

The interplay between business entities and children's rights: Exploring the role of multinational mineral organisations in promoting children's rights in Africa's mining areas

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Abstract

The operations of mining industries across Africa have had profound effects on children's rights, depriving them of access to education and a healthy environment, while also fostering conditions that enable sexual exploitation. The chapter critically engages with the socio-economic debate on the vices of mining corporations and offers best practices to address issues of children's rights in Africa. The research further investigates practical operational examples to advance the cause of children's rights within the jurisdictional operations of mining corporations in Africa. The focus is on highlighting the need for mining corporations to adopt safeguard measures for children's rights issues in Africa. The chapter proposes re-evaluating mining

contracts to incorporate child rights-based responsibilities and impose a contractual obligation on mining corporations to uphold and promote children's rights, whether expressly stated or implied. In doing so, the review explores localising developmental projects through the corporate social responsibility lens to address the unique socio-economic needs of children within Africa's mining zones. This initiative provides positive incentives and amenable solutions such as offering acceptable child work and sustainable financial assistance to children employed on grounds of necessity.

Key words: *children's rights; mining industry; social responsibilities; harmful practices; sexual abuse*

1 Introduction

Natural mineral resources are a determinant of national wealth across the globe.¹ Africa's mineral resources largely contribute to the boost in global wealth amidst the socio-economic decay and hazardous effects experienced in most mining areas on the continent.² Harmful practices causing environmental degradation, including water pollution, aquatic life destruction, soil pollution and vegetable crop loss inform the negative effects of mineral extraction in Africa.³ Foremost among these adverse impacts on Africa's socio-economic development is the violation of human rights,⁴ generally, and, more so, the children's rights observed in the Democratic Republic of the Congo (DRC),⁵ Ghana,⁶ South

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- 1 S Nkomo & P Mpofu 'The impact of artisanal mining on the career development of adolescents in Zimbabwe' (2022) 4 *Interdisciplinary Journal of Rural and Community Studies* 47.
 - 2 M Malpede 'The dark side of batteries: Child labour and cobalt mining in the Democratic Republic of Congo' (2022) 22 *Research on Geography, Resources, Environment, Energy and Networks* 2.
 - 3 IW Mwakesi and others 'Impact of mining on environment: A case study of Taita Taveta County, Kenya Irene Wakio Mwakesi' (2021) 15 *African Journal of Environmental Science and Technology* 203.
 - 4 U Idemudia and others 'The extractive industry and human rights in Africa: Lessons from the past and future directions' (2022) 78 *Resource Policy* 1.
 - 5 FWL Schwartz & TH Darrah 'A review of health issues related to child labour and violence within artisanal and small-scale mining' (2021) 5 *Geo Health* 3.
 - 6 A Obiri-Yeboah and others 'Assessing potential health effect of lead and mercury and the impact of illegal mining activities in the Bonsa river, Tarkwa Nsuaem, Ghana' (2021) 13 *Scientific African* 3.

Africa,⁷ Nigeria⁸ and other African countries.⁹ Human rights abuse in the mining sector is a derivative of mining activities often leading to protests on issues of environmental degradation.¹⁰ Evidence of such protest is associated with operations of multinational corporations such as the extraction of oil by Shell in the Niger Delta area of Nigeria.¹¹ The oil extraction led to and resulted in environmental pollution and degradation that undermined the livelihoods and welfare of ordinary people as well as displacement and human rights violations of the Ogoni people.¹² Another instance is the illegal mining of gold, 'Galamsey' in Ghana, which has affected locals' and children's health by polluting the environment and water bodies, causing diarrhoea, respiratory infections and high child mortality cases, among others.¹³ Illegal mining also poses security threats, causing injuries and the deaths of children.¹⁴ In Uganda, young boys dredge sand from rivers and Lake Victoria for pitiful pay.¹⁵ These boys use wooden canoes in swift-moving waters without any safety equipment, running the danger of harm or death.¹⁶ Child abuse is also evident in unlicensed miners economically exploiting children and sexually assaulting them.¹⁷

7 TP Mbonane and others 'Lead poisoning among male juveniles due to illegal mining: A case series from South Africa' (2021) 18 *International Journal of Environmental Research and Public* 2.

8 CO Amosu & TA Adeosun 'Curtailling illegal mining operation in Nigeria' (2012) 2 *International Journal of Advances in Engineering and Management* 121: 'Here, the author records that the Katsina and Zamfara state are the evidence of acute lead poisoning that is caused by the processing of ore, contaminating the local river where they fetch drinking water, affecting more than 3 500 children.'

9 Kenya, Mali, South Africa and others.

10 Amosu & Adeosun (n 8).

11 CI Obi 'Structuring transnational spaces of identity, rights and power in the Niger Delta of Nigeria' (2009) 6 *Globalisations* 473.

