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A review of the legal, policy and institutional framework on child labour in Ghana

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Summary: *Child labour persists in Ghana despite a range of policy and legal measures implemented by the government and other development partners. This article reviews Ghana's legal, policy and institutional framework on child labour to determine whether it meets international labour and human rights norms. It also assesses the framework to see whether it is well-positioned to combat child labour in Ghana. Although the article notes the steps taken by relevant legislation to incorporate international labour organisations' standards aimed at combating child labour, it observes that local legislation is not sufficiently detailed, especially on what constitutes the worst forms of child labour. Other forms of child labour, such as the use of children in mining and the illicit production of drugs, are not specifically addressed. The article also critiques the institutional framework that segregates enforcement along the lines of the formal and informal sectors. While the article commends the strong decentralised institutional structures in Ghana's current*

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plan for eliminating child labour, it argues that the strong institutional structures created by the plan should be given legal status and their roles clarified with a view to establishing legally-binding duties on the government. The article also proposes amendments to strengthen the legal framework and align it with international best practices. In this regard, it proposes the expansion of the hazardous work list, the introduction of the minimum conditions for light work and outlawing the use of children in mining and the illicit production of drugs.

Key words: *Ghana; child labour; legislative gaps; human rights; legal reforms*

1 Introduction

Child labour remains one of the world's most intractable problems. Approximately 160 million children worldwide are engaged in child labour.¹ More than half of these children are in sub-Saharan Africa. Ghana has made significant efforts to eradicate child labour since the Ghana Statistical Service reported in 2001 that approximately 2.47 million children aged 5 to 17 years of age were engaged in economic activities.² Nevertheless, further efforts are required, as subsequent surveys by the Ghana Statistical Service show that more than 20 per cent of all children between the ages of 5 to 14 years do some economic work.

The country's response to the problem of child labour has been both legal and policy-based. On the legal front, Ghana has signed on to several International Labour Organisation (ILO) conventions, including the two most crucial conventions geared at eliminating child labour: the ILO Minimum Age Convention 138 of 1973 and the ILO Worst Forms of Child Labour Convention 182 of 1999. These conventions have been domesticated and incorporated into Ghanaian law through the Children's Act and related statutes. In terms of policy, Ghana has developed several national action plans, each of which builds on the strengths of its predecessor's plan. The latest of these plans is the Ghana Accelerated Action Plan Against Child Labour (National Plan of Action for the Elimination of Child Labour) (2023-2027), which sets an ambitious target of eliminating child labour,

1 International Labour Organisation (ILO) & United Nations Children's Fund (UNICEF) *Child labour: Global estimates 2020, trends and the road forward* (2021) 22.

2 Ghana Statistical Service and Ministry of Finance and Economic Planning *Ghana child labour survey – 2001* (2003) 3.

at least its worst forms, by 2025. The country has also confirmed its commitment to eliminating child labour by 2025 by joining Alliance 8.7, a platform where governments, businesses, workers and international and regional organisations can share information and best practices, and cooperate to achieve Sustainable Development Goal (SDG) 8.7.³ Ghana has also benefited from private sector, civil society and development partner-led interventions in areas where child labour is endemic. These interventions have usually invested heavily in the mining and cocoa sub-agricultural sectors. With less than a year to go, it is important to ask whether the policy, legal and institutional framework is sufficient to achieve the ambitious target set by the government.

This article critically assesses Ghana's legal and policy framework for the elimination of child labour in Ghana to determine its suitability and adequacy in the fight against child labour. The second part of the article provides a situational analysis of the legal, policy and institutional framework on child labour in Ghana. The third part discusses the international legal framework on child labour and Ghana's attempt to legislate its obligations domestically in child and labour laws. The fourth part examines the policy and institutional response to child labour. The fifth part exposes the gaps, limitations and deficiencies in the legal, policy and institutional framework for eliminating child labour. The sixth part summarises our recommendations and concludes the article.

2 A situational analysis of the legal policy, and institutional framework on child labour in Ghana

Defining child labour can be challenging. It is a loaded term that hardly renders itself to objective interpretations. While it is easy to confuse any form of work done by children as child labour, child work and child labour are not the same.⁴ Children do all kinds of work, some of which are not detrimental to their overall well-being and may even equip them with the essential skills needed to become useful and employable adults in the future. For this reason, it has

3 For information about this alliance, see <https://www.alliance87.org> (accessed 13 February 2024); SDG 8.7 strives to 'take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms'.

