D9%8A%D8%A7%D8%B3%D9%8A%D9%86-%D9%84%D9%87/>

(accessed 7 October 2024).

⁵⁰ Baldo (n 26) 14.

⁵¹ L T Blitz, C Goldfine & T B Erickson 'Environmental and health risks posed to children by artisanal gold mining: A systematic overview'

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8841918> (accessed 1 October 2024).

⁵² Human Rights Watch 'Protecting Child and Adult Gold Miners Against Mercury: A Right to Health Issue' 17 October 2011

<https://www.hrw.org/news/2011/10/17/protecting-child-and-adult-gold-miners-against-mercury-right-health-issue#:~:text=Under%20the%20treaty%2C%20states%20also,the%20inherent%20right%20to%20life.> (accessed 2 October 2024).

⁵³ Institute for Water Education 'The Dark side of gold: The dangerous effects of mercury used in artisanal gold mining' 30 April 2020

<https://www.un-ihe.org/dark-side-gold-dangerous-effects-mercury-used-artisanal-gold-mining#:~:text=Extended%20exposure%20to%20mercury%20can,comatose%20or%20even%20claim%20lives> (4 October 2024).

⁵⁴ TLCR 'Environmental and occupational determinants of lung cancer'

<https://tlcr.amegroups.org/article/view/28014/html> (accessed 9 October 2024).

⁵⁵ Blitz (n 51).

The scale of this problem is particularly alarming in Sudan, which the World Bank reports provided that Sudan consumed an estimated 346 tons of mercury between 2008 and 2015, making it one of the largest mercury importers in sub-Saharan Africa.⁵⁶ The traditional gold extraction is done by digging up gold bearing soil. The soil is then treated with mercury and cyanide to extract the gold with highly toxic waste is often poured directly into valleys and streams, resulting in severe pollution.⁵⁷ The problem is further intensified by the government's support for the use of these harmful substances in South Kordofan West of Sudan police forces were deployed to guard 100 cyanidation plants from angry local protesters.⁵⁸

Furthermore, the health impacts are exacerbated by the lack of basic sanitation and healthcare services in mining areas, making children particularly vulnerable to infectious diseases like malaria and tuberculosis,⁵⁹ particularly threatening malnourished children with weakened immune systems.⁶⁰ In a documentary carried out by AlJazeera to shed light on the health crisis in Sudan's ASM sector. A local doctor in Alibidya North Sudan, reported treating an average of three patients daily for mercury poisoning, with even more cases of chest infections.⁶¹

Furthermore, a study conducted by the Department of Environment and Safety, Ministry of Minerals in November 2013 revealed alarming findings about mercury exposure in Abu

⁵⁶ Baldo (n 26) 14.

⁵⁷ Business and Human Rights Resource Centre 'Sudan: artisanal gold mining has 'serious consequences' for health, environment, communities, activist warns'
<https://www.business-humanrights.org/en/latest-news/sudan-advocate-warns-of-dire-consequences-of-traditional-gold-extraction> (accessed 4 October 2024).

⁵⁸ Radio Dabanga 'Two killed in South Kordofan dispute over gold extraction plant' 10 July 2027
<https://www.dabangasudan.org/en/all-news/article/two-killed-in-south-kordofan-dispute-over-gold-extraction-plant> (accessed 16 September 2024).

⁵⁹ Albadawi (n 24).

⁶⁰ Blitz (n 51).

⁶¹ AlJazeera 'Sudanese miners risk health for gold' 28 December 2016
<https://www.aljazeera.com/news/2016/12/28/sudanese-miners-risk-health-for-gold/> (accessed 10 October 2024).

Hamad area of the Nile River State.⁶² The study found that workers, particularly children aged 10-15 who primarily perform washing tasks, operate without any personal protective equipment, handle mercury with bare hands, and are exposed to mercury fumes during the amalgam heating process.⁶³

Apart from these risks, It should be noted that the lack of government control and oversight over this sector leaves these areas vulnerable to militant groups, as exemplified by the 2021 incident in Sudan's Northern State, where armed men forcibly occupied a private gold mine, endangering workers, including child labourers.⁶⁴ These multifaceted, life threatening risks not only violate children's internationally and regionally protected health but also jeopardise their right to life, the right to be protected from harm, and their overall development and prospects.⁶⁵

Additionally, ASM in Sudan presents a double threat to children, exposing them to dangers both in the workplace and in their communities. This dual hazard underscores the pervasive nature of the environmental and health risks associated with ASM practices in the country. The manual mercury treatment methods employed in ASM not only endanger these child workers directly but also contribute to widespread environmental contamination.⁶⁶ Tailings heaps, containing substantial amounts of unused gold particles and mercury, become sources of pollution that extend far beyond the immediate vicinity of mining sites.⁶⁷

In regions such as South Kordofan, South Darfur, and Blue Nile states, ASM activities take place in rich savannah areas with heavy seasonal rainfall, home to both sedentary and nomadic populations. The exposure of mercury-laden tailings to wind and water erosion results in extensive water, soil, and air pollution.⁶⁸ Consequently, the risk of pollution affects humans, flora, and fauna all together.

⁶² 'Minamata Convention Initial Assessment in Sudan' 73.

⁶³ As above.

⁶⁴ Baldo (n 26) 12-14.

⁶⁵ Blitz (n 51).

⁶⁶ Albadawi (n 24).

⁶⁷ Baldo (n 26) 14.

⁶⁸ Baldo (n 26) 12-15.

This contamination has severe and long lasting effects on local communities. For instance, a 2018 analysis of soil and water samples from Sawarda village revealed harmful levels of cyanide and heavy metals, including zinc, chromium, and copper. The South Kordofan State's Health Ministry has reported alarming increases in miscarriages, birth defects, and kidney failures in mining areas.⁶⁹ Based on the initial assessment conducted under the Minamata Convention in Sudan, the process of gold extraction using mercury amalgamation is identified as the primary source of mercury emissions in the country, accounting for approximately 81% of all mercury releases from various sources.⁷⁰

2.4 Conclusion

The prevalence of child labour in Sudan's ASM sector presents a severe and multifaceted threat to children's fundamental rights, particularly their rights to education and health. This chapter has reflected how the impact on children's education is profound and far-reaching, showcasing how the allure of immediate financial gains from mining has led to increased school dropouts, reduced attendance, and diminished academic performance. Even children who attempt to balance work and school find their educational prospects significantly compromised due to physical exhaustion and psychological stress.

Further, the health implications for child miners are equally alarming. Children engaged in ASM face immediate life-threatening risks such as mine collapses and drowning, as well as long-term health hazards from exposure to toxic substances like mercury and cyanide. The lack of proper safety measures and protective equipment exacerbates these risks, potentially leading to permanent physical impairments or death. Moreover, the environmental contamination resulting from ASM practices extends the health risks beyond the immediate mining sites, affecting entire communities and ecosystems. This widespread pollution poses a serious threat to public health, particularly in vulnerable populations.

The situation is further complicated by Sudan's ongoing political conflicts, displacement crises, and the presence of armed groups in mining areas, all of which increase children's vulnerability to exploitation and trafficking. This comprehensive analysis underscores the

⁶⁹ As above.

⁷⁰ Minamata Assessment (n 62) 43.

urgent need for a multifaceted approach to address child labour in Sudan's gold mining sector. Such an approach must encompass strengthened legal frameworks, improved enforcement mechanisms, enhanced educational opportunities, and community-based interventions to protect children's rights and ensure their overall well-being. The next chapter will delve into the legal framework surrounding these issues, providing a foundation for potential solutions and policy recommendations.

Chapter 3: Regulatory Framework

3.1 Introduction

This chapter provides an in-depth analysis of Sudan's legal framework concerning child labour in the mining sector, structured to first establish the relevant international legal standards particularly those in regard to child protection and child labour that Sudan has committed to uphold. Then the analysis transitions to evaluate the adequacy and sufficiency of these domestic laws against international standards and best practices across several key dimensions such as; the definition of a child, minimum age requirements for hazardous work, corporate obligations in the mining sector, educational guarantees, protection of children's health and development, and enforcement mechanisms. Through this structured comparison, the chapter highlights significant gaps in both legislation and implementation, underscoring Sudan's failure to fully address crucial issues that perpetuate child labour, particularly in areas such as access to education and health protection for vulnerable children. This comprehensive assessment sets the stage for the following chapter, where Ghana's more comprehensive approach to meeting international obligations will be explored as a comparative model for potential reforms in Sudan.

3.2 International Instruments

a. The Universal Declaration on Human Rights

Child labour is a multifaceted issue that intersects with various dimensions and is addressed by multiple International legal instruments, albeit often indirectly.⁷¹ The Universal Declaration of Human Rights (Universal Declaration), adopted in 1948, serves as a human rights catalogue applicable to adults and children. While not explicitly mentioning child labour, the Universal Declaration offers implicit protections through several articles. Article 3 which guarantees

⁷¹ BH Weston & MB Teerink 'Child labor and human Rights: making children matter' in BH Weston (ed) *'Rethinking child labor: A multidimensional human rights problem'* (2005).

the right to life and security,⁷² can be interpreted to shield children from life-threatening work conditions. Similarly, article 4 prohibits all forms of slavery, including forced child labour.⁷³

The protection offered under article 4 of the Universal Declaration is built upon earlier initiatives and agreements. In 1924, the Temporary Slavery Commission acknowledged various forms of slavery, including both public and private mandatory labour systems, regardless of monetary return.⁷⁴ Subsequently, the 1926 Slavery Convention provided a crucial definition of slavery, characterising it as a situation where an individual experiences "any or all of the powers normally associated with ownership."⁷⁵

There is a general consensus that the Universal Declaration incorporated this established definition of slavery, applying article 32 of the Vienna Convention on the Law of Treaties the interpretation of the Universal Declaration's provisions can be informed by earlier treaties such as the Slavery Convention.⁷⁶

The case of *Nevsun Resources Ltd. v. Araya*⁷⁷ reinforces article 4 of the Universal Declaration and marks a significant development in the application of international human rights law within domestic legal systems, with important implications for addressing child labour in the global supply chain. In this case, three Eritrean workers sued Nevsun, a Canadian mining company, alleging forced labour and inhumane treatment at an Eritrean mine. The Canadian court's decision to accept jurisdiction and allow claims based on customary international law to proceed represents a crucial step in holding corporations accountable for human rights violations. The court's recognition that breaches of *jus cogens* norms, such as the prohibition of slavery, may apply to corporations aligns closely with the protections outlined in the Universal Declaration.

⁷² Universal Declaration of Human Rights art 3.

⁷³ Universal Declaration art 4.

⁷⁴ H Franziska *The challenge of child labour in International Law: The prohibition of child labour in international law* (2009) 46.

⁷⁵ Slavery Convention 1926 art 1(1).

⁷⁶ Franziska (n 74) 46.