12 As above.

13 H Cossa and others 'Assessing the effects of mining projects on child health in sub-Saharan Africa: A multicountry analysis' (2022) 18 *Globalisation and Health* 2.

14 Human Rights Watch 'The forever mines, perpetual rights risks from unrehabilitated coal mines in South Africa' 5 July 2022, <https://www.hrw.org/report/2022/07/05/forever-mines/perpetual-rights-risks-unrehabilitated-coal-mines-south-africa> (accessed 27 November 2023).

15 M Daghar 'Shovelling for a pittance: East Africa's young sand miners' 11 August 2022, <https://issafrica.org/iss-today/shovelling-for-a-pittance-east-africas-young-sand-miners> (accessed 19 December 2023).

16 As above.

17 BK Sovacool 'When subterranean slavery supports sustainability transitions? Power, patriarchy, and child labour in artisanal Congolese cobalt mining' (2021) 8 *The Extractive Industries and Society* 290.

The challenges surrounding children's rights in the mineral sector extend beyond child labour, as understanding of the issue remains limited due to the scarcity – or, in some instances, the unreported nature – of cases.¹⁸ Children's rights in mining largely relate to vices within the sector and there is therefore a need to articulate values and develop policies and practices that respect children's rights in ways that are meaningful, convincing and effective.¹⁹ The vulnerable and inexperienced nature of children requires them to have the utmost protection. Ignorantly engaging in artisanal mining has led to health challenges derived from chronic exposure to dust with cobalt often results in fatal lung disease and sexual abuse, which is on the rise in the mining areas in DRC.²⁰ The DRC government has been criticised by the United Nations (UN) and non-governmental organisations for failing to prioritise and implement sufficient labour inspection systems to combat child abuse-related issues in the mining sector.²¹ The African Union (AU) admonishes state parties to uphold the rights of children and to safeguard them from sexual exploitation²² and environmental degradation.²³ Recognising the role of business entities in safeguarding the rights of children led the United Nations Children's Fund (UNICEF), the United Nations Global Compact and Save the Children to develop a set of principles for business entities to ensure children's rights in mining activities.²⁴ The international institutions highlighted the need to guarantee the safety of children and contribute towards the elimination of child abuse in all business activities and business relationships.²⁵ The focus of this chapter

18 TM Collins 'The relationship between children's rights and business' (2014) 18 *International Journal of Human Rights* 584.

19 As above.

20 MS Cataleta 'Human rights violations against children in the Democratic Republic of Congo, the international trade in minerals' (2020) 13 *Revista Misión Jurídica* 218.

21 As above.

22 Arts 11, 14 & 15 African Children's Charter, https://au.int/sites/default/files/treaties/36804-treaty-african_charter_on_rights_welfare_of_the_child.pdf (accessed 14 December 2023).

23 Arts 24, 28, 32 & 34 CRC, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child> (accessed 12 December 2023).

24 UNICEF & Save the Children 'Children's rights and business principles', <https://www.unicef.org/media/96136/file/Childrens-Rights-Business-Principles-2012>. (accessed 16 December 2023).

25 As above.

is to explore some best practices to inform a child's rights-based approach to prevent child abuse in Africa's mining sector.

The chapter begins with defining the context of child rights issues in Africa's mining sector. The chapter considers three main child rights-based approaches to which business entities in the mining sector may support children's rights in their operational jurisdiction. In doing so, it considers re-evaluating multinational mining contracts to incorporate responsibility for children's rights. The aim is to confer a contractual duty expressly or impliedly to safeguard children's rights. Having conferred a contractual duty, the chapter suggests localising developmental projects through the corporate social responsibility lens to meet the specific socio-economic needs of Indigenous children. Specific socio-economic approaches to corporate social responsibility significantly impact meeting child rights obligations. The chapter further suggests some mechanisms to breach the gap between child rights laws and effective implementation to eradicate child abuse in the mining in Africa's mining sector. The article proposes practical operational examples to emphasise and promote child rights within the jurisdictional operation of mining companies in Africa and explores children's strategic litigation to implement children's rights in Africa's mining regions.

2 Context of child rights in the mining sector

The rights of children are a matter of international concern.²⁶ The UN has entreated state Parties to uphold the rights of every child within their jurisdiction without discrimination, regardless of their race, colour, sex, language, religion or other status. They must also protect the child from discrimination or punishment based on the status, activities, expressed opinions, or the beliefs of the child's parents, legal guardians or family members.²⁷ National constitutions have equally also entrenched the rights of children.²⁸ Some of these national laws have stated that children have the right to know and be cared for by their parents or legal guardians, receive basic education, and not be deprived of medical treatment or

26 EY Tenkorang 'Physical, sexual, and psychosocial health impacts of child abuse: Evidence from Ghana' (2023) 57 *Advances in Life Cause Research* 1.