4 A Frimpong and others 'Concepts, causes and institutional response to child labour in Ghana: A socio-economic review' (2021) 1 *Journal of Economic Research and Review* 2, <https://opastpublishers.com/open-access/concepts-causes-and-institutional-response-to-child-labour-in-ghana-a-socio-economic-review.pdf> (accessed 13 February 2024).

been suggested that describing all forms of children's work as child labour is to 'trivialise the issue [of child labour]'.⁵ Therefore, there is a need to distinguish between the broader category of children's work and work that affects children's well-being. Children's work generally may be positive if it does not interfere with a child's right to education and teaches them useful life skills.⁶ Thus, it is acceptable for children to engage in light work, such as helping out with their families' businesses.⁷ Child labour, on the other hand, is restricted to those forms of work that interfere with the child's welfare, particularly the child's right to education.⁸ The ILO defines child labour as follows:⁹

Work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development. It refers to *work that*:

- *is mentally, physically, socially or morally dangerous and harmful to children; and/or*
- *interferes with their schooling* by depriving them of the opportunity to attend school; obliging them to leave school prematurely; or requiring them to attempt to combine school attendance with excessively long and heavy work.

Child labour cannot be monolithically understood; it admits of different societies' notions of childhood and varying socio-cultural beliefs about nurturing children. A child's age, the number of hours worked, and the sectors in which a child works are all significant determinants of child labour.¹⁰ Determining whether a child is involved in child labour is always a question of degree and not a question of scientific precision. Humbert, a legal scholar, notes:¹¹

[T]he relevant international organisations such as the UN Children's Fund (UNICEF) and the ILO as well as most of the legal writers speak of a continuum that embraces at one end work that is beneficial, promoting or enhancing a child's physical, mental, spiritual, moral or social development without interfering with schooling, recreation and rest. At the other end, the work is exploitative including as most obvious examples child prostitution and bonded child labour. Between the two poles, much child labour falls into a grey area.

Be that as it may, the substratum of child labour is that children are involved in work that offends their dignity, reduces their capacity to

5 F Humbert *The challenge of child labour in international law* (2009) 14.

6 ILO 'What is child labour', <https://www.ilo.org/ipecc/facts/lang--en/index.htm#:~:text=The%20term%20%20child%20labour%20is,harmful%20to%20children%3B%20and%20For> (accessed 13 February 2024).

7 As above.

8 As above.

9 As above (original emphasis).

10 As above.

11 Humbert (n 5) 17-18.

enjoy rights, and attain a high standard of living; they are involved in work that is 'intolerable and exploitative'.¹² Children's work, therefore, has been categorised into light work, hazardous work and the worst forms of child labour (WFCL). Child labour encompasses the last two categories.

Child labour has always been on the agenda of the ILO as far back as 1919 when the first convention stipulating a minimum age at which children could work in industry was adopted. In 1992 the ILO established the International Programme for the Elimination of Child Labour (IPEC). This programme is the most ambitious programme targeted at the elimination of child labour in the world. With an operational budget of over \$60 million, the IPEC offers technical, operational and financial support to member countries committed to fighting child labour.¹³

In 2000 the ILO-IPEC started publishing its quadrennial reports and estimates on child labour. The data shows that between 2000 and 2020, the number of children in child labour reduced from 245,5 million to 160 million.¹⁴ While there was a consistent downward trend in the number of children in child labour between 2000 and 2016, there was an increase in the number of children in child labour between the years 2016 and 2020.¹⁵ In these four years, the number of children involved in child labour increased from 151,6 to 160 million children.¹⁶ The difference has been attributed to the impact of the COVID-19 pandemic on the economic livelihoods of households.¹⁷

It should be noted that while the rest of the world seems to have consistently reduced the number of children in child labour, sub-Saharan Africa has fared less well. Over 23,9 per cent (an estimated 86,6 million children) of all children in the region are involved in child labour.¹⁸ Between 2008 and 2020, the region has only managed to reduce its children in child labour from 25,3 per cent to 23,9 per cent.¹⁹

12 Humbert (n 5) 18.

13 ILO 'The International Programme on the Elimination of Child Labour (IPEC, nd), https://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/genericdocument/wcms_210580.pdf (accessed 14 February 2024).

14 ILO and UNICEF (n 1) 23.

15 As above.

16 As above.

17 ILO and UNICEF (n 1) 54-59.

18 ILO and UNICEF (n 1) 13; Latin America has almost halved its child labour rates, bringing the percentage down to 6% in 2020 from 13,3% in 2008; ILO and UNICEF (n 1) 24.

