

Dangers of child labour in the extractive industries and a case for due diligence

BY: MARIAM DIARRA | 29 JUL 2013 13:17

 SUBMIT A COMMENT
  BIZLIKE

According to the United Nations (UN) International Labour Organisation (ILO), "one million children aged between 5 and 17 are engaged in small-scale mining and quarrying worldwide."⁽²⁾ While child labour is condemned by the ILO, not every occupation is banned by the Convention on the Rights of the Child (CRC). Indeed, certain types of activities are permitted when "they do not interfere with the child's schooling and do not harm the child."⁽³⁾ Yet, a child working in the extractive industry suffers both. Child labour in gold mining, locally called 'orpillage', is common in both Burkina Faso and Niger. Indeed, a quarter of all mine-working children in the world can be found in Africa's Sahel region.⁽⁴⁾ In the Great Lakes Region, children work underground to extract tantalum, tin and tungsten. In Sierra Leone, diamonds make misery for child labourers.



This CAI paper explores the dangers of child labour in the context of extractive industries and provides an overview of the international legal framework. Child labour remains too much a part of multinational business supply chains, and this paper argues for entrenching legally binding prohibitions regarding businesses and their duty of due diligence regarding child labour. Finally, this paper suggests that efforts should be made by local governments and regional organisations to implement and strengthen income transfer programmes, in order to enhance school enrolment for children.

A waste of youth

The ILO defines child labour as an occupation that is "mentally, physically, socially, or morally dangerous and harmful to children" and "interferes with their schooling."⁽⁵⁾ For any worker, the process of working in mineral extraction is an extremely strenuous one. However, it is particularly arduous for child labourers. To find ore, children as young as six dig with pickaxes, in shafts or pits that are at least 30 metres deep.⁽⁶⁾ Those who remain outside the shaft pull up the ore with buckets. This step, called 'pulling the rope', is followed by transportation to places where the ore is bagged for storage or crushed, before getting panned for gold.⁽⁷⁾ Mercury is used to extract gold from ore, a process that is particularly dangerous as it puts labourers at grave risk of mercury poisoning.⁽⁸⁾ Human Rights Watch (HRW) has noted that other health consequences of child labour in artisanal gold mining are respiratory diseases and musculoskeletal problems. Further, physical injuries occur because of the sharp tools used and as a consequence of shaft collapses.⁽⁹⁾

In Sierra Leone's diamond industry, mines are staffed by workers who use basic tools and techniques. Children experience a particularly high level of physical pain, as they have to carry bags of gravel (50-60 kilograms) and hunch over to wash gravel for up to 10 hours a day, six days a week. The over-exploitation of soil signifies that diamonds are getting harder to find near the surface, forcing the diggers to go deeper.⁽¹⁰⁾ When it comes to assessing the extent of the phenomenon, the main

challenge consists in the informal nature of mining work: artisanal diggers are usually unregistered, and they therefore have no formal employment contracts.⁽¹¹⁾ Child miners are particularly exposed to such exploitation. They receive low daily wages and are frequently swindled out of their share of diamond finds. Even worse, it has been reported that some child diggers, who are brought by a parent or guardian to assist in digging, receive no salary at all.⁽¹²⁾

School dropout is a widespread problem in mining areas. The majority of the children involved in mining come from poor households, and they initially start mining part-time to help pay school fees with the approval of their parents. In Ghana, for instance, many children end up abandoning school altogether as the attraction of making money, even very little, is stronger than their perception of any long-term benefits of continued schooling.⁽¹³⁾ Likewise, in Burkina Faso, a surge in the gold mining industry has made the country the fourth leading producer on the continent; the adverse effect is the dramatic increase of school dropouts.⁽¹⁴⁾ Given the relatively short life spans of most small-scale mining sites, these children will eventually find themselves unemployed and without skills for finding other jobs.

Poor living and working conditions mean that children are exposed to infections and diseases caused by unclean water and lack of sanitation.⁽¹⁵⁾ To bear those difficult conditions, it appears that many child labourers take recourse to alcohol or drugs.⁽¹⁶⁾ Those sacrificed children constitute the loss of entire nations, and child exploitation is key to economic development issues.