27 Arts 24, 28, 32 & 34 CRC, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child> (accessed 17 October 2024).

28 The Constitution of the Republic of Uganda, 1995 art 34.

social benefits due to religious beliefs.²⁹ They are to be protected from exploitation and should not be employed in hazardous work.³⁰

Recent developments in this context have focused on the rights of children in business and human rights. The interest in this dimension of children's rights largely dwells on the notion that respect for international human rights also relates to children's rights as a growing business concern.³¹ The 2013 report of the International Labour Organisation (ILO) estimates that 168 million children are engaged in labour worldwide, with half involved in hazardous work, despite numerous campaigns to eliminate this.³² International organisations have partnered to contribute to ensuring the rights of children within the business sector.³³ Apart from other human rights treaties and conventions on the rights of children, 'Children's Rights and Business Principles' promulgated in 2012 by UNICEF, Save the Children and Global Compact, have specifically targeted mechanisms to safeguard the rights of children in the business space.³⁴ The General Comment on state obligations (2013) of the UN Committee on the Rights of the Child (CRC Committee)³⁵ and the UN Guiding Principles on Business and Human Rights (2011)³⁶ equally consider the relationship between business and human rights and the need to protect children in these spaces. The persistence of child abuse in the mining sector resulted in a UNICEF Extractive Plot on Children's Rights and the Mining Sector.³⁷ The communications and documents serve as informative tools and

29 As above.

30 As above.

31 Collins (n 18) 584.

32 S Deva 'Child labour: Should companies "stand at bay" or "enter the water?" (2014) 56 *Journal of the Indian Law Institute* 143.

33 As above.

34 Guiding Principles on Business and Human Rights: Implementing the UN, 21 March 2011, www.ohchr.org/documents/issues/business/A.HRC.17.31 (accessed 13 December 2023).

35 CRC Committee General Comment 16 7 April 2013, <https://www2.ohchr.org/english/bodies/crc/docs/crc.c.gc.16.pdf> (accessed 17 December 2023).

36 Guiding Principles on Business and Human Rights (n 34).

37 United Nations Children's Fund 'UNICEF extractive plot on children's rights and the mining sector' March 2015 30, https://media.businesshumanrights.org/media/documents/files/documents/UNICEF_REPORT_ON_CHILD_RIGHTS_AND_THE_MINING_SECTOR_APRIL_27_0.pdf. (accessed 17 December 2023).

guiding principles to suggest the proper regulation of mining activities, especially with a focus on children's rights.³⁸

Despite the establishment of comprehensive legal frameworks, child rights violations are even more rampant in mining areas. The AU has made significant progress in promoting the protection of children's rights through a growing framework of treaties and institutions.³⁹ A recent initiative is the June 2020 No Name Campaign. The AU and UNICEF launched the No Name Campaign, an initiative aimed at promoting the right of every child in Africa to a legal identity, and therefore to justice. The ILO reports that 43 per cent of Nigerian children are in forced labour environments, despite international conventions, due to ineffective enforcement agencies and domestic implementation processes.⁴⁰ In Ghana's gold mining economy, over 100 000 working children are involved in gold mining and quarrying. This exposing them to physical, psychological and sexual abuse, confined spaces, dangerous equipment, manual handling, hazardous substances, and long hours of work in Western, Ashanti, Eastern, Brong Ahafo and the northern regions.⁴¹ The numerous legal frameworks are inadequately addressing the rise in children's rights violations due to the lack of a clear roadmap for implementation and compliance. The article considers some of these policies to evaluate their impact on corporate entities in protecting children's rights in Africa's mining areas such as the Kibali gold mine in the DRC and will later suggest a mechanism for enforcement.

3 Re-evaluating the contracts of mining corporations to incorporate child rights responsibilities

Drafting mining contracts transcends a representation of standard phases of mining, comprising crucial issues such as prospecting, exploration, assessing and building a project for exploitation.⁴² Mining contracts reflect a complete infrastructure including housing for workers and their

38 As above.

39 As above.

40 ILO International Programme on the Elimination of Child Labour (IPEC) – Geneva: ILO IPEC 'Analytical studies on child labour in mining and quarrying in Ghana' May 2013, www.ilo.org/ipecc (accessed 12 December 2023).