19 ILO and UNICEF (n 1) 12.

The Ghana Living Standards Survey Round 6, published in 2014, noted that of all children in Ghana aged 7 to 14 years, 28.8 per cent are child labourers.²⁰ The majority of these children, approximately 91,2 per cent of them, worked in agriculture, forestry and fishing, while another 13,2 per cent worked in wholesale and retail trade.²¹ Others worked in manufacturing, mining and quarrying, and some in the services industry, including transportation, hospitality, food, information and communication.²² Two-thirds of these children worked less than 20 hours daily, while another one-third worked more than 20 hours.²³ Remuneration for work done ranged from 8 cedis to 220 cedis (US\$0,62 to US\$16,94)²⁴ a month.²⁵ In the Ghana Living Standards Survey Round 7, published in 2020, the number of children in child labour within the same bracket increased to 29,2 per cent. Approximately 73,9 per cent of these children worked in agriculture and fishing, and another 14,5 per cent in the services industry.²⁶ A few children were also involved in mining, quarrying, manufacturing and construction.²⁷ Most of the children worked less than 40 hours a week, while a small percentage of 5,6 per cent worked more than 40 hours.²⁸ Forty hours a week would mean that a child works not less than 8 hours daily. The 2020 statistics do not in any way show a reduction or improvement in Ghana's fight against child labour. Rather, it supports the conclusion that the number of children working illegally has risen.

Admittedly, generating child labour statistics can be difficult and may not always reflect the facts on the ground. Although child labour is work that is said to be detrimental to a child's welfare, the statistics less often reflect this and may include children who are involved in light work. Lieten, an expert on childhood studies and child labour, asserts:²⁹

Recording one figure for the complex category of child labour, and analysing trends, equates putting apples and oranges in one basket; it includes children who do or do not go to school and may do light work in and around the household (eg on the family farm), as well as

20 Ghana Statistical Service *Ghana Living Standards Survey Round 6* (Ghana Statistical Service 2014) 58.

21 Ghana Statistical Service (n 20) 59.

22 As above.

23 As above.

24 Using a cedi-to-United States dollar exchange rate of 12,99 cedis to 1 United States dollar as of 12 April 2024.

25 Ghana Statistical Service (n 20) 60.

26 Ghana Statistical Service *Ghana Living Standards Survey Round 7* (2019) 106.

27 Ghana Statistical Service (n 26) 107.

28 Ghana Statistical Service 108.

29 GK Lieten 'Introduction: The worst forms of child labour in Latin America' in GK Lieten (ed) *Hazardous child labour in Latin America* (2011) 9.

children who are at work most of the day and most of the year and who are impaired in their normal development as a child.

In Ghana, especially, Hilson, a scholar of mining and development in Africa, has suggested that the data from the Statistical Service about child labour in agriculture is

misleading because [such figures] stem from a misdiagnosis of the role smallholder agriculture plays in Ghana altogether ... 80 per cent of national agricultural production originates from smallholder farms of less than two hectares in size, which are 'linked largely to household subsistence' (Aryeetey and Nyanteng, 2006: 7), not export markets.³⁰

Thus, he argues that the figures include a category of children who simply accompany their parents to the farm. The information from the Ghana Living Standards Surveys fails to differentiate between the varying degrees of severity in the work performed by child workers, whether the work done is light work, hazardous work or those forms of work known as the worst forms of child labour. There are also no definitions of what even constitutes child labour. Thus, the statistics seem to reflect child work generally and not child labour.

Nonetheless, studies carried out by state agencies, human rights organisations and non-governmental organisations illustrate the extent of the problem. In 2021 the Commission of Human Rights and Administrative Justice published a study on child labour in the communities along Ghana's Volta Lake.³¹ The research was conducted in communities in the Kpando municipality, Effutu municipality, Ada-East district and the South Dayi/Afadjato districts. The research revealed that many children under the age of 17 years were employed to perform fishing or fishing-related activities on the Volta Lake. These activities include mending nets, paddling canoes, diving, scooping water from canoes, preparing baits, salting, and smoking fish. These children were often poor, hardly attended school and were even trafficked. In Ada-East, children were often trafficked and exchanged for money or material benefits.³² Trafficked children were transported to other communities close to the lake under the pretext that they were to be apprenticed or offered a livelihood. It was also noted that trafficked children were often abused and, in some circumstances, died. Children in all the communities worked long hours, sometimes at night, with little to no rest periods and were poorly remunerated. It was noted that

30 G Hilson 'Child labour in African artisanal mining communities: Experiences from Northern Ghana' (2010) 41 *Development and Change* 543.