⁷⁷ Walton BA *Nevsun Resources Ltd. V Araya* (2021) 115 AJIL 107.

Furthermore, the declaration acknowledges the interrelatedness of children's and parents' rights, with article 25(2) emphasising special care for motherhood and childhood,⁷⁸ and article 26 establishing the right to free, compulsory elementary education.⁷⁹

Although the Universal Declaration was enacted as soft law with no legally binding authority,⁸⁰ its protections were later expanded upon by two key international covenants: the ICCPR and the ICESCR, which together formed 'The International Bill of Human Rights,' establishing a comprehensive framework for protecting human rights, including provisions that address children's protection and safety from hazardous work, as shall be discussed below.⁸¹

b. International Covenant on Civil and Political Rights (ICCPR)

Sudan ratified the ICCPR ten years after it came into force in 1986.⁸² The ICCPR reaffirms the inherent right to life under article 6(1).⁸³ Additionally, article 24(1) emphasises comprehensive safeguarding measures for children without any discrimination on any basis, involving various stakeholders such as family members, societal institutions, and governmental bodies. This multi-faceted approach to child protection is particularly pertinent when addressing the intricate issue of child labour in Sudanese mining operations.⁸⁴ Similarly to the Universal Declaration, the ICCPR prohibits acts of servitude that apply regardless of voluntariness, which is crucial when considering children's involvement in hazardous mining work.⁸⁵

However, the convention strikes a distinction between servitude and compulsory labour with the latter requiring coercion and lack of willingness, in alignment with the ILO's definition of

⁷⁸ Universal Declaration art 25(2).

⁷⁹ Universal Declaration art 26.

⁸⁰ Franziska (n 74) 48.

⁸¹ J Silk & M Makonnen 'Ending child labor a role for international human rights A role for international human rights law?' 361.

⁸² <http://www.claiminghumanrights.org/sudan.html?L=0> (accessed 12 August 2024).

⁸³ International Covenant on Civil and Political Rights art 6(1).

⁸⁴ Franziska (n 74) 61.

⁸⁵ ICCPR art 8(2).

forced labour, which requires work to be against one's will and under unjust or oppressive conditions,⁸⁶ while servitude is still prohibited even if it is voluntary.⁸⁷

In the context of Sudan, article 24 is particularly important as it extends protection to children who voluntarily decided to join the mining industry and children who were trafficked and found themselves forced to work in that space. In the case of *Doe v. Nestle USA, Inc.*⁸⁸ while not directly addressing mining, provides crucial insights into the legal treatment of hazardous child labour and servitude in global supply chains. This landmark case involves former child slaves who were forced to work on cocoa farms in Ivory Coast, suing major cocoa manufacturers like Nestle USA and Cargill Inc.

The plaintiffs allege that these corporations were aware and complicit in child slavery within their supply chains, with children reportedly forced to work up to 14 hours a day without pay in hazardous conditions. The case explores several key issues that apply to various contexts of child exploitation, including mining, such as corporate liability for human rights abuses in supply chains, aiding and abetting liability for child slavery and hazardous labour, and the extraterritorial application of human rights law.

Notably, the Ninth Circuit Court's decision to hold corporations liable for aiding and abetting slavery sets a precedent that could potentially be applied to other industries where hazardous child labour is prevalent.

c. International Covenant on Economic, Social & Cultural Rights (ICESCR)

The ICESCR articulates a robust framework for safeguarding children and adolescents from exploitative practices, particularly in the realm of employment. Article 10(3) of the ICESCR stresses the need to shield children and young people from all forms of social or economic exploitation, especially from the type of employment that is detrimental to their moral or physical well-being, poses risks to their lives or impedes their natural growth, and

⁸⁶ ICCPR 8(3).

⁸⁷ Franziska (n 74) 47.

⁸⁸ *Doe v Nestle US Inc* (2014) 766 F 3d 1013.

development. The article further urges states to set minimum age requirements for paid employment of children and prosecute and punish whoever violates the age limit.⁸⁹

The Covenant's provisions align with the tripartite classification of child labour delineated by ILO and UNICEF. This categorisation encompasses labour performed at an inappropriately young age, work that jeopardises a child's physical, mental, or moral well-being, and the unequivocally worst forms of child labour. It is noteworthy that the Covenant's protections extend to young persons as well, broadening its scope beyond children exclusively.⁹⁰

Regarding state obligations under international law, the ICESCR mandates a multifaceted approach encompassing respect, protection, and fulfilment. Article 10(3) implies a state duty to protect children from exploitation by third-party employers and to establish and enforce minimum age requirements for employment that are punishable by law in case they have been violated.

Article 5(1) imposes both negative and positive obligations on states and non-state actors. It prohibits activities detrimental to the rights enshrined in the convention while simultaneously requiring the state to adopt proactive measures to prevent interference from other entities.⁹¹ Article 2(1) gives States flexibility in choosing suitable methods to meet their obligations, with a specific mention of legislative measures. However, the Committee on Economic, Social & Cultural Rights has clarified that legislation is not the only option, encouraging the use of administrative, financial, and other interventions to achieve the goals of the Covenant. This flexibility should not be seen as an excuse for insufficient protection. The Committee views the failure to provide a minimum level of protection as clear evidence of non-compliance with the Covenant's requirements.⁹²

Additionally, article13 recognises the right to education as a right granted to all without any discrimination. While article13(2)a provides for a compulsory free primary education for children. Article 12(1) of the convention recognises "the right of everyone to the enjoyment

⁸⁹ ICESCR art 10(3).

⁹⁰ Franziska (n 74) 65.

⁹¹ Franziska (n 74) 65.

⁹² As above.

of the highest attainable standard of physical and mental health." ⁹³ The Committee interprets this right to include healthy environmental conditions and access to safe water.⁹⁴ In this sense, the Committee's interpretation makes it clear that the right to clean water is fundamental for survival and is inextricably linked to other human rights, including the right to the highest attainable standard of health and the right to adequate housing and food.⁹⁵

Furthermore, the ICESCR imposes an obligation on state parties to improve "all aspects of environmental and industrial hygiene."⁹⁶ The Committee has expanded this interpretation to encompass safe and hygienic working conditions.⁹⁷

Collectively, the above instruments serve as the foundation for more targeted international efforts to combat child labour and safeguard children's rights.⁹⁸

d. United Nations Convention on the Rights of the Child (CRC)

Sudan formally acceded to CRC in September 1991.⁹⁹ This comprehensive international treaty is distinguished by its legally binding nature and holistic approach, encompassing a broad spectrum of children's human rights across civil, cultural, economic, political, and social domains.¹⁰⁰

⁹³ ICESCR art 12(1).

⁹⁴ UN Committee on Economic, Social and Cultural Rights General Comment (ESCR Committee) 14.

⁹⁵ ESCR Committee General Comment 15.

⁹⁶ ICESCR art 12 (2) b.

⁹⁷ Social and Economic Rights Action Centre (SERAC) & Anor v Nigeria (2001) AHRLR 60 (ACHPR 2001), para 50-51.

⁹⁸ Silk (n 81).

⁹⁹ L Tonnesen & S Alnagar 'Sudan country case study: Child Rights' (2011)

<https://cdn.sida.se/publications/files/sida61388en-sudan-country-case-study-child-rights.pdf> (accessed 11 August 2024).

¹⁰⁰ T Crabbe 'Child labour laws and policies in Ghana: with specific emphasis on the cocoa sector' <https://www.forest-trends.org/publications/child-labor-laws-and-policies-in-ghana/> page???? (accessed 6 August 2024).

The Convention defines a child as anyone under 18 years old,¹⁰¹ and outlines provisions to protect children from exploitation. Primarily, article 6(1) of the CRC emphasised the right to life of children,¹⁰² and added in article 6(2) an obligation on state parties to ensure the highest level of protection for the child's "survival and development".¹⁰³ Subsequently, article 32(1) specifically addresses child labour, recognising children's right to be protected from economic exploitation. The concept of exploitation in this context is understood as circumstances that fail to respect the child's human dignity or impede the harmonious development of their personality.¹⁰⁴ Economic exploitation, more broadly, can be conceptualized as the coercion of labour at the expense of an individual's health, well-being, and societal development.¹⁰⁵

Consequently, the CRC's approach to child labour protection is more comprehensive than the ICESCR. It covers work that harms development, health, or morals, as well as work that interrupts education and all types of development.¹⁰⁶ Importantly, the article does not ban all child work but focuses on hazardous work, that interferes with education, or negatively impacts a child's health, mental, physical, or social development.¹⁰⁷

In doing so, the convention acknowledges that work can positively contribute to a child's development, helping them grow into responsible individuals and equipping them with valuable skills for the future. It also takes into account the realities faced by economically disadvantaged children who live in poverty and must work to support themselves.¹⁰⁸ Further, The CRC's protection extends to both formal and informal sectors, including exploitative work within family contexts.¹⁰⁹

¹⁰¹ Convention on the Rights of the Child art 1.

¹⁰² CRC art 6(1).

¹⁰³ CRC art 6(2).

¹⁰⁴ Franziska (n 74) 69.

¹⁰⁵ HV Kistenbroker 'Implementing article 32 of the Convention on the Rights of the Child as a domestic statute: protecting children from abusive labor practices' (2012) 44 *Case Western Reserve Journal of International Law* 930.

¹⁰⁶ Franziska (n 74) 68.

¹⁰⁷ Franziska (n 74) 71.

¹⁰⁸ Ed J Tobin (ed) *The UN Convention on the Rights of the Child; A Commentary* 2019.

¹⁰⁹ Franziska (n 74) 70.

UNICEF has identified elements of economic exploitation, including excessive working hours, inadequate wages, work negatively impacting mental and physical development, early full-time work, and work with excessive responsibility.¹¹⁰ Evidently, almost all these elements apply to children working at gold mines. Furthermore, Unlike the ICESCR, the CRC requires State Parties to implement various measures - legislative, administrative, social, and educational to enforce these protections. This multifaceted approach acknowledges the complexity of child labour issues and the need for a coordinated societal response.¹¹¹

Further, article 19(1) of the convention offers protection against all types of violence inflicted upon children. The Committee illustrated this provision is to be interpreted broadly to encompass all categories of harm whether deliberately inflicted or unintentional, minor or severe. The fundamental principle remains that children must be protected from harm in all circumstances.¹¹² This article directly applies to cases where parents engage their children in hazardous occupations like mining.

Adding to that, article 35 of the CRC addressed the matter of trafficking and abducting of children for any usage within and across borders and called for 'national, bilateral and multinational' action to tackle the issue. Again, this article is of special importance in Sudan because reports have indicated that Sudanese and foreign children are being trafficked to work in the mines or to join armed groups. These provisions create a comprehensive framework for protecting children from harmful labour practices and ensuring their well-being.

e. ILO Convention No 29 Concerning Forced or Compulsory Labour

Sudan ratified the Convention in 1957. Article 2 of the Convention defines forced or compulsory labour as 'all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.'