41 As above.

42 E Schanze 'Complex business contracts: Lessons from mining agreements' (2015) 12 *University of St Thomas Law Journal* 81.

families as well as complicated environmental and social issues affecting the daily life of indigenous people residing in the mining areas.⁴³ The majority of mining contracts are negotiated for and on behalf of citizens by states with the political mandate to protect the socio-economic interest of the localities residing in these mineral lucrative areas.⁴⁴ Contractual terms of mining entities are favourable to them by the reception of high returns on their investments to the detriments of localities who settle with the hazards of mining activities such as polluted water bodies, resettlements issues and general destruction of normative lifestyle and living.⁴⁵ Perilous practices of mining entities have a negative impact on children inhabiting these areas.⁴⁶ A highlight of the article is to assess the relationship between the activities of mining industries, their infringement on children's rights and employing minerals extraction contracts as a mechanism to safeguard children's rights.

Mandating states to promote respect for human rights in business is achievable through contractual terms and conditions bearing in mind states' relevant obligations under national and international law.⁴⁷ The Nigerian state's corrupt and exploitative mindset of officials, coupled with inadequate oversight of oil multinational corporations, enabled the involvement of mega-capitalist corporations in the Niger Delta to exploit the area for exorbitant profits.⁴⁸ Taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication, positions states to effectively supervise the activities of mining industries.⁴⁹ Assuming an oversight role by limiting the operations of multinational corporations through negotiating the terms positions the states to make these corporations accountable for child's rights violations.⁵⁰ Expressly delineating the

43 As above.

44 M Kamuwanga 'Negotiating investment contracts: Some essential points for a developing country' (1985) 17 *Zambia Law Journal* 95.

45 M Frilet & K Haddow 'Guiding principles for durable mining agreements in large mining projects' (2013) 31 *Journal of Energy and Natural Resources Law* 468.

46 SE Dessy & S Pallage 'A theory of the worst forms of child labour' (2005) 115 *The Economic Journal* 70.

47 Constitution of the Republic of Uganda (n 28) Principle 6.

48 G Karmakar 'Living with extraction: Environmental injustice, slow observation and the decolonial turn in the Niger Delta, Nigeria' (2023) 74 *International Social Science Journal* 5.

49 Guiding Principles on Business and Human Rights (n 34) Principle 1.

50 Guiding Principles (n 34) Principle (b)(i).

domestic rights of children and the responsibility of mining industries towards children as terms and policy conditions of mining contracts at the stage of negotiating are expedient to confirm the rights of children in the mining sector.⁵¹ Negotiating mining agreements within the framework of 'free, prior and informed consent'⁵² is undesirable as the concept has suffered several flaws at the stage of implementation.⁵³ Equal bargaining power by parties on the ability to consent to or refuse a mining project and be provided with equivalent knowledge when making decisions about and negotiating mining projects ensures fairness in deciding mining contracts.⁵⁴

Mining contracts are seldom focused on the obligations of multinational corporations especially on the specific responsibilities of these entities beyond the influence of operational priorities.⁵⁵ Recent developments such as the African Continental Free Trade Area's Protocol on investment have admonished state parties under article 13 to prohibit the operations of multinational corporations whose priorities conflict with the public interest.⁵⁶ Mining contracts should set out responsibility policies such as issues of allowable child work as against child labour mainly relying on the consequences of both.⁵⁷ The necessity of clearly distinguishing the constituents of child labour and allowable child work cannot be overemphasised, as international treaties and conventions have noted that gainful employment of children in non-hazardous work for necessities is legitimate.⁵⁸ Including clauses that oppose hazardous work that openly endangers the health, safety and moral development

51 As above.

52 R Goodland 'Free, prior and informed consent and the World Bank Group' (2004) 4 *Sustainable Development Law and Policy* 66.

53 B Meyersfeld 'Empty promises and the myth of mining: Does mining lead to pro-poor development?' (2017) 2 *Business and Human Rights Journal* 42.

54 As above.

55 D Kemp 'Mining and community development: Problems and possibilities of local-level practice' (2010) 45 *Community Development Journal* 203.

56 A 13, African Continental Free Trade Area Protocol on Investment (2023), <https://edit.wti.org/document/show/8993cb69-cbc5-4f07-a372-5ef5c74e7b78> (accessed 17 December 2024).

57 JL French & RE Wokutch 'Child workers, globalisation, and international business ethics: A case study in Brazil's export-oriented shoe industry' (2005) 15 *Business Ethics Quarterly* 618.