The legal framework

There is an extensive set of legal materials both domestically and internationally, intended to prevent child exploitation. The primary material regarding child labour can be found in the declarations created under the auspices of the ILO. In a 2010 report, the organisation noted that "in most countries, mining remains the most hazardous occupation."⁽¹⁷⁾ Further, the work in mineral extraction is placed among the "worst forms of child labour" according to a recommendation enacted by the ILO.⁽¹⁸⁾ More precisely, the types of hazardous work comprise inter alia: "work underground, under water, at dangerous heights or in confined spaces; work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads; work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels or vibrations damaging to their health."⁽¹⁹⁾ The Minimum Age Convention provides that domestic laws and regulation may "authorise employment or work as from the age of 16 years on condition that the health, safety and morals of the young persons concerned are fully protected and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity."⁽²⁰⁾ There is therefore a responsibility to protect children physically, but states are also required to protect children from work that interferes with their education.⁽²¹⁾

Unfortunately, beyond the legal materials, lies an economic and political reality that materialises in on-going child exploitation. Fighting child labour is indeed a complex task because, according to Jack Omora, a government official in one of Kenya's mining areas, "while we promote education, there is little to end the cycle of poverty that creates this problem in the first place."⁽²²⁾ Child labour, as any other form of exploitation, is part and parcel of an overarching policy issue. This is why, in conjunction with legal instruments, governments have their role to play. However, the companies that need the

minerals in their supply chains also need to take full responsibility for the part they play in this process.

Tackling the mineral guilt: The importance of due diligence

The mineral trade can help to fuel conflicts, like during the war in the Democratic Republic of the Congo (DRC),⁽²³⁾ but it also perpetuates child labour because the resources are in high demand.⁽²⁴⁾ Awareness of the origin of minerals is central, because public scrutiny can have a strong influence on the work ethic of foreign companies. Transparency can indeed work as an incentive for businesses using those materials to exert better inspection over the work conditions inside the mines.

Concisely put, "due diligence must come first."⁽²⁵⁾ A parallel can be made here with the emblematic Nike Case in the 1990s. Following public outrage at the finding of child labourers in their supplier's factories, Nike initiated steps to ensure an independent monitoring system for its contractors. Along with other corporations, Nike joined the Fair Labour Association (FLA). Created by President Bill Clinton in 1999 as a cooperation of apparel and footwear companies and non-governmental organisations (NGOs), the FLA aims to create a monitoring system that ensures corporate compliance with its labour standards.⁽²⁶⁾

An analogous system is being implemented in respect of minerals. The United States (US) adopted in 2011 the Dodd-Frank Wall Street Reform and Consumer Protection Act. Under the act, US companies must disclose their supply chains and the origin of their minerals.⁽²⁷⁾ In particular, Section 1502 of the act requires all US-listed companies to disclose annually whether they and their suppliers use "conflict minerals" (specifically gold, tantalum, tin, and tungsten), defining those minerals as originating from the DRC or an adjoining country. Beyond transparency, companies must exert due diligence and mitigate potential risks.⁽²⁸⁾

The Organisation for Economic Cooperation and Development (OECD) adopted in May 2011, Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.⁽²⁹⁾ The ambition of this instrument is to provide "management recommendations for global responsible supply chains of minerals to help companies to respect human rights and avoid contributing to conflict through their mineral or metal purchasing decisions and practices."⁽³⁰⁾ This document is the product of a multi-stakeholder collaboration and was developed with 11 countries of the International Conference on the Great Lakes Region (Angola, Burundi, Central African Republic, DRC, Kenya, Rwanda, Sudan, Tanzania, Uganda and Zambia), actors from the industry, civil society, as well as the UN Group of Experts on the DRC.⁽³¹⁾ The principles do not apply solely to conflict-areas.⁽³²⁾ Indeed, "high-risk areas may include areas of political instability or repression, institutional weakness, insecurity, collapse of civil infrastructure and widespread violence. Such areas are often characterised by widespread human rights abuses and violations of national or international law."⁽³³⁾

At the European level, in early May 2013, a forum on implementing due diligence in the gold, tin, tantalum, and tungsten supply chains was held in Paris, under the auspices of the OECD.⁽³⁴⁾ The discussion of this forum focused on risk mitigation and a possible European Union (EU) initiative on responsible sourcing of minerals.⁽³⁵⁾ The aim of this conference was to appraise how the EU can "complement and/or continue on-going due diligence initiatives and support for good governance in mineral mining, especially in developing countries affected by conflict."⁽³⁶⁾

All such steps should be welcome; however, these initiatives could go deeper. For instance, the due diligence guidance produced by the OECD is not legally binding in international law.⁽³⁷⁾ Yet, there is a strong case to entrench a legally binding instrument, with significant scope and depth to control child labour.