¹¹⁰ Kistenbroker (n 105) 931.

¹¹¹ CRC art 32(2).

¹¹² Z Vaghi, J Zermattan, G Landsdown, R Ruggiero (ed) *Monitoring state compliance with the UN Convention on the Rights of the Child: An analysis of attributes* (2022) 294-299.

The definition encompasses any work or service extracted from an individual under the threat of penalty, without voluntary consent. This conceptualisation hinges on the dual criteria of coercion and involuntariness.¹¹³

The ILO's 2001 report on forced labour emphasises the vulnerability of children to contemporary forms of forced labour, equating slavery-like systems with forced labour. This aligns with the broader understanding of child labour as a slavery-like practice under the Supplementary Convention on Slavery and as a form of servitude and forced labour under the ICCPR.

Further, the Committee of Experts on the Application of Conventions and Recommendations has raised pertinent questions regarding the capacity of minors to offer themselves 'voluntarily' for work, the role of parental consent, and the associated sanctions. Therefore, considering children's inherent vulnerability and limited capacity for free consent due to their legal and practical dependence on adults and the principle of the best interests of the child, as enshrined in article 3 of the CRC, parental consent alone is deemed insufficient in cases of exploitative child labour.¹¹⁴

f. ILO Convention No. 138 on the minimum age for admission to employment

Sudan ratified the Convention in March 2003.¹¹⁵ The Convention's main objective is outlined in article 1 which encourages member states to implement domestic policies aimed at eliminating child labour and progressively increasing the minimum working age. The rationale behind increasing this age threshold is to ensure that young individuals can fully develop both physically and mentally before beginning work, thereby safeguarding their overall growth and welfare.¹¹⁶

Furthermore, article 2 provides more specific guidelines, stating that the minimum working age set forth by the states' declarations¹¹⁷ 'shall not be less than the age of completion of

¹¹³ International Labour Organization Forced Labour Convention 1930 No 29 art 2.

¹¹⁴ Franziska (n 74) 83-84.

¹¹⁵ <https://normlex.ilo.org/dyn/normlex/en/f?p=1000:11001> (10 August 2024).

¹¹⁶ ILO 'ILO Convention No. 138 At a Glance' 1.

¹¹⁷ ILO Convention No 138 art 2(1).

compulsory schooling and in any case shall not be less than 15 years'.¹¹⁸ However, recognising economic disparities among nations, the Convention allows less developed economies and educational systems may, after consulting with relevant employers' and workers' organisations, initially set the minimum age at 14 years.¹¹⁹

The Convention also addresses hazardous work in article 3(1), which states: 'The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons shall not be less than 18 years". In this regard, Recommendation No. 146, which complements Convention No. 138, provides guidance on defining hazardous employment or work for children. This instrument emphasises the importance of considering relevant international labour standards and paying particular attention to specific risk factors. These factors include exposure to dangerous substances, agents, or processes, such as ionising radiation, as well as tasks involving heavy lifting and underground work.¹²⁰

Adding to that, the Convention distinguishes between hazardous work and light work permissible for children. It exempts specific forms of work that have educational or vocational value for young people. This includes work done in educational settings such as schools and training institutions, as well as work performed by individuals aged 14 and above in certain undertakings. The latter is subject to conditions set by competent authorities in consultation with relevant organisations.¹²¹

Finally, article 5 specifies that the Convention's provisions must apply, at minimum, to the mining and quarrying industries, highlighting these sectors as areas requiring particular attention in enforcing the Convention's protections.

¹¹⁸ ILO Convention No 138 art 2 (2).

¹¹⁹ ILO Convention No 138 art 2 (4).

¹²⁰ Franziska (n 74) 71.

¹²¹ ILO Convention No 138 art 6.

g. ILO Convention No. 182 on the Worst Forms of Child Labour

The Convention has achieved universal ratification by all 187 ILO member states, underscoring its global significance.¹²² Article 3 of the Convention defines 'the worst forms of child labour', encompassing various forms of exploitation, including slavery, trafficking, forced labour, child prostitution, use of children in illicit activities, and work likely to harm children's health, safety, or morals.¹²³

Additionally, article 7 emphasises education as a preventive measure against child labour and calls for effective enforcement measures, including different sanctions as deemed appropriate. However, Recommendation 190 suggests penal sanctions for the most severe forms of child labour to match the severity of these types of labour and the impact on children.¹²⁴

Further, article 8 promotes international cooperation for social and economic development and poverty eradication, recognising poverty as both a cause and consequence of child labour.¹²⁵ The Convention, along with other ILO instruments, strongly emphasizes child protection, reflecting the ILO's stance that childhood should be dedicated to full physical and mental development rather than work.

3.3 Governing Principles

a. United Nations Guiding Principles on Business and Human Rights (UNGPs)

The UNGPs endorsed unanimously by the UN Human Rights Council in 2011, established a comprehensive framework addressing the intersection of business operations and human

¹²² ILO 'ILO child convention achieves universal ratification' [https://www.ilo.org/resource/news/ilo-child-labour-convention-achieves-universal-ratification#:~:text=All%20187%20member%20States%20of,182\).&text=GENEVA%20\(ILO%20News\)%20%E2%80%93%20For,ratified%20by%20all%20member%20States](https://www.ilo.org/resource/news/ilo-child-labour-convention-achieves-universal-ratification#:~:text=All%20187%20member%20States%20of,182).&text=GENEVA%20(ILO%20News)%20%E2%80%93%20For,ratified%20by%20all%20member%20States). (Accessed 10 August 2024).

¹²³ International Labour Organization Worst Forms of Child Labour Convention 1990 No 182 art 3.

¹²⁴ Franziska (n 74)101.

¹²⁵ Z Naeem, F Shaukat & Z Ahmed 'Child labor in relation to poverty' (2011).

rights protection.¹²⁶ This framework is structured around three fundamental pillars: state responsibility, corporate accountability, and access to remedies.

Within Pillar I, the principles emphasise that the state holds the primary obligation to safeguard human rights through regulatory and policy mechanisms that govern business conduct. Importantly, this state duty becomes particularly crucial in conflict-affected regions, where governments must proactively prevent or mitigate human rights violations by commercial entities before, during, and after conflicts.¹²⁷

Pillar II which directs the obligations on Businesses, extends beyond traditional state obligations, recognising corporations as "specialised organs of society" with corresponding responsibilities.¹²⁸ This perspective aligns with the broader interpretation of article 24(1) of the ICCPR, which suggests that the duty to protect children's rights extends beyond state actors to encompass family and society at large.¹²⁹ Given that businesses operate within community spaces, this interpretation effectively places them within the societal framework bound by such obligations.

Under this Pillar, businesses are mandated to adopt human rights policies and conduct comprehensive due diligence. Companies are expected to publicly commit to internationally recognised human rights standards, but critics argue that such policy statements often become mere 'checkbox' exercises lacking meaningful implementation.¹³⁰ However, the human rights due diligence process, intended to identify and mitigate potential human rights impacts, faces criticism for its non-mandatory nature, limiting its effectiveness.¹³¹

¹²⁶ United Nations Human Rights Office of the High Commissioner *Guiding Principles on Business and Human Rights: Implementing the United Nations Protect, Respect and Remedy Framework* (2011).

¹²⁷ United Nations Human Rights Office (n 126) 3-13.

¹²⁸ UNGPs General principle (b).

¹²⁹ ICCPR art 24(1).

¹³⁰ UNDP 'A baseline assessment on business and human rights in Africa: from the first decade to the next' 10 October 2022 41-44.

¹³¹ As above.

Pillar III is access to remedy through three primary mechanisms: state-based judicial systems, non-judicial state mechanisms, and non-state grievance procedures.¹³² As to the first one, all different courts should be available to adjudicate business human rights cases, as to the non-judicial mechanisms the National Human Rights Commission in Sudan is a valid option since it has quasi quasi-judicial mandate.¹³³

As for the last one, the UNGPs require businesses to establish internal grievance mechanisms for stakeholders affected by their operations, acknowledging that policy commitments and due diligence alone cannot prevent all human rights violations.¹³⁴ Despite their foundational importance, the implementation of the UNGPs faces significant challenges, particularly in the context of informal economies prevalent in developing nations due to their insufficient engagement with informal sector dynamics.¹³⁵ This is particularly related to Sudan where artisanal mining operations are predominant and operate outside formal regulatory frameworks.

b. The Ten Principles of the UN Global Compact

The UN Global Compact stands as the UN's most extensive initiative aimed at encouraging businesses to adopt human rights practices. It presents ten core principles, known as "the ten principles of the UN Global Compact," designed to guide companies in developing strategies, policies, and procedures that protect both global citizens and the planet.¹³⁶

The Principles touched upon important aspects of protection as such it urges corporations to respect and uphold international human rights standards and calls on businesses to avoid complicity in human rights abuses,¹³⁷ and to take proactive action to support human rights. ¹³⁸

¹³² UNDP Baseline Assessment (n 130) 53.

¹³³ The National Human Rights Commission Act 2009 art 2(h).

¹³⁴ UNDP Baseline Assessment (n 130) 58.

¹³⁵ UNDP Baseline Assessment (n 130).

¹³⁶ <https://unglobalcompact.org/what-is-gc> (accessed 12 August 2014).

¹³⁷ The Ten Principles of the UN Global Compact principles 1 & 2.

¹³⁸ <https://www.unglobalcompact.nl/the-ten-principles> (accessed `29 September 2014).

c. Sustainable Development Goal (SDG) Target 8.7

In 2015, the UN established the Sustainable Development Goals (SDGs), also referred to as the Global Goals. These objectives represent a worldwide initiative to eradicate poverty, safeguard the environment, and guarantee universal peace and prosperity by the year 2030.¹³⁹ Goal 8 is dedicated to ‘Decent Work and Economic Growth’ and target 7 for the goal explicitly provides for “the prohibition and elimination of the worst forms of child labour” and sets the year 2025 as the intended year for the world to end child employment in its all forms.¹⁴⁰

However, Sudan will not meet this deadline for many reasons. The country's ongoing political instability manifested in the ongoing war has disrupted governance and policy implementation. The high inflation rates,¹⁴¹ and the displacement crises that Sudan is facing are key drivers of child labour.¹⁴² Adding to that, schools are shut down due to the ongoing conflict which exuberate children's exposure to employment.¹⁴³

d. Other relevant instruments

Sudan has ratified several Multilateral Environmental Agreements aimed at combating pollution and toxic substances, including the Stockholm Convention on Persistent Organic Pollutants,¹⁴⁴ the Basel Convention on Hazardous Wastes,¹⁴⁵ the Rotterdam Convention,¹⁴⁶ the

¹³⁹ <https://www.undp.org/sustainable-development-goals> (accessed 15 August 2024).