58 UNICEF & Save the Children (n 24); also see art 15(1) African Children's Charter.

of children and defining the consequences thereof is mandatory.⁵⁹ Specifically defining child work and the allowable conditions for permitting child work within the confines of a particular mining exploration or activity is expedient in this regard. Conditions expressly stating minimum age(s) for admission to employment, appropriate regulation of the hours and conditions of employment⁶⁰ and appropriate penalties or other sanctions to safeguard the effective enforcement of these terms should be delineated in mining contracts.⁶¹

Social responsibility as a condition precedent to leasing mining concessions to mineral extraction companies is essential for the needs of children in those localities through an assessment of their social impact.⁶² These conditions are non-negotiable but the self-serving interests of governmental officials in the form of bribes and kick-backs hinder enforcement and compliance.⁶³ The negotiation stage of these contracts with governments should insistently warrant the inclusion and precisely outline the specific social responsibility mandate to the state and the community affected by mining extraction processes and guarantee fairness to citizens.⁶⁴ These corporations, in partnership with state entities, engage in developmental projects such as building schools, hospitals, libraries with digital sections, sports centres, and ultramodern motorable roads, among others, which directly or indirectly affect the health, safety and moral development of children.⁶⁵ Negotiating these contracts should consider and include specific developmental projects to the benefit of children, such as building schools, the number of children to be educated under scholarship grants, building hospitals aimed at

59 Deva (n 32) 143.

60 International Labour Organisation 'ILO-IOE child labour guidance tool for business: How to do business with respect for children's right to be free from child labour' 2015, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/--ipec/documents/instructionalmaterial/wcms_ipec_pub_27555.pdf accessed 15 December 2023).

61 Art 32(2) CRC; arts 15(2)(b) & (c) African Children's Charter.

62 A Hilsona and others 'Corporate social responsibility at African mines: Linking the past to the present' (2019) 241 *Journal of Environmental Management* 343.

63 As above.

64 S Sahla and others 'How and why the Myanmar government should publish petroleum and mining contracts' (2019) 10 *Natural Resource Governance Institute* 2.

65 H Jenkins & L Obara 'Social responsibility (CSR) in the mining industry the risk of community dependency' (2008) CRRC conference paper 2, <http://crrconference.org> (accessed 16 December 2023).

the health care of children and establishing facilities for special needs children in the mining and resettlement sites.⁶⁶ A clause may indicate educating 1 200 children free of charge across seven basic schools with a staff of 25 qualified teachers and subsequent local educational facilities expansions in the future to meet the needs of a growing population.⁶⁷ Employers may also recruit the best-performing students to fill top positions at the mines to incentivise and encourage students to study diligently.⁶⁸

Mining entities in partnership with state corporations ought to provide and promote sustainable solutions to the root cause of child labour.⁶⁹ A responsive measure to child labour, often supported by the need to provide either for self or family is to offer decent work for children in mining localities.⁷⁰ Clauses providing child work with defined convenient working hours creates legitimate employment of children and a balance to avoid infringing on the educational rights of children.⁷¹ The duty to eradicate child labour by mining entities in Africa may comprise establishing vigorous age-verification processes as part of recruitment and employment requirements.⁷² Mining companies should equally employ age-verification processes in the supply chain and be cognisant of the presence of employed children, providing appropriate work, where suitable, for adult household members to replace a child relieved of the duties at the workplace.⁷³ Refraining from placing pressure on suppliers, contractors and subcontractors by mining companies prevents the employment of cheap labour and the subsequent violation of children's rights.⁷⁴ Campaigning against child labour through advertisements, educating indigenous people on the effects of child labour and supporting governmental initiatives are additional mechanisms to be considered.⁷⁵

66 As above.

67 Hilsona and others (n 62) 343.

68 As above.

69 Children's Rights and Business Principles (n 24) Principle 2(c).

70 Guiding Principles on Business and Human Rights (n 34) Principle 3(a).

71 Art 32(1) CRC.

72 Guiding Principles on Business and Human Rights (n 34) Principle 2.

73 Guiding Principles (n 34) Principle 2 (b).

74 As above.

75 J Kolieb 'Protecting the most vulnerable: Embedding children's rights in the business and human rights project' in S Deva & D Birchall (eds) *Research handbook on human rights and business* (2020) 365.

The UN has recognised sexual violence as one of the grievous crimes against children, hence a need for protection.⁷⁶ Gender bias and sexual abuse in mining localities are on the rampage with the increase of mining activities in lucrative areas across the African continent. The discourse in South Africa has consistently revealed the rape of young girls in the platinum mining areas of Rustenburg, leading to unwanted pregnancies and the spread of the human immunodeficiency virus (HIV).⁷⁷ With poverty as the majority informing factor,⁷⁸ children are subjected to forced labour, sexual slavery and hazardous labour.⁷⁹ Young girls face limited employment opportunities in mines, often exploited sexually by male workers who turn them into sex slaves due to a lack of legal and psychological capacity.⁸⁰ The abuse of children in mining is evident in unequal paid remuneration of the same positions and responsibilities.⁸¹ Protecting children in mining areas and a coherent association with the legal principle of vicarious liability to insist on employers monitoring the activities of their employees in the mining areas create a supervisory relationship to maintain children's rights.⁸² Holding employers liable for the negligent actions of their employees, especially towards children within the mining localities, imposes a mandate on employers to adopt mechanisms and a policy commitment to meet their responsibility to respect children's rights within the work premises and beyond.⁸³ Adopting a due diligence process to identify, prevent, mitigate and account for addressing human rights issues and their impacts on the rights and safety of children in these environments is appropriate.⁸⁴ To impact social

76 United Nations Security Council S/RES/1261 (30 August 1999); UNSC/RES/1539 (22 April 2004).

77 D Botha 'Women in mining still exploited and sexually harassed' (2016) 14 *South African Journal of Human Resource Management* 4.