Concluding remarks

Writing for The New York Times, Professor Kamari Maxine Clarke, who teaches anthropology at the Yale University, argues that the International Criminal Court (ICC) "should be empowered to prosecute corporate crimes - and not be restricted to genocide, war crimes, crimes against humanity and crimes of aggression, as it is now under the Rome Statute."⁽³⁸⁾ Clarke further noted that "practices like child labour reproduce exploitation, but the ICC holds neither the rural farmers nor the international corporations that depend on such practices responsible."⁽³⁹⁾ However, an extension of the ICC prohibitions would require agreement among the signatories to the Rome Statute. Moreover, the scope of the initiative would be curtailed, as countries such as China, India and the US are not signatories of the ICC's Statute. Nonetheless, this point is interesting as it calls upon the role of the ICC and the content of the rights it should (or can) vindicate.

Child labour is a short-term means to marginally increase household income; however, it seriously deprives children in terms of their health and future potential. It does not only harm children, it also impinges on the development of the implicated societies. This is no ground-breaking finding: educating children can yield enormous economic benefits for developing nations, and "could bring a sevenfold return on the investment, in addition to social and other benefits," according to the ILO.⁽⁴⁰⁾ However, subjecting themselves to immediate poverty for the improved prospects of their children may be too much to demand of the impoverished family. This is when the responsibility of governments, jointly with businesses benefiting from natural resources, has to be called upon. As explained in this paper, transparency can lead to great improvement: it acts as a pressure on business to ensure that there are no gross violations of human rights in their supply chains. Governments must choose to invest in youth. For instance, an income transfer programme in Brazil, which pays families a certain amount per month provided their children go to school, has played a pivotal part in decreasing child labour both in rural and urban areas.⁽⁴¹⁾ Institutions such as the African Bank of Development could make it a priority to implement a fund to finance this type of programme in Africa.

No positive structural changes can occur in sub-Saharan Africa as long as the education and the conditions of children are considered of minor importance. "Child and youth miners struggle with the belief that their dire economic circumstances will never improve and display a loss of self-esteem and self-identity."⁽⁴²⁾ Yet, the so-called 'paradox of plenty' plaguing countries rich in natural resources, is a compelling demonstration of the truth that real wealth is not to be found in the ground, but in our youth.

Notes

(2) Melik, J., 'Africa gold rush lures children out of school', BBC News, 11 October 2012, <http://www.bbc.co.uk>.

(3) 'A poisonous mix: Child labour, mercury and artisanal gold mining in Mali', Human Rights Watch, December 2011, <http://www.hrw.org>.

(4) 'Child labour in gold mining', International Labour Organisation, June 2006, <http://www.ilo.org>.

(5) Ibid.