¹⁴⁰ Sustainable Development Goal 8 Target 8.7 <https://www.undp.org/sustainable-development-goals/decent-work-and-economic-growth> (accessed 14 August 2024).

¹⁴¹ African Development Bank Group ‘Sudan economic outlook: Recent macroeconomic and financial developments’ <https://www.afdb.org/en/countries/east-africa/sudan/sudan-economic-outlook> (accessed 5 October 2024).

¹⁴² ILO Report (n 8 above).

¹⁴³ Reuters ‘Schools shut; exams cancelled: War shatters Sudan's education sector’ 10 August 2024 <https://www.reuters.com/world/africa/schools-shut-exams-cancelled-war-shatters-sudans-education-sector-2023-08-10/> (accessed 7 October 2024).

¹⁴⁴ Stockholm Convention on Persistent Organic Pollutants 2003.

¹⁴⁵ Basel Convention on Hazardous Wastes 1989.

¹⁴⁶ Rotterdam Convention on the prior informed consent procedure for certain hazardous chemicals and pesticides in international trade 1998

Bamako Convention,¹⁴⁷ and the Vienna Convention for the Protection of the Ozone Layer.¹⁴⁸ These agreements complement the objectives of the Minamata Convention, specifically designed to protect human health and the environment from mercury emissions.¹⁴⁹ Notably, Sudan signed the Minamata Convention on Mercury in 2014.¹⁵⁰

3.4 Domestic Legal Framework

a. The Constitutional Document of 2019

The Constitutional Document guarantees the right to life, the right to health and ensures children's right to free compulsory basic education".¹⁵¹ Article 42(2) of the constitution broadens the scope of rights protection by stating that "All rights and freedoms contained in international and regional human rights agreements, pacts, and charters ratified by the Republic of Sudan shall be considered an integral part of this Charter".¹⁵² And more specifically article 50 provides that "The state protects the rights of the child as provided in international and regional agreements ratified by Sudan".¹⁵³

This constitutional stance obligates Sudan to address various human rights issues, including the eradication of child labour, particularly forms that jeopardize children's safety, development, and overall well-being under the multiple international instruments to which Sudan is a party.

b. Labour Act 1997

Although the law defines important terms and offers certain protections, it does not fully meet international standards in several areas. For instance, the Act defines a "young person" as

¹⁴⁷ Bamako Convention on Hazardous Wastes 1991

¹⁴⁸ Vienna Convention for the Protection of the Ozone Layer 1985

¹⁴⁹ ILO Report (n 8 above) 80.

¹⁵⁰ <https://minamataconvention.org/en/parties> (accessed 6 October 2024)

¹⁵¹ Sudan's Constitution of 2019.

¹⁵² Sudan's Constitution of 2019 art 42(2).

¹⁵³ Sudan's Constitution of 2019 art 5.

anyone under 16,¹⁵⁴ while the CRC classifies a child as anyone under 18.¹⁵⁵ This discrepancy means that individuals aged 16 to 17 lack specific protections afforded to younger workers, violating article 3(1) of the ILO Minimum Age Convention and article 5, which prevent children from engaging in work that poses risks to their development and specifically dictates that states must rigidly apply the minimum age to industries such as mining and quarrying, given the inherent dangers of those types of work.

However, the law is in alignment with ILO Convention No. 182 by prohibiting hazardous work under section 21(2) of the Labour Act¹⁵⁶ and adheres to article 4 under ILO Convention No. 138 by providing a list of hazardous job types. Specifically, the law forbids young persons from engaging in jobs that involve carrying heavy loads, using metal presses, iron and steel smelting, underground or underwater work, mining, and quarrying. Yet, even this protection is incomplete, as the definition of "children" is not fully consistent with international standards, leaving some age groups without adequate safeguards.

Additionally, it prohibits jobs that expose young workers to harmful substances such as lead, mercury, calcium, and benzene derivatives, as well as those involving x-rays, harmful radiation, and the maintenance of machinery and conveyor belts.¹⁵⁷ Despite this detailed prohibition it failed to address jobs that could hinder education or developmental aspects of the child, which leaves it out of step with article 32(1) of the CRC.

However, the law is in alignment with ILO Convention No. 182 by prohibiting hazardous work under section 21(2) of the Labour Act¹⁵⁸ and adheres to article 4 under ILO Convention No. 138 by providing a list of hazardous job types. Specifically, the law forbids young persons from engaging in jobs that involve carrying heavy loads, using metal presses, iron and steel smelting, underground or underwater work, mining, and quarrying.

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¹⁵⁴ Labour Act Interpretation provision.

¹⁵⁵ CRC art 1.

¹⁵⁶ Labour Act 1997 sec 21(2).

¹⁵⁷ Labour Act sec 21(1).

¹⁵⁸ Labour Act 1997 sec 21(2).

and the maintenance of machinery and conveyor belts.¹⁵⁹ Despite this detailed prohibition it failed to address jobs that could hinder education or developmental aspects of the child, which leaves it out of step with article 32(1) of the CRC.

The Sudanese Labour Act conflicts with international legal obligations by exempting certain categories from employment restrictions. It allows the employment of children under twelve years of age in cases such as family-run businesses.¹⁶⁰ However, the committee emphasised that article 32 should be absolute, with no exceptions, and that measures under this article should apply to all forms of employment, including work under family supervision.¹⁶¹

c. The Child Act 2010

The Sudanese Child Act provides a more comprehensive and internationally aligned framework for child protection than the labour law. It defines a child as "every person, who is not above the age of eighteen years".¹⁶² This definition ensures that all individuals under 18 are afforded the protections outlined in the Act.

Additionally,, section 5(2) of the Act establishes key principles that the state must adhere to, including the care and protection of children, ensuring their proper upbringing,¹⁶³ and respecting the rights and duties of parents and family.¹⁶⁴ Importantly, section 5(2)(e), directs the state to guarantee the child's right to education according to conditions set by law.¹⁶⁵ which aligns with the core international, regional, and constitutional obligations.¹⁶⁶

Further, the Act's commitment to protecting children from all forms of violence, abuse, and exploitation,¹⁶⁷ resonates with above mentioned international obligations. Section 36(1) of

¹⁵⁹ Labour Act sec 21(1).

¹⁶⁰ Labour Act sec 21(4).

¹⁶¹ Tobin (n 108) 1235.

¹⁶² The Child Act 2010 sec 4.

¹⁶³ The Child Act sec 5(1) (a).

¹⁶⁴ The Child Act sec 5(1) (b).

¹⁶⁵ The Child Act sec 5(2) e.

¹⁶⁶ CRC art 32(2).

¹⁶⁷ The Child Act sec 5 (2) k.

the Child Act prohibits work for children under 14 years old.¹⁶⁸ This aligns more closely with the ILO Convention No. 138 on Minimum Age.

Boosting the protection, section 37 prohibits hazardous work for children generally, stating that "there shall be prohibited works by its nature or for the circumstances around may damage child health, safety or moral conduct".¹⁶⁹ This partially aligns with both ILO Convention No. 182 and section 32 of the CRC, which protect children from economic exploitation and hazardous work.¹⁷⁰ The act did not prohibit work that interferes with education in light of article 32 of the CRC. Additionally, the Act could be more specific about the types of hazardous work prohibited and could benefit from explicitly mentioning the worst forms of child labour as defined by ILO Convention No. 182.

d. Mineral Wealth and Mining Development Act 2015

The Act is considered the sole regulator for the mining sector in Sudan as it was adopted under the auspices of the repealed interim constitution 2005.¹⁷¹ The Act appears to have significant shortcomings in addressing the critical issue of child labour in mines. The Act lacks an explicit prohibition on child labour in mining activities, which is particularly concerning given the prevalence of this issue in artisanal and small-scale mining in Sudan.

Furthermore, it fails to specify a minimum age for employment in mining, falling short of international standards set by ILO Conventions that categorise mining as hazardous work unsuitable for anyone under 18. Additionally, the Act also seems to lack specific protective measures for young workers, robust enforcement mechanisms, and adequate monitoring provisions to prevent child labour.

Further, section 27(1) of the Act establishes an inspection body to monitor compliance with 'technical, financial, and administrative aspects' and permits access to licensed areas. While this is theoretically useful given that mining operations often take place in heavily secured

¹⁶⁸ The Child Act sec 36 (1).

¹⁶⁹ The Child Act 2010 art 37.

¹⁷⁰ See art 3 (d) of the IL Convention No 182 & art 32 of CRC.

¹⁷¹ <https://www.herbertsmithfreehills.com/notes/africa/2021-06/the-sudanese-mineral-law-regime-and-potential-law-reform-recommendations> (accessed 15 August 2024).

locations where violations can go undetected.¹⁷² In reality, it is ineffective, particularly since the Act only governs regulated mining.¹⁷³ Overlooking the ASM sector, where child labour is often more prevalent and misses opportunities to mandate support programs for affected children or engage local communities in combating this issue.

Even for corporations, the law does not provide a clear mandate to protect underage workers, rendering the inspection process insufficient.¹⁷⁴ Moreover, the Act fails to specify which body within the ministry is responsible for such inspections.

Overall, the Act falls short of incorporating international standards on child labour protection as outlined in the various international law instruments and guiding principles.

e. Mineral Exploitation Regulating Bill of 2018

The Mineral Exploitation Regulating Bill of 2018 was enacted to supplement the Minerals and Wealth Act. The Bill sets conditions for obtaining mining extraction licenses, yet it lacks provisions regarding child labour as grounds for license revocation.¹⁷⁵ Although section 13 of the Bill targets ASM extractions and requires an environmental assessment prior to the application.¹⁷⁶ The article failed to give mention to worker protection or employee related matters.

Furthermore, sec 29 of the Bill states that "Environmental, health, and safety requirements are subject to the conditions set by the competent oversight authorities, and the provisions contained therein are considered a precaution of these regulations." This provision fails to identify the oversight authority responsible for monitoring, weakening enforcement of the measures.

¹⁷² Mining.Com 'How a sanctioned Russian company gained access to Sudan's gold' 30 April 2022 <https://www.mining.com/web/how-a-sanctioned-russian-company-gained-access-to-sudans-gold/> (accessed 6 October 2024).

¹⁷³ Mineral Wealth and Mining Development Act sec 11.

¹⁷⁴ Mineral Wealth and Mining Development Act sec 27(1).

¹⁷⁵ Mineral Exploitation Regulating Bill 2018 sec 7.

¹⁷⁶ The Mineral Exploitation Regulating Bill sec 13 (1) c.

f. Other relevant national instruments

Sudan has enacted the Environment Protection Act 2021,¹⁷⁷ which requires environmental impact assessments for potentially harmful projects; the Environment Health Act 2009,¹⁷⁸ which sets conditions for preventing air pollution; and lastly, in 2019, the transitional government issued a decree to ban the usage of mercury and other harmful chemicals in artisanal mining.¹⁷⁹

3.5 Legal analysis

Sudan's legal framework governing child labour in gold mining, particularly in the ASM sector, is characterised by significant gaps and inconsistencies that fall short of international standards.