78 RB Flowers 'The sex trade industry's worldwide exploitation of children' (2001) *The Annals of the American Academy of Political and Social Science* 153.

79 Free the Slaves and others 'Child rights in mining pilot project results and lessons learned Obuasi, Ghana March' (2014) 8, <https://freetheslaves.net/wp-content/uploads/2015/03/Child-Rights-in-Mining-Pilot-Project-Overview-24.3.14.pdf> (accessed 15 December 2024).

80 As above.

81 K Sarah & O Nahayo 'Gender bias and sexual harassment in the mining industry: Unceasing hurdles to females' career development and work safety' (2021) 10 *The Indonesian Journal of Occupational Safety and Health* 403.

82 P Morgan 'Recasting vicarious liability' (2012) 71 *Cambridge Law Journal* 616.

83 Guiding Principles on Business and Human Rights (n 34) Principle 15.

84 As above.

change, engaging localities and educating indigenous people on sexual exploitation and its effects on the development of children as well as the criminal repercussion of aiders and abettors of these hideous crimes by multinational corporations is required.⁸⁵

4 Localising developmental projects and social responsibilities of mining corporations to suit the special socio-economic needs of the indigenous people

Current narratives on corporate social responsibility critically consider the social impact as the consequence and not necessarily the intent of corporate entities in engaging such responsibilities.⁸⁶ Child rights-based approaches to corporate social responsibility invariably inform unique social impacts in mining areas.⁸⁷ The responsibility of multinational corporations can be grouped into physical protection, parental employment and family life, moral protection, education and employability, impacting children's charities, social and cultural participation and economic well-being of children.⁸⁸ Social responsibility projects that affect children directly often include building schools⁸⁹ to safeguard the educational rights of children regardless of environmental changes due to mining practices.⁹⁰ Multinational entities in partnership with states are envisaged to formulate effective legal and policy frameworks that protect children from environmental threats and degradation hindering children's survival and development.⁹¹ Deconstructing educational curriculum to incorporate positive multifaceted cultural

85 RV Aguilera and others 'Putting the S back in corporate social responsibility: A multilevel theory of social change in organisations' (2007) 32 *The Academy of Management Review* 837.

86 As above.

87 Kemp (n 55) 202.

88 A Crane & BA Kazmi 'Business and children: Mapping impacts, managing responsibilities' (2010) 91 *Journal of Business Ethics* 574.

89 AN Mzembe & J Meaton 'Driving corporate social responsibility in the Malawian mining industry: A stakeholder perspective' (2014) 21 *Corporate Social Responsibility and Environmental Management* 196.

90 CRC Committee (2006) General Comment 7 on implementing child rights in early childhood CRC/C/GC/7/Rev.1.

91 T Kaime 'Children's rights and the environment' in U Kil Kelly and T Lief aard (eds) *International human rights of children* (2019) 67.

practices⁹² and include an indigenous environment,⁹³ education instils a sense of awareness, recognition and belonging in the child. An example is the mining company in Malawi, Mkango educational standards at three primary schools near its Songwe Hill Rear Earth project by improving infrastructure, providing learning materials, and awarding scholarships to top-performing students.⁹⁴ Educational systems addressing the needs of children with special needs afford a further opportunity for inclusion in educating children in mining areas.⁹⁵ South Africa introduced inclusive schooling in 1996, allowing learners with special education needs to be served in mainstream education, with relevant support provided by multinational mining entities.⁹⁶

Healthcare systems as social responsibility contributions have a positive effect on the growth and development of children when the services provided address the special growth and development needs of children.⁹⁷ Establishing pediatric sections at hospitals and employing childcare experts allow mining communities to seek medical solutions to child-related illnesses.⁹⁸ Rehabilitation centres to socialise raped and abused victims are all context-specific corporate responsibilities that have positive consequences and rightfully impact the lives of children. Creating job opportunities in mining companies, with conducive working conditions and defined working hours, to provide income for self-sustaining children while they pursue education, supports

92 B Fagbayibo 'A critical approach to international legal education in Africa: Some pivotal considerations' *TWAILR: Reflections* (12/2019) 7, <https://twailr.com/a-critical-approach-to-international-legal-education-in-africa-some-pivotal-considerations/> (accessed 16 December 2023).