31 Commission on Human Rights and Administrative Justice (CHRAJ) *Qualitative study of child labour in Ghana's fishing communities along the Volta Lake* (2021).

32 CHRAJ (n 31) 26.

generally, there was a preference for child labour instead of adult labour. Most formal actors indicated that children were easy to employ and offer cheap labour. They were smart, energetic, dutiful, malleable and seldom complained under bad working conditions. Besides, children were better skilled than adults at diving and paddling and could paddle for long distances.³³

Furthermore, it is important to acknowledge that in the majority of the impacted communities, educational institutions were either absent or poorly resourced.

Amnesty International has also published a report on child labour in Ghana, Nepal and Uganda titled, “‘I must work to eat’: COVID-19, poverty, and child labour in Ghana, Nepal and Uganda’.³⁴ Amnesty interviewed about 24 working children in Ghana.³⁵ Most of these children stated that the pandemic had adversely affected their family’s income and that entering the labour force was the only way to support their families.³⁶ These children, who worked in industries such as fishing, transportation and gold mining, worked long hours, were poorly paid and handled toxic substances, which affected their health.³⁷ Some of these children earned as low as two cedis a day (US\$ 0,15)³⁸. Fifteen of the children interviewed worked in gold mining and, among other things, blasted ores, carried heavy loads and handled toxic chemicals such as mercury.³⁹ The lack of protective gear and the fumes and dust emanating from mining activities adversely affected the children’s health.⁴⁰

Several foreign news outlets have also reported stories of impoverished children in Ghana who work on cocoa farms instead of attending school.⁴¹ The use of children on cocoa farms is singularly damaging to the country’s reputation and the goodwill of key players in the chocolate industry, both of which have committed to the elimination of child labour in Ghana.⁴² The pressure to remove

33 CHRAJ (n 31) 13.

34 Amnesty International ‘*I must work to eat’: COVID-19, poverty and child labour in Ghana, Nepal and Uganda* (2021).

35 Amnesty International (n 34) 44.

36 Amnesty International (n 34) 46-48.

37 Amnesty International (n 34) 48-52.

38 Using a cedi-to-United States dollar exchange rate of 12,99 cedis to 1 United States dollar as of 12 April 2024.

39 Amnesty International (n 34) 50-52.

40 As above.

41 ‘Why is the cocoa industry still using child workers in Ghana?’ 5 January 2023, <https://www.youtube.com/watch?v=DyZnkXQUL6M&t=33s> (accessed 14 February 2024); ‘Iconic chocolate brand linked to child labour in Ghana’ 1 December 2023, <https://www.youtube.com/watch?v=fYapy2GJN9E&t=214s> (accessed 14 February 2024).

42 The private sector players in the cocoa industry signed the Harkin Engel Protocol in which they committed to work together with governments other key players

children from cocoa farms is also a result of increased advocacy on the human and business front, where there is a call to make supply chains more sustainable, including eliminating child labour in the industry.⁴³

The evidence suggests that across the country, there are children engaged in hazardous work, some of which constitute the WFCL. It is well documented that child labour has adverse effects on children. Children in child labour are more likely to have poor educational outcomes.⁴⁴ They are also more likely to drop out of school.⁴⁵ They may also suffer physical and mental harm or exhaustion when they do hazardous work. Inevitably, the inability of such children to fully pursue their education means that they are unable to reap the dividends of education and will often end up poor with little to no room for social mobility.⁴⁶ The result is the perpetuation of intergenerational poverty, which itself perpetuates child labour.⁴⁷

Child labour in Ghana, though a result of poverty and economic deprivation and impoverishment, is also caused by other factors. For instance, it has been suggested that cultural beliefs also impact Ghanaians' perceptions about child labour.⁴⁸ Some Ghanaians believe that children's involvement in work, even hazardous work, is part of the socialisation process. In other words, children can become better and more productive adults if they work alongside their parents early on in life. While children's work may be beneficial, the cultural belief underpinning it has often been used to involve children in hazardous work. Whatever the case, measures to eradicate child labour will have to combine legal standard-setting measures with policy interventions targeted at educating Ghanaians and empowering the economically-vulnerable segments of society.

to eliminate child labour in the industry. The Framework of Action to Support Implementation of the Harkin-Engel Protocol was signed in 2010 to provide more specific steps to eliminate child labour in the industry in Ghana and Côte d'Ivoire. See also a report published by the organisation Voice Network about sustainability interventions in the cocoa industry; AC Fountain & FH Adams *Cocoa Barometer* (2022).