- (6) 'A poisonous mix: Child labour, mercury and artisanal gold mining in Mali', Human Rights Watch, December 2011, <http://www.hrw.org>.
- (7) Ibid.
- (8) Callimachi, R. and Klapper, B., 'Thousands of children work in African gold mines', The New York Times, 11 August 2008, <http://www.nytimes.com>.
- (9) 'A poisonous mix: Child labour, mercury and artisanal gold mining in Mali', Human Rights Watch, December 2011, <http://www.hrw.org>.
- (10) 'Digging in the dirt: Child miners in Sierra Leone's diamond industry', The International Human Rights Clinic at Harvard Law School, 2009, <http://www.law.harvard.edu>.
- (11) Ibid.
- (12) Ibid.
- (13) 'Child labour in gold mining', International Labour Organisation, June 2006, <http://www.ilo.org>.
- (14) Melik, J., 'Africa gold rush lures children out of school', BBC News, 11 October 2012, <http://www.bbc.co.uk>.
- (15) 'Child labour in gold mining', International Labour Organisation, June 2006, <http://www.ilo.org>.
- (16) Ibid.
- (17) 'Mining: A hazardous work', International Labour Organisation, 3 September 2010, <http://www.ilo.org>.
- (18) 'Worst Forms of Child Labour Recommendation', 1999, Geneva: International Labour Organisation, <http://www.ilo.org>.
- (19) Ibid.
- (20) 'Minimum Age Convention', 1973, Geneva: International Labour Organisation, <http://www.ilocarib.org>.
- (21) 'Convention on the Rights of the Child', 1990, New York: Office of the High Commissioner for Human Rights, <http://www.ohchr.org>.
- (22) Melik, J., 'Africa gold rush lures children out of school', BBC News, 11 October 2012, <http://www.bbc.co.uk>.
- (23) 'DR Congo mining transparency site launched', BBC News, 11 November 2011, <http://www.bbc.co.uk>.
- (24) Dailey, K., 'How to offset your "conflict mineral" guilt', BBC News, 19 January 2012, <http://www.bbc.co.uk>.
- (25) Poulsen, F.P., 'Children of the Congo who risk their lives to supply our mobile phones', The Guardian, 7 December 2012, <http://www.guardian.co.uk>.
- (26) Kaeb, C., 2008. Emerging issues of human rights responsibility in the extractive and manufacturing industries: Patterns and liability risks. *Northwestern Journal of International Human Rights*, 6(2), pp. 327-353.
- (27) Dailey, K., 'How to offset your "conflict mineral" guilt', BBC News, 19 January 2012, <http://www.bbc.co.uk>.
- (28) 'Public consultation on a possible EU initiative on responsible sourcing of minerals originating from conflict-affected and high-risk areas', European Commission, May 2013, <http://ec.europa.eu>.
- (29) 'OECD due diligence guidance for responsible supply chains of minerals from conflict-affected and high-risk areas: Second edition', Organisation for Economic Cooperation and Development, 2013, <http://www.oecd.org>.
- (30) Ibid.
- (31) Ibid.
- (32) 'A poisonous mix: Child labour, mercury and artisanal gold mining in Mali', Human Rights Watch, December 2011, <http://www.hrw.org>.
- (33) 'OECD due diligence guidance for responsible supply chains of minerals from conflict-affected and high-risk areas: Second edition', Organisation for Economic Cooperation and Development, 2013, <http://www.oecd.org>.
- (34) 'Forum on implementing due diligence in the 3Ts and gold supply chains', Organisation for Economic Cooperation and Development Conference Centre, May 2013, <http://www.oecd.org>.
- (35) Ibid.

- (36) 'Public consultation on a possible EU initiative on responsible sourcing of minerals originating from conflict-affected and high-risk areas', European Commission, May 2013, <http://ec.europa.eu>.
- (37) 'OECD due diligence guidance for responsible supply chains of minerals from conflict-affected and high-risk areas: Second edition', Organisation for Economic Cooperation and Development, 2013, <http://www.oecd.org>.
- (38) Clarke, K.M., 'Treat greed in Africa as a war crime', The New York Times, 29 January 2013, <http://www.nytimes.com>.
- (39) Ibid.
- (40) Madslie, J., 'ILO: "Child labour prevents development"', BBC News, 4 February 2004, <http://news.bbc.co.uk>.
- (41) 'ILO report shows why social protection is crucial to tackle child labour', International Labour Organisation, 29 April 2013, <http://www.ilo.org>.
- (42) 'Digging in the dirt: Child miners in Sierra Leone's diamond industry', The International Human Rights Clinic at Harvard Law School, 2009, <http://www.law.harvard.edu>.

SOURCE



CAI

CAI

Consultancy Africa Intelligence (CAI) provides up-to-date, informed analysis and insight into the African continent's political, economic, financial and social affairs.

Go to: <http://www.consultancyafrica.com/>

ABOUT THE AUTHOR

Contact Mariam Diarra through Consultancy Africa Intelligence's Rights in Focus Unit at [\[\[rights.focus@consultancyafrica.com\]\]](mailto:rights.focus@consultancyafrica.com). This CAI discussion paper was developed with the assistance of Laura Clarke and was edited by Kate Morgan.

Copyright © 2014 Bizcommunity.