93 Kaime (n 91) 67.

94 Mining in Malawi 'Mkango launches programme to uplift education standard to help empower Phalombe local communities' 29 March 2015, <http://mininginmalawi.com/2015/03/29/mkango-launches-programme-to-uplift-education-standards-to-help-empower-phalombe-local-communities-miningreview-march-2015/> (accessed 14 December 2023).

95 G Hornby 'Inclusive education for children with special educational needs: A critique' (2011) 58 *International Journal of Disability, Development and Education* 324.

96 South African Schools Act 84 of 1996 sec 12(4).

97 Crane & Kazmi (n 88) 575.

98 P Prasad & A Supe 'A review of corporate social responsibility programmes conducted in a large public hospital in a metropolitan city' (2020) 9 *International Journal of Medical and Health Sciences* 10.

sustainable growth and development.⁹⁹ This may suffice as a practical operational example to support the fight against all forms of child abuse.

5 Adopting practical operational examples to promote child rights in the mining sector

State entities domestically and internationally mandated to prevent all forms of discrimination against children, in partnership with multinational mining organisations, may ensure children's rights through practical operational examples. Regulating the mining sector through rules and enactments guarantees operational confinement and gives state entities a supervisory role over the operations of the mining sector. Unfortunately, most African countries are not forthcoming with legislation on regulating the mining business in Africa. In Kenya, the government is mandated to protect the natural resources. However, only Makueni, one of Kenya's 47 counties, has enacted laws and established the Makueni County Sand Conservation and Utilisation Authority.¹⁰⁰ The authority demanded an age limit for sand workers at 18 plus and workers to be registered through unions, allowing country inspectors to order children out. The policy lacks penalties for recruiting children, limiting effectiveness and accountability.¹⁰¹ Expressly defining penalties for child rights violators within the operation of the mining industries by state regulations and mining corporate policies provides a laid down process for punishment and deters potential violators from the same.

African governments must take the necessary steps to be responsive to the welfare of children in the mining sector. National governments must regulate multinational corporations by enforcing international and national laws on child labour in mining which requires creating an effective environment for law enforcement agencies and providing necessary vehicles and logistics.¹⁰² The government, in its dealings with these corporations, must stop prioritising economic matters over social matters but view both as complementary and deserving of equal

99 I Kaempfer & D Sturmes 'How mining companies can support decent work for youth', <https://www.faircobaltalliance.org/blog/unleashing-potential-how-mining-companies-can-support-decent-work-for-youth/> (accessed 15 December 2023).

100 Daghar (n 15).

101 As above.

102 ILO (n 40) 65-67.

protection. The self-serving attitude of governmental officials in the form of kick-backs and bribes serving the selfish interest of these officials must be put in check through effective accountability institutions such as crime units and to deter other governmental officials. Governmental officials in their contracting with these mineral corporations must negotiate equitable and inclusive sharing of accruals from natural resources. This will support the campaign to alleviate poverty in the families of those children engaged in mining and related work. The financial support provided for such families restricts the propensity of their children to engage in such deleterious work.¹⁰³

A mechanism to breach the gap between laws on child rights in the mining sector and the implementation of these rights should consider effective collaboration between district assemblies and law enforcement agencies to eradicate child labour in mining providing an immediate and hands-on response to child rights issues in mining in this area. District assemblies through the district security committees in Africa should be empowered to enforce its bylaws on child labour in mining. Regularising illegal operators through minerals commissions and encouraging membership are necessary.¹⁰⁴

Implementing a national programme to engage small-scale illegal miners and eradicate the adverse effects of small-scale illegal is beneficial to child labourers. Political commitment to child labour should be emphasised through financial and human resources for law enforcement agencies, with political leadership enforcing the elimination of child labour in mining and quarries. African governments should promote collaboration among stakeholders to combat child labour in mining areas, ensuring the appropriate allocation of resources and skills. Strengthening existing social intervention programs to remove child labourers from mining by focusing on poverty reduction schemes such as Livelihood Empowerment Against Poverty (LEAP) and the ILO's CLEAR is an added advantage.¹⁰⁵

African governments should implement alternative livelihood programmes supporting child labourers and their parents. Coordinated efforts from various organisations and agencies are needed to effectively

103 As above.

104 ILO (n 40).

105 As above.

address child labour issues. The programmes and projects of various civil society organisations and NGOs and even government agencies are largely uncoordinated. These are a result of programmes and projects that are ineffective in addressing the child labour issue. Thus, there is a need to get these programmes and projects coordinated for effective achievement of results. Sensitisation programmes that educate the public on the hazards of child labour and its effects on children and the country should be intensified. Conducting awareness-raising programmes on UN-designated observances, such as 'Child Labour Day,' to highlight and address the challenges of child labour should be encouraged.¹⁰⁶