43 C Pugmire 'Child labour in Ghana' (2022) 3 *Ballard Brief* 14-18.

44 ES Hamenoo, EA Dwomoh & M Dako-Gyeke 'Child labour in Ghana: Implications for children's education and health' (2018) 93 *Children and Youth Services Review* 251-252.

45 Hamenoo and others (n 44) 252.

46 Pugmire (n 43) 17-18.

47 As above.

48 E Takyi 'Child labour in Ghana: Ecological perspective' (2014) 4 *Developing Country Studie* 38; O Adonteng-Kissi 'Causes of child labour: Perceptions of rural and urban parents in Ghana' (2018) 91 *Children and Youth Services Review* 59, 62.

3 Ghana's legal obligations under international labour law on the elimination of child labour

Several international legal instruments address the issue of child labour directly or indirectly. Among these instruments are those that outlaw slavery and protect children against exploitation. However, the most influential instruments in the area of child labour are the ILO Minimum Age Convention 138 of 1973⁴⁹ and its Minimum Age Recommendation 146 of 1973,⁵⁰ and the ILO Worst Forms of Child Labour Convention 182 of 1999⁵¹ and its Recommendation 190.⁵² Convention 138 and Convention 182 are considered fundamental to the ILO under its 1998 Declaration on Fundamental Principles and Rights at Work.⁵³ This means that even states that have not ratified the conventions are obliged to respect their provisions. Nonetheless, Ghana has ratified both Conventions 138 and 182.⁵⁴

While we acknowledge the contribution of child rights treaties such as the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (African Children's Charter), we limit our discussion to the ILO Conventions as they most directly address the issue of child labour. This part parses the two conventions to first identify Ghana's legal obligations on the elimination of child labour and the degree to which domestic child and labour laws fulfil these obligations.

49 ILO Minimum Age Convention 138 of 1973, 58th Conference Session, Geneva, 26 June 1973 (Convention 138).

50 ILO Recommendation R146: Minimum Age Recommendation, 58th Conference Session, Geneva 26 June 1973 (Recommendation 146).

51 ILO Worst Forms of Child Labour Convention 182 of 1999, 87th Conference Session, Geneva, 17 June 1999 (Convention 182).

52 ILO Recommendation R190: Worst Forms of Child Labour Recommendation 190, 87th Conference Session, Geneva, 17 June 1999 (Recommendation 190).

53 ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, 86th Conference Session, Geneva, 1998 amended at the 110th session, Geneva, 2022. Art 2 of the Declaration states: 'Declares that all members, even if they have not ratified the Conventions in question, have an obligation, arising from the very fact of membership in the organisation, to respect, to promote and to realise, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) *the effective abolition of child labour*; (d) the elimination of discrimination in respect of employment and occupation; and (e) a safe and healthy working environment' (our emphasis).

54 Ghana ratified Convention 138 on 6 June 2011 and Convention 182 on 13 June 2000.

3.1 Convention 138 and Recommendation 146

In 1973 the ILO adopted Convention 138 to provide a single minimum age applicable to all industries to replace the many minimum age conventions.⁵⁵ Recommendation 190 gives more detail on the Convention's provisions.

Under Convention 138, state parties are under a duty to develop a national policy to ensure the elimination of child labour and to 'raise progressively the minimum age of admission to employment or work to a level consistent with the fullest physical and mental development of young persons'.⁵⁶ Recommendation 143 asks that the needs of children and young people be prioritised in national development and that special attention be given to employment, poverty-alleviating social and economic measures, social security and family welfare measures, education and training, and the development of other facilities necessary for the development of children and young people.⁵⁷ Other policy considerations should address the needs of children without families, migrant children and nomadic children. Full-time school attendance should also be pursued up to an age equal to the minimum age requirements in article 2 of the Convention.⁵⁸

Each ratifying state must stipulate a minimum age for admission to work, which shall coincide with the age at which children complete compulsory education and, in any case, the age should not be lower than 15 years.⁵⁹ However, developing countries whose 'economy or educational facilities are insufficiently developed' may prescribe 14 years as the minimum age.⁶⁰ Under Article 2(1), no person under the prescribed age shall be admitted to work of any form.⁶¹ States are encouraged to progressively take steps to increase the age to 16 years for all levels of economic activity.⁶² In the specific case of agriculture, states are encouraged to, at the very least, adopt a minimum age for plantations and commercial agriculture.⁶³

55 For a full list of minimum age conventions, see M Borzaga 'Limiting the minimum age: Convention 138 and the origin of the ILO's action in the field of child labour' in G Nesi, L Nogler & M Pertile (eds) *Child labour in a globalised world: A legal analysis of ILO action* (2008) 25-26.