The primary laws addressing this issue are the Labour Act of 1997, the Child Act of 2010, and the Mineral Wealth and Mining Development Act of 2015. These laws contain contradictions and inadequacies that hinder the effective protection of children's rights.

A key issue is the inconsistent definition of a child across different laws. The Labour Act defines a "young person" as anyone under 16, leaving 16-17 year olds without adequate protection.¹⁸⁰ The definition conflicts with both the Child Act of 2010 and international standards. These definitional inconsistencies create challenges in determining a breach of law to prosecute offenders and provide comprehensive protection for all children.

Further compromising international compliance, the Labour Act fails to protect children against employment that could hinder the education or developmental aspects of the child and allows employment of children under 12 in certain circumstances, including family-owned businesses, directly contradicting Article 32(1) of the CRC.¹⁸¹

¹⁷⁷ The Environment Protection Act 2021.

¹⁷⁸ The Environment Health Act 2009.

¹⁷⁹ Franziska (n 74) 50-51.

¹⁸⁰ Labour Act Interpretation provision.

¹⁸¹ Labour Act sec 21(4).

Furthermore, The Mineral Wealth and Mining Development Act of 2015, the primary regulator for the mining sector, has significant shortcomings in addressing child labour. It lacks an explicit prohibition on child labour in mining activities, fails to specify a minimum age for employment in mining, and overlooks the ASM sector where child labour is most prevalent.

The failures accumulated under Sudan's national laws indicate that the country has failed in its obligation as the primary protector of human rights, as outlined in international conventions and guiding principles, including the UN Guiding Principles on Business and Human Rights (UNGPs).

The UNGPs emphasise that the state holds the primary duty to safeguard human rights through regulatory and policy mechanisms governing business conduct. However, in light of the state's failure to uphold this obligation, businesses are left free to commit violations, as they cannot be compelled to adhere to human rights standards when the state itself has failed to do so.

Under the UNGPs, businesses are mandated to adopt human rights policies and conduct comprehensive due diligence. Companies are expected to publicly commit to internationally recognized human rights standards. Nevertheless, there is no obligation for businesses to submit reports detailing their human rights due diligence. The Mineral Wealth and Mining Development Act's failure to require comprehensive human rights due diligence, only requesting environmental reports, further demonstrates its inadequacy against international best practices.

Additionally, the labour law only requires companies to maintain records of employee salaries, deductions, and annual and sick leaves, not their ages or workers' information.¹⁸² This regulatory vacuum suggests that gold companies are unlikely to adhere to any international standards, considering the state's own reluctance.

Moreover, this legislative framework also fails to meet the Committee's criteria for effective measures. As it has outlined, for the measures to be effective, they must tangibly contribute

¹⁸² Labour Act sec 65.

to protecting children while being aligned with broader international protection standards. The principle of effectiveness requires drawing on significant expertise and scholarship, as offered by organisations such as IPEC, UNICEF, the UN Global Compact, the World Bank, and others, as well as considering the committee's commentaries and recommendations.¹⁸³ This position is reinforced by ILO Recommendation No. 190, which urges states to cooperate with international efforts to prevent the worst forms of child labour. Sudan's efforts in this regard are clearly inadequate and fall short of its obligations.¹⁸⁴

Sudan's non-compliance with international obligations extends to research and policy development. The country has failed to conduct comprehensive studies and gather data as required by the Committee, which emphasises evidence-based policymaking.¹⁸⁵ As a corollary failure to adopt a national strategy or action plan to address child labour, particularly in hazardous sectors like mining.

As previously highlighted, addressing child labour in the gold mining industry requires a multifaceted approach, with particular emphasis on education and health. The Constitutional Document of 2019 ostensibly guarantees free compulsory basic education; however, the government's inadequate funding has led to additional fees, effectively pushing children into hazardous labour such as mining. This failure not only contradicts the constitutional guarantee but also violates article 32(1) of the CRC.

Concurrently, Sudan's legal framework falls short in protecting children from the severe health risks inherent in gold mining, notably exposure to toxic substances like mercury. This inadequacy is particularly alarming given Sudan's high mercury consumption in gold extraction, as reported by the World Bank. The government's inability to safeguard children from these health hazards constitutes a breach of its obligations under international law. These interlinked failures in education and health protection underscore the complex nature

¹⁸³ Tobin (n 108) 1242 -1243.

¹⁸⁴ D Wessbrodt & NW Kohner 'International law and child labour' in A Fassa, DL Parker & TJ Scanion (eds) *Child labour a public health perspective* (2010) 79-92.

¹⁸⁵ Tobin (n 108) 1242 -1243.

of the child labour issue in Sudan's gold mining sector and the urgent need for comprehensive legal and policy reforms.

Implementation and enforcement challenges further widen the gap between Sudan's practices and international standards. With the ongoing war and the prevalence of illegal mining in conflict-affected areas although the domestic court system is typically crucial for enforcing child protection the current situation would render its judgment a mere ink on paper.

Adding to that, the African Commission has established that for domestic remedies to be considered effective, they must have a judicial nature and be founded upon sound legal principles.¹⁸⁶ This requirement presents significant challenges in Sudan due to the conflicting definition of a child in the Labour Law and the Child Act. For instance, if violations occur involving children between 16 and 18 years old engaged in mining activities, legal ambiguity will exist. Thus, under the Labour Law, such employment would not be considered a crime, while the Child Act would classify it as illegal. This inconsistency creates a substantial impediment to effective legal action.

This impediment is further complicated by Sudan's Interpretation of Laws and General Text Law 1974, which typically dictates that a special law takes precedence over a general law, and an earlier law precedes a later one.¹⁸⁷ In the case of child labour in mining, it's unclear whether the Child Act 'the special law for children' or the Labour Act 'the specific law to labour issues' should take priority, creating a substantial impediment to effective legal action.

Moreover, the principle of *nullum crimen sine lege* (no crime without law) requires clear legal provisions criminalising the act of hiring or engaging children in hazardous employment. While the Child Act could potentially serve this purpose, its deficiencies make effective prosecution challenging. This legal ambiguity, coupled with conflicting laws, significantly undermines the viability of using domestic courts to protect children from labour exploitation. An additional

¹⁸⁶ H Onoria 'The African Commission on Human and Peoples' Rights and the exhaustion of local remedies under the African Charter' (2003) 3 *African Human Rights Law Journal* 5.

¹⁸⁷ Interpretation of Laws and General Text Law 1974 arts 6(2) -6(3).

hurdle is the lack of precedent in Sudanese courts for relying solely on international law in human rights cases, despite the constitution's incorporation of international law into Sudan's legal obligations.¹⁸⁸ Cases typically require a foundation in domestic law. Compounding this issue is the suspension of Sudan's Constitutional Court, which has eliminated a crucial mechanism for resolving such legal conflicts.¹⁸⁹

Additionally, there is also a lack of transparency and awareness regarding the laws and regulatory framework, and various entities addressing children's needs do so without coordination, indicating a lack of political will or focus on the issue.¹⁹⁰ This was evident in a workshop held by the Sudanese Ministry of Minerals last year, where financial gains were seemingly prioritised over health and safety concerns.¹⁹¹ Additionally, enforcement efforts are underfunded, and penalties for violations are too minor to deter employers. Despite the Committee's repeated calls for states to adopt strong sanctions that commensurate with the severity of the violation.¹⁹²

The collective impact of these shortcomings renders domestic remedies largely ineffective, meeting the African Commission's criteria for ineffective remedies - being discretionary, non-judicial, or having limited court accessibility.¹⁹³ This situation potentially justifies international intervention under Article 56 of the African Charter, even without full exhaustion of local remedies, given their demonstrated ineffectiveness.¹⁹⁴ The systemic nature of these failures, from legislative inconsistencies to implementation challenges, illustrates the comprehensive

¹⁸⁸ Sudan's Constitution of 2019 art 50.

¹⁸⁹ S Saeed 'Sudan's constitutional crisis: Dissecting the coup declaration' 3 November 2021 <https://www.justsecurity.org/78848/sudans-constitutional-crisis-dissecting-the-coup-declaration> (accessed 7 October 2024).

¹⁹⁰ ILO Report (n 5 above) 12.

¹⁹¹ Radio Dbanga 'Sudan activist warns of 'dire consequences' of toxic gold extraction' 13 September 2023 <https://www.dabangasudan.org/en/all-news/article/sudan-activist-warns-of-dire-consequences-of-toxic-gold-extraction> (accessed 7 October 2024).

¹⁹² Tobin (n108) 1279.

¹⁹³ Onoria (n 187 above) 7.

¹⁹⁴ Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights art 6(2) & art 56 of the African Charter.

gap between Sudan's current framework and both international obligations and best practices in addressing child labour in the gold mining sector.

3.6 Conclusion

In conclusion, Sudan's legal framework reveals significant discrepancies between the country's domestic laws and its international obligations regarding child labour in the gold mining sector. Despite ratifying key international instruments such as the ILO Conventions and the CRC, Sudan's national legislation falls short in several critical areas.

The conflicting definitions of a child between domestic laws create a dangerous loophole, leaving 16–17-year-olds vulnerable to exploitation. This legal ambiguity, coupled with the principle of *nullum crimen sine lege*, makes prosecution of offenders challenging in domestic courts. The situation is further exacerbated by the suspension of the Constitutional Court eliminating the possibility of adjudicating the matter based on International Human Rights Law principles. Additionally, Sudan's laws fail to fully address the comprehensive protections required by article 32 of the CRC. While some hazardous work is prohibited, the legislation does not adequately cover work that interferes with education or child development, as mandated by the CRC.

As to the mining sector, the Mineral Wealth and Mining Development Act of 2015 lacks explicit prohibitions on child labour in mining activities and fails to specify a minimum age for employment in this hazardous sector, contrary to ILO Convention No. 182 on the Worst Forms of Child Labour. Furthermore, Sudan's legal framework does not align with the UN Guiding Principles on Business and Human Rights. There is a notable absence of requirements for businesses to conduct human rights due diligence, particularly in the ASM sector where child labour is most prevalent.

Lastly, the implementation and enforcement of existing laws are hampered by various factors, including political instability, lack of coordination among relevant entities, and insufficient resources for monitoring and prosecution.

These gaps between Sudan's international commitments and its domestic legal framework highlight the urgent need for comprehensive legal and policy reforms to effectively address

the issue of child labour in the gold mining sector and fulfil Sudan's obligations under international law. The following chapter examines Ghana's experience in combating child labour in mining, offering both positive lessons and cautionary tales for Sudan. The chapter will carefully analyse Ghana's success in terms of the comprehensive legislative work it adopted and critically address its enforcement mechanisms to identify key lessons that can inform Sudan's approach to eliminating child labour in its mining industry.