Research must be conducted on the problem of child labour to bring out issues involved in non-implementation for remedy used by institutions such as the National Information Services Department (ISD), National Commission for Civic Education (NCCE), District Child Protection Committees (DCPC) and various radio stations available in the districts to disseminate information on the hazards of child labour. Mining-related institutions such as association groups and all stakeholders must participate in seminars and workshops targeted at small-scale illegal operators to educate them on child labour and disseminate information on national child rights laws.¹⁰⁷ Child labourers should be removed from mining and focus on education and should not return. Comprehensive social intervention programmes should be instituted to support them, including school supplies and putting parents into viable economic activities. Parents and guardians who depend on wages should be included in these interventions, as a lack of support from them is a compelling reason for working in mining.¹⁰⁸

Child labourers are exposed to harmful chemicals such as mercury, cyanide and sulphur, causing respiratory issues, itchy eyes and burns. Institutions and law enforcement agencies should intensify the monitoring and sanctioning of illegal mining sites. Child labour in small-scale illegal mining areas is hazardous and tedious, causing health problems. Law enforcement agencies should remove child labourers or ensure that they perform only light, non-hazardous tasks. The ideal solution is to eliminate child labour in mining, requiring illegal miners to

106 As above.

107 As above.

108 As above.

stop using hazardous chemicals and involving institutions to champion the campaign.¹⁰⁹

Child labourers work in very poor conditions at the mine sites. Conditions the child labourers have to contend with daily are dust pollution, limited space for work, and working with hazardous chemicals and explosives. These conditions have affected child labourers with different types of health conditions. The immune system of children is not as developed as that of adults and, therefore, they are prone to be affected by various diseases and injuries. Employers of child labourers should provide appropriate safety working gear (such as face masks, protective clothes, hand gloves, ear plugs, and so forth) to protect children and this should be enforced by the appropriate law enforcement agencies, national institutions and civil society organisations involved.¹¹⁰ Child labourers rely heavily on self-medication for health conditions, which can have severe health consequences. Proper medical attention is crucial, and sensitisation and education should be provided to child labourers, parents and employers on the dangers of self-medication and the importance of regular check-ups. The National Social Welfare Department, in collaboration with the Education Services and the Ministries of Gender, Children and Social Protection, must initiate a sensitisation programme on child labour laws.¹¹¹

Strategic litigation and the role of the judiciary in confirming the rights of children are beneficial as it targets special cases of child's rights disputes. It acts as a measure for creating awareness and caution to stake holders in the mining sector to maintain positive legal and social change in terms of children's enjoyment of their rights.¹¹² A child rights strategic litigation approach promotes state accountability, enforces rights-protecting laws, and enhances their effectiveness in practice.¹¹³ Businesses can partner with domestic judicial systems to ensure that

109 As above.

110 As above.

111 As above.

112 A Nolan and others 'Advancing child rights-consistent strategic litigation practice' 1 September 2022 4, <https://ssrn.com/abstract=4318384> (accessed 15 December 2023).

113 Open Society Foundation Report 'Potential benefits of strategic litigation advancing public health through strategic litigation: Lessons from five countries' (2016) 51, <https://www.jstor.org/stable/resrep29302.7> (accessed 19 December 2023).

corporate social responsibility is justice-oriented by incorporating quasi-judiciary disciplinary processes in their corporate policy statements to identify violators.¹¹⁴ Strategic litigation enhances grassroots social movements by involving individuals and communities affected by the litigation issues.¹¹⁵

6 Conclusion

This chapter critically considered the socio-economic discussion on the vices of mining corporations and sought to suggest suitable practices to address issues of children's rights in Africa's mining regions. The article contextualised child rights issues in Africa's mining sector and suggested three main child rights-based approaches with which business entities in the mining sector may support children's rights in their operational jurisdiction. Re-evaluating multinational mining contracts to incorporate child rights responsibilities aimed at conferring a contractual duty expressly or impliedly to safeguard children's rights was considered as an initial step. Having conferred a contractual duty, the chapter further suggested localising developmental projects through the corporate social responsibility lens to meet the specific socio-economic needs of indigenous children. The chapter finally proposed practical operational examples to emphasise and promote child rights within the jurisdictional operation of mining companies in Africa and explored the benefits of children's strategic litigation to implement children's rights within Africa's mining regions. Mining activities in Africa have irreversible effects on children, affecting their physical, mental and emotional health. Setting adequate expedient measures in place for the survival, growth and development of children in these areas is an inclusive responsibility. This chapter concentrated on some of the contributions of mining corporations to safeguard children's rights in Africa's mining regions.

114 Kemp (n 55) 202.

115 Open Society Foundation (n 113) 52.