56 Art 1 Convention 138.

57 Pt 1 Recommendation 146.

58 Para 4 Recommendation 146.

59 Arts 2(1) & (3) Convention 138; permits may, however, be granted for children's participation in artistic dances subject to reasonable conditions; see art 8.

60 Art 2(4) Convention 138.

61 Pt II Recommendation 146.

62 Pt II paras 6 & 7 Recommendation 146.

63 Pt II para 8 Recommendation 146.

Children are permitted to do light work under the Convention. Light work is work that meets two conditions: The work is not likely to harm the child's health or development, and the work does not affect the child's attendance at school or participation in vocational or training programmes.⁶⁴ The state may permit only children between 13 and 15 years to engage in light work.⁶⁵ Where light work is permitted by a state, the state must stipulate the number of hours and the conditions under which the child should work.⁶⁶ Under the Convention, work done by children in school as part of a vocational, technical or training programme is also permitted.⁶⁷

For hazardous work, described as work that 'is likely to jeopardise the health, safety or morals of young persons', the minimum age must be at least 18 years.⁶⁸ Each state, in consultation with employers and workers' organisations, determines the tasks that qualify as hazardous work.⁶⁹ In determining what constitutes hazardous work, states are encouraged to have regard to international labour standards, particularly those concerning dangerous substances, agents or processes.⁷⁰ The list may be revised by states in light of scientific and technological advancement.⁷¹ However, after consulting employers and workers' organisations, states may peg the minimum age for hazardous work at 16 years only if children above that age have been sufficiently trained and are fully protected from the adverse effects of such work.⁷² While states can exclude limited categories of work for which the application of the Convention will be difficult, states cannot exclude hazardous work.⁷³

The Convention grants more concessions to developing countries, which may initially limit the Convention's application.⁷⁴ However, there are certain industries to which the limitations may not extend, and these are mining and quarrying, manufacturing, construction, electricity, gas and water, sanitary services, transport, storage and communications and commercial agriculture.⁷⁵

Every state must undertake all requisite measures within its jurisdiction to effectively implement and enforce the provisions

64 Art 7(1) Convention 138.

65 As above.

66 Art 7(3) Convention 138.

67 Art 6 Convention 138.

68 Art 3(1) Convention 138.

69 Art 3(2) Convention 138.

70 Pt III para 10(1) Recommendation 146.

71 Para 10(2) Recommendation 146.

72 Art 3(3) Convention 138.

73 Art 4 Convention 138.

74 Art 5 Convention 138.

75 Art 5(3) Convention 138.

outlined in the Convention. This shall include legal rules on penalties and registers or documents to be kept by employers with the names, ages and dates of birth of child workers.⁷⁶ It is proposed that the legal rules should assign the responsibility of enforcement to an effective person or authority.⁷⁷ The recommendation part of this article advocates using labour inspections to ensure compliance with the provisions outlined in the Convention.⁷⁸

Although the Convention was the first truly global instrument to address child labour in all economic activities and at all levels, it was not rapidly ratified as expected, especially by developing countries.⁷⁹ According to Borzaga, a legal academic, the reasons why many states in the Global South were not keen to ratify the Convention were cultural, legal and economic. Borzaga states that some of these states were less than likely to ratify a highly-prescriptive instrument – prescriptive in the sense that it indicated minimum age requirements to be applied.⁸⁰ The Convention was also said to have been based on a Western model of childhood, which put children out of the workplace. The Western model clashed with the model from the Global South where ‘children are considered mature starting with adolescence and thus are asked to play a frequently important role in order to increase their family’s well-being [and] the value of family unity and solidarity definitely prevails over a presumed right of children not to work’.⁸¹ As of 1919, when the first minimum age convention was adopted, many countries in the Global South were still under colonial rule. Despite the subsequent decolonisation of the Global South, their admission into the ILO, and the flexibility and concession made for developing countries, the core philosophy of minimum age as the sure way to rid the world of child labour loomed heavily over the Convention. Consequently, numerous states in the Global South opted not to ratify it. In light of these reasons, it is not surprising that Ghana only ratified the Convention in 2011.