Chapter 4: Lessons from Ghana's Experiences and Challenges

4.1 Introduction

This chapter critically examines Ghana's approach to addressing child labour in its mining sector, highlighting both its comprehensive legislative framework as a potential model for Sudan and its implementation challenges as valuable lessons for Sudan also to avoid. While Ghana has demonstrated strong commitment through extensive legal reforms and alignment with international standards - including United Nations conventions, African Union charters¹⁹⁵, and ILO standards¹⁹⁶ its experience reveals that robust legislation alone is insufficient.

Despite establishing an impressive legal architecture and national action plans, Ghana continues to struggle with implementation, particularly in the artisanal and small-scale mining (ASM) sector, locally known as "Galamsey".¹⁹⁷ The persistence of child labour in Ghana's mining sector, with estimates suggesting over 100,000 children involved in gold mining and quarrying as of 2003, serves as a crucial lesson for Sudan. Many children from impoverished families initially engage in part-time mining to fund their education but often end up abandoning schooling entirely due to the allure of short-term financial gains. This has resulted in widespread school dropouts in mining areas.¹⁹⁸

This is particularly evident in the ASM areas, where despite legalisation in 1989, approximately 90 per cent of operations remain unlicensed and unregulated,¹⁹⁹ creating hazardous

¹⁹⁵ UN Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child, the Forced Labour Convention, and the Palermo Protocol.

¹⁹⁶ See ILO Convention No 138 & ILO Convention No 182.

¹⁹⁷ International Labour Organization International Programme on the Elimination of Child Labour (IPEC) 'Child labour in gold mining: The problem' June 2006 <https://webapps.ilo.org/ipecinfo/product/download.do?type=document&id=4146> (accessed 02 September 2024).

¹⁹⁸ As above.

¹⁹⁹ ILO 'Analytical studies on child labour in mining and quarrying in Ghana' May 2013

conditions for children.²⁰⁰ The Ghanaian experience illustrates that while comprehensive legal frameworks are essential, as evidenced by Ghana's integration of international obligations into its constitution and various domestic laws covering children's rights, labour practices, human trafficking, education, and health equal emphasis must be placed on effective implementation and enforcement mechanisms.

For Sudan, this dual perspective offers valuable insights. Firstly, Sudan must follow Ghana's legislative approach and enact amend and align all its national laws with international standards in regards to child protection for the elimination of child labour. Secondly, Sudan must avoid Ghana's mistakes and adopt a multi-dimensional approach that goes beyond mere legislative reform to include practical, enforceable measures for child protection.

4.2 Ghana's Legal Framework Against Child Labour

a. Ghana Constitution 1992

The Ghanaian Constitution sets a robust foundation for protecting children's rights, particularly in the realm of child labour. Unlike Sudan, Ghana's supreme law addresses this issue. Article 28(2) of the 1992 Constitution explicitly prohibits child labour that could harm a child's welfare, hinder their development, or interfere with their education.²⁰¹ By enshrining this protection at the highest level of the legal hierarchy, Ghana demonstrates a more forceful commitment to combating exploitative child labour. This constitutional mandate serves as a powerful legal basis for crafting and enforcing policies and laws aimed at safeguarding children from harmful work practices

b. The Children 1998 (Act 560)

The Ghanaian Children's Act provides a comprehensive framework for protecting children from exploitative labour. It defines a child as anyone under 18 and sets minimum working

²⁰⁰ Human Rights Watch 'Precious metal, cheap labor: Child labor and corporate responsibility in Ghana's artisanal gold mines' June 2015 65-66.

<https://www.hrw.org/report/2015/06/10/precious-metal-cheap-labor/child-labor-and-corporate-responsibility-ghanas> (accessed 05 September 2024).

²⁰¹ The Constitution of the Republic of Ghana Act 1996 art 28(2).

ages: 15 for general employment and 13 for light work.²⁰² The Act explicitly prohibits "exploitative labour" that could harm a child's health, education, or development²⁰³ It also bans children from hazardous work, such as mining or handling dangerous materials, reserving such tasks for those 18 and older.²⁰⁴ Unlike Sudan's Child Act Ghana's Act specifies prohibited hazardous work types.²⁰⁵

To enhance oversight, the Act requires industrial employers to maintain registers of child workers, including their ages.²⁰⁶ This place direct responsibility on businesses to protect children and shield themselves from liability. The Act's enforcement mechanisms cover both formal and informal sectors,²⁰⁷ aligning with the UN Convention on the Rights of the Child's broad scope.²⁰⁸

In formal settings, district labour officers conduct investigations, while in informal settings, social service committees investigate and may assign social welfare officers.²⁰⁹ However, given that unregulated mines make up the bulk of the mining sector, this weakens enforcement efforts, as the social welfare committee's numbers are insufficient to cover all mining sites.²¹⁰

Lastly, regardless of the sector, the responsibility for prosecution lies with the police, to ensure a consistent legal approach across different contexts.²¹¹

c. Education Act 2008

Ghana recognises the intricate link between education and child labour eradication. The country acknowledges that to effectively combat child labour, children must be in school. This understanding is reflected in Ghana's multi-faceted approach to addressing the issue. The

²⁰² The Children's Act 1998 (Act 560) secs 89-90.

²⁰³ The Children's Act 1998 (Act 560) sec 87(1).

²⁰⁴ The Children's Act 1998 (Act 560) sec 91(1).

²⁰⁵ The Children's Act 1998 (Act 560) 91(3).

²⁰⁶ The Children's Act 1998 (Act 560) sec 93 (1).

²⁰⁷ The Children's Act 1998 (Act 560)secs 95 -96.

²⁰⁸ Tobin (n 108) 1234.

²⁰⁹ The Children's Act, 1998 (Act 560) secs 96(1)- 95(1).

²¹⁰ Human Rights Watch (n 197) 59.

²¹¹ The Children's Act 1998 (Act 560) secs 95(3) – 96(3).

Education Act stipulates that basic-level education is free of charge and compulsory.²¹² Basic education in Ghana consists of kindergarten education, primary education, and junior high school education, so 11 years in total.²¹³

The government has introduced additional measures to complement its educational initiatives and make education more accessible, including free basic education, school feeding programs, and poverty alleviation initiatives like the Livelihood Empowerment Against Poverty (LEAP) program. These efforts aim to reduce the economic barriers that often drive children into labour, as many children work to pay for their school fees and related expenses.²¹⁴

However, despite these efforts, Ghana has faced challenges in achieving universal education. Primary school attendance remains at 72%, with even lower rates for secondary education. This shortfall in educational access, particularly in mining areas, increases the likelihood of children entering the labour force prematurely. The persistence of unofficial fees, inadequate support for vulnerable children, and long distances to schools continue to be barriers to education in some communities.²¹⁵

d. The Human Trafficking Act 694 of 2005

Ghana's Human Trafficking Act provides a comprehensive framework to combat the exploitation of individuals, including children, in various forms of forced labour. The Act defines human trafficking broadly, encompassing any action that treats a person as a commodity, whether within Ghana or across its borders, using force or coercion.²¹⁶ Importantly, the legislation explicitly includes forced labour and services under its definition of exploitation.²¹⁷

²¹² Education Act 2008 (Act 778) sec 2.

²¹³ Education Act 2008 (Act 778) sec 1(2).

²¹⁴ Ministry of Employment and Labour Relation 'Guidelines and Protocols for Establishing Child Labour Free Zones (CLFZs) in Ghana' 6 November 2023 2.

²¹⁵ Human Rights Watch (n 197 above) 62-63.

²¹⁶ Human Trafficking Act 2005 (Act 694) sec 1(1).

²¹⁷ Human Trafficking Act 2005 (Act 694) sec 1(2).

A crucial aspect of this law is its approach to consent. The Act stipulates that the prior consent of a child, their parents, or guardians cannot be used as a defence in trafficking cases, even when deception is involved.²¹⁸ This provision is particularly significant in the context of child labour in Ghana's mining sector.

The importance of this legislation is underscored by reports from international organizations. The U.S. State Department's Bureau of International Labour Affairs has documented instances of children being trafficked for mining and other hazardous labour in Ghana.²¹⁹ Even more alarming, some reports have uncovered evidence of child slavery in the country's mining industry. These reports describe boys being forced to work with dangerous chemicals and girls as young as ten being solicited for relationships with older men at mining sites.²²⁰

e. Ghanian Labour Act 2003

The Labour Act of 2003 provides protections for young workers. It prohibits the employment of young people in jobs that could expose them to physical or moral dangers.²²¹ Specifically, the act forbids employers from having young persons work in underground mines.²²² The act defines a "young person" as someone who is at least 18 years old but not yet 21.²²³ By extension, this implies that individuals under 18 are also prohibited from engaging in hazardous work.

Legislation must be supplemented by other measures the CRC committee in general comment 5 gave examples of wide range of administrative measures, ratifying treaties, development of comprehensive national or strategy plans coordination of implementation between relevant stakeholders' collaboration between government and civil society.²²⁴

²¹⁸ Human Trafficking Act 2005 (Act 694) sec 1(4).

²¹⁹ US State Department of Labor 'Ghana 2023 Findings on the worst forms of labor.'

²²⁰ By Free the Slaves 'New FTS research explores child slavery in Ghana gold mining' 4 September 2013. <https://freetheslaves.net/new-fts-research-explores-child-slavery-in-ghana-gold-mining/> (accessed 14 October 2024).

²²¹ Labour Act 2003 (Act 651) sec 58(1).

²²² Labour Act 2003 (Act 651) sec 58(3)

²²³ Labour Act 2003 (Act 651) sec 75.

²²⁴ Tobin (n 108) 1248.

4.3 Bodies Mandated with Child Labour

Ghana has established a comprehensive institutional framework to combat child labour, particularly in the mining sector. The Ministry of Employment and Labour Relations leads these efforts through its Child Labour Unit,²²⁵ coordinating activities and developing policies.²²⁶ The Ministry of the Interior, via specialised police units, enforces laws against child labour and trafficking.²²⁷ The Minerals Commission regulates the mining sector, conducting inspections and awareness campaigns.²²⁸

A high-level National Steering Committee coordinates programs and provides policy advice,²²⁹ while the Ghana Child Labour Monitoring System tracks at-risk children and assesses intervention impacts.²³⁰ These bodies work in tandem, combining policy development, law enforcement, sector-specific regulation, high-level coordination, and systematic monitoring. This multi-faceted approach allows Ghana to address the complex issue of child labour in mining and other hazardous sectors, striving to protect children from exploitation and uphold their rights in accordance with national and international standards.