Although Ghana’s Children’s Act 560 of 1998 precedes its ratification of Convention 138, its provisions reflect the letter and spirit of Convention 138. Section 87 of the Children’s Act outlaws exploitative labour, to which the law refers as work that ‘deprives the child of its health, education and development’.⁸² The Act prohibits night work for children and defines night work as work that takes

76 Arts 9(1) & (3) Convention 138.

77 Art 9(2) Convention 138.

78 Pt V, para 14(1)(3) Recommendation 146.

79 Borzaga (n 55) 40–41.

80 Borzaga (n 55) 40.

81 Borzaga (n 55) 54.

82 Sec 87 Children’s Act 1998 (Act 560).

place between 20:00 and 06:00.⁸³ The minimum age of admission to work for children is 15 years,⁸⁴ while the minimum age for light work is 13 years.⁸⁵ Light work is defined as 'work which is not likely to be harmful to the health or development of the child and does not affect the child's attendance at school or the capacity of the child to benefit from school work'.⁸⁶

The minimum age for hazardous work is 18 years, and hazardous work relates to work that involves the following categories:⁸⁷

- (a) going to sea;
- (b) mining and quarrying;
- (c) portering of heavy loads;
- (d) manufacturing industries where chemicals are produced or used;
- (e) work in places where machines are used; and
- (f) work in places such as bars, hotels and places of entertainment where a person may be exposed to immoral behaviour.

The minimum age for any apprenticeship in the informal sector is 15 years or after the completion of basic school.⁸⁸ It seems that the applicable age will be whichever is later. Every apprenticeship should be preceded by an apprenticeship contract entered into between the parents or guardians of the apprentice and the craftsperson according to the customs of the trade.⁸⁹ The agreement, which must be in writing, must include provisions relating to the cost of protective equipment and tools, which cost is borne by the parent or guardian. It should also outline the craftsperson's commitment to providing shelter for the child and paying an allowance, which should not be less than half of the daily minimum wage.⁹⁰ The agreement lapses immediately if either party breaches it.⁹¹ The informal sector is characterised by a high degree of illiteracy and informality; thus, contracts or agreements are unlikely to be reduced to writing. Also, the requirement that the apprenticeship agreement in the informal sector be documented is impractical and unrealistic. It is more likely to be violated than followed.

The child is entitled to be released upon completion of the apprenticeship, and the conditions for this release should not be

83 Sec 88 Children's Act 1998 (Act 560).

84 Sec 89 Children's Act 1998 (Act 560).

85 Sec 90(1) Children's Act 1998 (Act 560).

86 Sec 90(2) Children's Act 1998 (Act 560).

87 As above.

88 Sec 98 Children's Act, 1998 (Act 560).

89 Secs 100 (1) & (2) Children's Act, 1998 (Act 560).

90 Secs 101(3) & (4) Children's Act 1998 (Act 560).

91 Sec 101(5) Children's Act 1998 (Act 560).

exploitative. A certificate of release shall also be issued to the child apprentice.⁹² Disputes about the apprenticeship agreement are to be referred to the district labour officer for resolution.⁹³

In line with the provisions of the ILO Convention, which requires states to legislate the keeping of registers, section 93 of the Children's Act indicates that an employee in an industrial undertaking must keep a register of children, including their dates of birth.⁹⁴ An industrial undertaking is explained to mean any form of work that is not related to commerce or agriculture. These forms of work include mining and quarrying, manufacturing and related activities, transportation and related activities.

There are two enforcement mechanisms in the Act. One applies to the formal sector, and the other applies to the informal sector. For the formal sector, enforcement is carried out by labour officers whose role is to carry out relevant enquiries to ensure that the provisions of the Act are strictly complied with in the formal sector.⁹⁵ This provision, though well-intentioned, is spectacularly vague and unhelpful. Where, how and when the labour officers should act are unstated. Related provisions do not help much. For instance, the labour officer may interrogate any person and, if satisfied that the provisions have not been complied with, should report the non-compliance to the police for investigation and prosecution. The authority of labour officers regarding child labour is so limited that it raises questions about how they can effectively enforce the provisions of the Children's Act. Contrary to these very narrow powers given to labour officers under the Children's Act, labour inspectors have broad powers under the Labour Act 651 of 2003. They can inspect any workplace during working hours, carry out any probe to ascertain compliance with the Labour Act and its regulations, interview employees or workers in respect of compliance, demand that books, registers and necessary documents be produced for inspection, and enforce notices.⁹⁶