By implementing this comprehensive framework, Ghana demonstrates conformity with its obligations under the CRC. As emphasised by the CRC Committee in General Comment 5, legislation alone is insufficient; it must be supplemented by a wide range of administrative measures. These include ratifying treaties, developing comprehensive national strategic action plans, coordinating implementation among relevant stakeholders, and fostering collaboration between government and civil society. Ghana's approach, which incorporates

²²⁵ Ministry of Employment and Labour Relation

<https://www.melr.gov.gh/2/2/objectives-and-functions> (accessed 13 September 2024).

²²⁶ IPEC (n 194) 12.

²²⁷ U.S Department of Labor Report (n 28).

²²⁸ Human Rights Watch (n 197).

²²⁹ IPEC (n 194) 12.

²³⁰ Ministry of Employment & Social Welfare 'Ghana Child Labour Monitoring System' September 2010 9
https://www.cocoainitiative.org/sites/default/files/resources/ghana_child_labour_monitoring_system.pdf
(accessed 05 September 2024).

all these elements, reflects a holistic effort to fulfil its international commitments and effectively protect children from labour exploitation.²³¹

4.4 Implemented initiatives to eradicate child mining employment

The government of Ghana has demonstrated a strong commitment to eradicating hazardous child labour by collaborating with multiple international entities, in line with the obligations outlined in article 8 of the ILO Convention No. 182 on the Worst Forms of Child Labour and article 32(2) of the UN Convention on the Rights of the Child. The country has implemented a comprehensive strategy that combines long-term initiatives with short and medium-term measures, addressing both root causes and immediate concerns.

The country has partnered with the International Labour Organization's International Programme for the Elimination of Child Labour (ILO-IPEC) to implement various initiatives, including a national program from 2000 to 2002 and the Ghana Time-Bound Project in 2004. These programs laid the groundwork for Ghana's first National Plan of Action for the Elimination of Child Labour (2009-2015).²³²

Additionally, Ghana has participated in the Economic Community of West African States (ECOWAS) regional initiative on the worst forms of child labour, which provided training for law enforcement officials and enhanced stakeholder capabilities.²³³ Further the Ministry of Gender, Children and Social Protection has also played a crucial role, in implementing poverty alleviation programs, supporting vulnerable children's education, and leading advocacy campaigns against child labour and human trafficking.²³⁴ Recent developments include a 12% increase in labour inspections from 2022 to 2023, extensive training programs reaching over 1,500 community participants, and the launch of new multisectoral public-private partnerships.²³⁵

²³¹ Tobin (n 108) 1248.

²³² Ministry of Employment and Labour Relation Guidelines (n 211) 2.

²³³ <https://www.ilo.org/projects-and-partnerships/projects/eliminating-child-labour-west-africa-and-strengthening-sub-regional> (accessed 10 September 2024).

²³⁴ U.S Department of Labour Report (n 28) 4.

²³⁵ U.S Department of Labour Report (n 28) 1.

These efforts, along with the emphasis on collaboration between government stakeholders, international organizations, and community leaders, showcase Ghana's multifaceted and evolving strategy.²³⁶ Ghana has also fostered extensive international collaborations, partnering with organizations such as ILO-IPEC, UNICEF, and ECOWAS to implement various programs.²³⁷ The country's proactive stance and continuous improvement have led to its classification as a "Moderate Advancement" country by the U.S. Department of Labour in 2023, acknowledging its ongoing progress in the fight against child labour.²³⁸

4.5 National Action Plans

Ghana has implemented three significant National Action Plans (NAPs) to combat child labour, each building on the successes and lessons of its predecessor. The first NAP (2009-2015) established a comprehensive framework for child welfare initiatives, improved inter-governmental cooperation, and raised public awareness about child labour as a national concern.²³⁹ It focused on specific areas such as child trafficking and labour in small-scale mining.²⁴⁰

The second NAP (2017-2021) aimed to reduce the worst forms of child labour to less than 10% by 2021.²⁴¹ It introduced the Integrated Area-Based Approach (IABA) and the concept of Child Labour Free Zones (CLFZs), shifting from sector-specific interventions to holistic, area-based

²³⁶ U.S Department of Labor Report (n 28) 4.

²³⁷ As above.

²³⁸ As above.

²³⁹ Ghana National Plan of Action Phase II for the Elimination of the Worst Forms of Child Labour in Ghana (2017-2021) 11.

²⁴⁰ Ministry of Employment and Social Welfare (MESW) 'Ghana Child Labour Monitoring System (GCLMS)' September 2010 8

https://www.cocoainitiative.org/sites/default/files/resources/ghana_child_labour_monitoring_system.pdf

(accessed 10 September 2024).

²⁴¹ Ghana National Plan of Action Phase II for the Elimination of the Worst Forms of Child Labour in Ghana (2017-2021) 27.

solutions.²⁴² This plan acknowledged poverty as a primary driver of child labour and sought to address the issue more comprehensively.²⁴³

The current Ghana Accelerated Action Plan Against Child Labour (2023-2027) responds to persistent challenges, with recent surveys showing 21.8% of children aged 5-17 still engaged in child labour.²⁴⁴ This plan emphasizes collaboration among all stakeholders, including government institutions and community leaders, to avoid duplication of efforts and ensure synergy. It also recognises the stark rural-urban divide in child labour prevalence and aims to address these disparities.²⁴⁵

The evolution of these plans reflects an increasing understanding of the complex nature of child labour and the need for multifaceted, collaborative solutions.

4.6 Analysis

Ghana's Constitution, Children's Act, and other relevant laws demonstrate a robust and comprehensive approach to addressing child labour, particularly in the mining sector. This stands in contrast to the shortcomings identified in Sudan's legal framework.

The Ghanaian Constitution explicitly prohibits child labour that could harm a child's welfare, development, or education, enshrining this protection at the highest legal level. This strong constitutional foundation sets the stage for Ghana to develop effective policies and enforce laws against exploitative child labour.

Ghana's Children's Act, passed in 1998, further reinforces this commitment by clearly defining a "child" as anyone under 18 and establishing minimum working ages. Crucially, the Act bans children from engaging in hazardous work, including in the mining industry. It also requires businesses to maintain registers of child workers, placing direct responsibility on employers to protect children.

²⁴² Ministry of Employment and Labour Relation Guidelines (n 211) 3.

²⁴³ Ghana National Plan of Action Phase II for the Elimination of the Worst Forms of Child Labour in Ghana (2017-2021) 16.

²⁴⁴ Ministry of Employment and Labour Guidelines (n 211) 5.

²⁴⁵ Ministry of Employment and Labour Guidelines (n 211) 11–12.

Unlike Sudan's law, the Ghanaian Children's Act goes a step further by mandating that businesses publicly disclose their human rights due diligence, including details on their efforts to prevent child labour. This provision holds companies accountable and increases transparency, addressing a key gap in Sudan's regulatory framework identified earlier.

The Act's enforcement mechanisms, which involve labour officers, social service committees, and the police, demonstrate a multi-pronged approach to addressing the issue across both formal and informal sectors.

Despite Ghana's comprehensive regulatory framework to combat child labour recent statistics from the US Department of Labour reveal persistent challenges with 4.1% of children working and 15.6% engaged in hazardous work with sexual exploitation of children spreading among the different sectors of employment.²⁴⁶ The government has reinforced anti-human trafficking laws, increased law enforcement efforts, and established regional anti-trafficking units.²⁴⁷ Yet, the social care for victims remains severely underfunded, highlighting a critical area for improvement.²⁴⁸

Ghana's approach, while progressive, through innovative approaches and international collaborations, faces implementation hurdles that hinder its effectiveness. The insufficiency of district labour and social welfare officers, coupled with inadequate funding for transportation, impedes thorough inspections. Moreover, the broad mandates of these officers dilute their focus on child labour specifically. Additionally, the informal sector, where most child mining labour occurs, suffers from jurisdictional ambiguities, complicating enforcement efforts.²⁴⁹

Addressing the root causes, such as Galamsey, maybe the most effective approach to eradicating child labour in the mining sector, given the severe environmental and societal damage it causes. Recently, in Accra, a large protest was held, with hundreds of participants

²⁴⁶ Human Rights Watch (n 197) 59.

²⁴⁷ ILO (n 196) 26.

²⁴⁸ Tobin (n 108) 1249.

²⁴⁹ U.S Department of Labor Report (n 28) 5.

urging the government to ban illegal mining activities.²⁵⁰ In response, the president called for an immediate suspension of illegal mining operations around water sources and forests.²⁵¹

However, for Ghana to make substantial progress towards its goals, a comprehensive approach is necessary; one that not only halts Galamsey entirely but also provides alternative livelihoods for affected communities and reintegrates children into schools and society.²⁵²

Additionally, Ghana must address the gendered aspects of child labour, particularly in the ASM sector, where women and girls are disproportionately affected.²⁵³ Furthermore, enhancing data collection on child labour in Galamsey operations will be crucial for targeted interventions.

Furthermore, the persistence of child labour in Ghana is partly due to cultural norms that regard child work as a family duty. This cultural context poses significant challenges to the implementation of international standards. Therefore, the Ghanaian government must engage with communities to raise awareness about the dangers of child labour, particularly its harmful effects on children. Parents should also be reminded of their responsibility to prioritize the best interests of the child, as outlined in article 3 of the CRC.

4.7 Conclusion

The analysis of Ghana's approach to combating child labour in mining reveals a dual perspective that offers critical insights for Sudan. On one hand, Ghana's comprehensive legal framework demonstrates the importance of aligning domestic legislation with international standards. Ghana's Constitution explicitly prohibits exploitative child labour, while its

²⁵⁰ Reuters 'Hundreds march against Ghana's damaging informal gold mining boom' 11 October 2024 <https://www.reuters.com/world/africa/hundreds-march-against-ghanas-damaging-informal-gold-mining-boom-2024-10-11/> (accessed 14 October 2024).

²⁵¹ All Africa 'Ghana: President Akufo-Addo Reaffirms Commitment to End Illegal Mining' 10 October 2024 <https://allafrica.com/stories/202410110073.html> (accessed 14 October 2024).

²⁵² Tobin (n 108) 1231.

²⁵³ TP Siakwah 'Mining, gender and 'kolikoli': Marginalisation of women or empowerment in the margins?' 7 August 2020 <https://www.diis.dk/en/node/24143> (accessed 13 October 2024).

Children's Act and Labour Act provide clear age definitions and restrictions on hazardous work. These legislative measures, alongside mandatory free education policies and social protection programs like LEAP, showcase how international obligations can be effectively integrated into national law.

However, Ghana's experience equally demonstrates that robust legislation alone is insufficient. Despite having comprehensive laws, regulations, and three successive national action plans, Ghana continues to struggle with implementation, particularly in the ASM sector where approximately 90% of operations remain unregulated. The persistence of child labour, low school attendance rates in mining areas (around 72%), and limited enforcement capacity due to insufficient labour inspectors highlight critical gaps between legislative intent and practical implementation.

These parallel successes and shortcomings provide valuable lessons for Sudan. First, Sudan must follow Ghana's positive example by strengthening its legislative framework - harmonizing definitions of a child across different laws, establishing clear minimum age requirements for hazardous work, and ensuring alignment with international standards. However, Sudan must simultaneously avoid Ghana's implementation pitfalls by developing stronger enforcement mechanisms from the outset. This includes ensuring adequate resources for monitoring, establishing effective inspection systems, and addressing socio-economic factors that drive children into mining work.

Both countries face similar challenges in regulating artisanal mining and need to adopt more effective, multi-dimensional approaches that extend beyond mere legislative reform. These approaches must encompass practical enforcement measures, educational support, community engagement, and economic alternatives for affected families. The experience of both nations underscores that successful elimination of child labour requires not just comprehensive laws, but also robust implementation mechanisms, adequate resources for enforcement, and programs addressing root causes of child labour in mining communities.

Chapter 5: Conclusion and Recommendations

5.1 Conclusion

Child labour in Sudan's gold mining sector represents a complex and multifaceted challenge that severely undermines the nation's social, economic, and human rights commitments. The prevalence of children working in hazardous mining conditions stems from a combination of factors, including widespread poverty, displacement due to conflict, weak regulatory frameworks, and inadequate education systems. The artisanal and small-scale mining (ASM) sector, largely unregulated and often controlled by militias in conflict-prone areas, exacerbates the problem by making oversight and enforcement nearly impossible. The ongoing war has further deteriorated the situation, leading to increased displacement and school closures, leaving children with few alternatives but to engage in dangerous labour.

The health impacts on child miners are severe and long-lasting. These young workers face immediate life-threatening risks such as unstable mine shafts, potential drowning, and hazardous falls. Their physical immaturity and lack of safety training intensify these dangers. More insidiously, prolonged exposure to toxic substances like mercury, lead, and arsenic can inflict permanent neurological damage, impair sensory functions, and even prove fatal.

Sudan's position as a major mercury importer in sub-Saharan Africa exacerbates this issue, with traditional gold extraction methods releasing significant amounts of toxins into the environment. The absence of proper sanitation and healthcare in mining regions further compromises the children's well-being, leaving them susceptible to infectious diseases. Studies have revealed alarming rates of mercury poisoning and respiratory ailments among young miners. These health hazards not only threaten their immediate well-being but also significantly increase their risk for cancer and other chronic diseases in later life.

The educational impact is equally devastating, creating a destructive cycle where a fragile educational system both drives children to mining and suffers from their absence. Inadequate school funding and additional fees push families to choose mining over education, while the allure of quick earnings from mining further discourages school attendance. As children drop out to work in mines, they experience fatigue, memory issues, and behavioural changes that hinder learning. This exodus of students further weakens the already struggling educational

institutions, leading to declining attendance and increased dropout rates. The situation is exacerbated by the ongoing conflict, leaving millions without access to formal education. Ultimately, this interplay between child mining and educational deficiencies perpetuates a cycle of poverty and limited opportunities, making it challenging for affected children to secure a better future through education.

Sudan's legal and regulatory framework is plagued with critical shortcomings that severely hinder its ability to address the child labour crisis in the gold mining sector. At the constitutional level, there is a glaring absence of explicit provisions prohibiting hazardous child labour, leaving a fundamental gap in child protection. This weakness is compounded by inconsistencies across various laws in defining the age of a child, creating dangerous loopholes that leave many youths vulnerable to exploitation.

The mining sector regulations are particularly deficient, lacking specific provisions against child labour, especially in the artisanal and small-scale mining (ASM) sector where the problem is most prevalent. Enforcement mechanisms are woefully inadequate, with insufficient funding for labour inspections and weak penalties that fail to deter violations effectively.

The government's commitment to education is undermined by chronic underfunding, inadvertently pushing children into hazardous work as families struggle to meet school-related expenses. There is a notable absence of comprehensive research, data collection, and national action plans to address the problem systematically, reflecting a broader lack of political will to combat child labour effectively. The private sector operates with minimal accountability, as there are no obligations for businesses to conduct human rights due diligence in their operations or supply chains.

Furthermore, the lack of programs for victim reintegration or community engagement leaves those affected by child labour without adequate support or alternatives. This combination of legislative inadequacy, administrative shortcomings, and a lack of transparency creates an environment where child labour in the gold mining industry can persist with impunity, underscoring the urgent need for comprehensive reform.

Crucially, the domestic court system in Sudan, which theoretically serves as a mechanism for enforcing child protection, is severely compromised by legal and practical challenges. The conflicting definitions of a child between the Labour Law and the Child Act create significant legal ambiguities, particularly for children aged 16-18. This is further complicated by Sudan's Interpretation of Laws and General Text Law 1974, which creates uncertainty about which law should take precedence in child labour cases.

The principle of *nullum crimen sine lege* presents additional challenges, as the lack of clear legal provisions criminalizing child labour in hazardous employment makes effective prosecution difficult. The suspension of Sudan's Constitutional Court has eliminated a crucial mechanism for resolving legal conflicts and applying international human rights law domestically.

These factors collectively render domestic remedies in Sudan largely ineffective, potentially necessitating intervention from international bodies like the African Commission or Court. However, the exhaustion of local remedies requirement, as stipulated in Article 56 of the African Charter, presents an additional hurdle. Nevertheless, given the evident ineffectiveness of Sudan's domestic legal system in this context, there may be grounds for these international mechanisms to accept communications or cases related to child labour in Sudan's mining sector, even if local remedies have not been fully exhausted.

Ghana's experience in addressing child labour in the mining sector presents two distinct perspectives that Sudan can learn from. On the legislative front, Ghana offers a positive model through its comprehensive legal framework that aligns with international standards. This is evidenced by its Constitution's explicit prohibition of exploitative child labour, the Children's Act's clear definition of a child as anyone under 18, and the Labour Act's specific provisions on hazardous work. Ghana's integration of international obligations into domestic law, coupled with its development of national action plans and collaboration with international organisations, provides a blueprint for Sudan to strengthen its own legislative framework.

However, Ghana's implementation challenges serve as crucial cautionary lessons for Sudan. Despite having well-structured laws and policies, Ghana continues to struggle with enforcement, particularly in the ASM sector where about 90% of operations remain

unregulated. These shortcomings highlight that Sudan must not only focus on legislative reform but must also prioritize effective implementation mechanisms from the outset. Specifically, Sudan should learn from Ghana's difficulties in allocating sufficient resources for monitoring, addressing cultural norms that perpetuate child labour, and ensuring adequate enforcement capacity through proper staffing of labour inspectors and social welfare officers.

This dual perspective of Ghana's legislative strengths and implementation weaknesses offers Sudan a unique opportunity to develop a more effective approach to eradicate child hazardous labour at the gold mines.

5.2 Recommendations

Based on the analysis of Sudan's situation and existing legal framework and lessons drawn from Ghana's experience, this thesis proposes a comprehensive set of recommendations aligned with Sudan's obligations under Article 32 of the Convention on the Rights of the Child. However, it must be emphasised that the effective implementation of these recommendations fundamentally depends on the resolution of Sudan's ongoing conflict, as peace is essential for government institutions to function effectively in addressing child labour:

- i. **Legislative Measures:** At the legislative level, Sudan must undertake significant reforms to strengthen its legal framework. This begins with amending the constitution to explicitly prohibit hazardous child labour and harmonising all relevant laws to ensure a consistent definition of a child's age. The legal framework should be expanded to include specific regulations for the ASM sector, incorporating strict prohibitions against child labour with harsher penalties for violations of laws and enforcing stringent controls on the use of mercury and other toxic substances in gold mining. Additionally, legislation should mandate human rights due diligence for all companies operating in the mining sector.
- ii. **Administrative Measures:** The government should significantly increase funding for labour inspections in mining areas. A specialised task force should be established to monitor child labour in mining. Sudan must also establish partnerships with international organisations like the ILO and UNICEF for targeted interventions and seek their technical assistance to develop and implement a comprehensive national action

plan against child labour in the mining sector. This should be supported by establishing a national database and conducting regular research on child labour in mining. Additionally, Sudan must participate in regional efforts to address cross-border child trafficking for mining purposes and endeavour to formalise the ASM sector by incentivizing the public with access to better equipment and markets. Further, law enforcement, judiciary, and social workers should receive specialised training on child labour issues.

- iii. **Educational Measures:** Educational reforms are crucial in preventing and addressing child labour. Sudan must increase investment in education, focusing on eliminating hidden fees that often drive children into mining work. Programs should be implemented to prevent dropouts in mining communities, and flexible education options should be developed to enable working children to return to school. Additionally, vocational training programs for older adolescents should be established to provide alternative livelihood opportunities.
- iv. **Social Measures:** This type of intervention forms another critical component of the recommended reforms. The government should establish rehabilitation programs for children with mining-related health issues and create comprehensive rehabilitation and reintegration programs for former child labourers. Cash transfer programs should be implemented to support vulnerable families in mining regions, alongside the establishment of community childcare centres to support working parents. Public awareness campaigns should be launched to change social norms around child labour, and psychosocial support and counselling services should be made available to affected children and their families.
- v. **Enforcement & Implementation:** Effective stakeholder engagement is essential for the successful implementation of these reforms. Civil society organisations should play a vital role in monitoring business sector violations, particularly in mining, and advocating for children's rights. The business sector must take responsibility by adopting and implementing strict internal regulations that prohibit child labour and protect children's rights.
- vi. **Monitoring and Evaluation Measures:** These measures are the pillars for informed interventions to combat child labour in gold mining. The government should establish an independent monitoring body that assesses

- vii. the effectiveness of implemented programs and tracks progress in reducing child labour incidents. This body should develop clear metrics and indicators to measure success, including school attendance rates in mining communities, the number of children removed from mining work, and successful rehabilitation cases. Regular reporting mechanisms must be established to ensure transparency and accountability, with periodic impact assessments of intervention programs providing data-driven insights into what works and what needs adjustment. Community-based monitoring systems should also be implemented in mining areas, engaging local stakeholders in oversight and ensuring continuous ground-level surveillance of child labour practices.
- viii. Health and Safety Measures: The Health sector requires particular attention given the severe physical and psychological impacts of mining work on children. Sudan should establish mobile health clinics in mining communities to provide immediate medical care and regular health screenings for children in mining areas, with specialised medical programs specifically designed to treat mercury poisoning and other mining-related health conditions. These clinics should be equipped to handle both emergency cases and ongoing health monitoring of affected children and their families. A comprehensive occupational safety framework should be developed specifically for the ASM sector. Additionally, emergency response systems must be established to handle mining accidents promptly, with clear protocols for rescuing and treating injured children.

These recommendations present a multi-sectoral approach to addressing child labour in Sudan's gold mining sector, encompassing legislative, administrative, educational, and social reforms. However, their successful implementation fundamentally depends on ending the current conflict to ensure the proper functioning of the institutions necessary for these reforms.

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