In the informal sector, enforcement is entrusted to the District Assemblies through their Social Services Sub-Committee and the Department of Social Welfare.⁹⁷ A member of the social services, who has interrogative powers like labour officers, is under a duty to report non-compliance to the police for investigation and prosecution.⁹⁸

92 Sec 102 Children's Act 1998 (Act 560).

93 Sec 103 Children's Act 1998 (Act 560).

94 Sec 93(1) Children's Act 1998 (Act 560).

95 Sec 95(1) Children's Act 1998 (Act 560).

96 Sec 124 Labour Act 2003 (Act 651).

97 Sec 96(1) Children's Act 1998 (Act 560).

98 Secs 96(2) & (3) Children's Act 1998 (Act 560).

If the offender is a family member, a member of the social services subcommittee or the Department may ask that a social inquiry report be prepared. The police may consider the report before initiating any action.⁹⁹

The Children's Act includes penalties for non-compliance. Violation of the provisions on child work is an offence, punishable by a fine of not more than 1 000 cedis, a term of imprisonment of not more than two years, or both.¹⁰⁰ Failure to keep registers attracts a fine of not less than 50 cedis.¹⁰¹

3.2 Convention 182 and Recommendation 190

In the 1990s, the ILO and other international organisations recognised that Convention 138 was not working and gradually adjusted its strategy by focusing on the progressive elimination of only the WFCL. In 1998 a new convention was proposed to deal with the matter. Under article 1, states agreed to 'take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency'. What constitutes WFCL is described in article 3 of the Convention as follows:

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

Under the Convention, states must identify the types of work that constitute WFCL in their territories in collaboration with employers and workers' organisations in accordance with international standards.¹⁰² The list is to be reviewed periodically.¹⁰³

99 Secs 96(5) & (6) Children's Act 1998 (Act 560).

100 Using a cedi-to-United States dollar exchange rate of 12,99 cedis to 1 United States dollar as of 12 April 2024, 1 000 cedis would amount to US \$76,98.

101 Sec. 94 Children's Act 1998 (Act 560); using a cedi-to-United States dollar exchange rate of 12,99 cedis to 1 United States dollar as of 12 April 2024, 50 cedis would amount to US \$3,85.

102 Arts 4(1) & (2) Convention 182.

103 Art 4(3) Convention 182.

States have the responsibility to consult their employers and workers' organisations to set up mechanisms to implement the Convention in their respective jurisdictions.¹⁰⁴ States have to design and implement programmes geared towards eliminating the worst forms of child labour and implement them in collaboration with the relevant government institutions, employers and workers' organisations.¹⁰⁵ States are to equally consider the use of criminal sanctions, education, and time-bound measures to prevent and remove children from these WFCLs, with special focus given to vulnerable children and girls.¹⁰⁶ The breadth of programmes that should be implemented is captured in the recommendation part. States have to put policy measures in place to collect and analyse data on child labour, establish monitoring institutions and mechanisms, and criminalise child slavery and slave-like practices, the trafficking of children, child sex work and child pornography, and the use of children for illicit work.¹⁰⁷

It should also be noted that Convention 182 does not define some key terms used in framing its definition of the instances that constitute WFCL. For instance, it does not define forced labour and child pornography. Thus, it has been suggested that the definitions of these terms in related instruments should be utilised to fill in the gaps.¹⁰⁸ For instance, the ILO Forced Labour Convention defines forced 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'.¹⁰⁹ The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography may also give insight into the meaning of child pornography.¹¹⁰

Convention 182, unlike Convention 138, found favour with many countries, which soon ratified it. Convention 182 became the first international ILO instrument to be ratified by all member states – a record indeed.¹¹¹ Analysis of the Convention by the ILO's Committee

104 Art 5 Convention 182.

105 Art 6 Convention 182.

106 Art 7 Convention 182.

107 Pt III paras 5-16 Recommendation 190.

108 D Rishikesh 'The worst forms of child labour: A guide to ILO Convention 182 and Recommendation 190' in G Nesi, L Nogler & M Pertile (eds) *Child labour in a globalised world: A legal analysis of ILO action* (2008) 85-87.

109 ILO Forced Labour Convention (14th Conference Session, Geneva 28 June 1930) art 2(1).

110 Art. 2 Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (adopted 25 May 2000, entered into force 18 January 2002) 2171 UNTS 227 (Optional Protocol to the CRC).

111 ILO & UNICEF (n 1) 58.

of Experts on the Application of Conventions and Recommendations (CEACR) also shows that the Convention has made massive inroads into global and domestic interventions against child labour. It has been noted, for instance, that many states have passed legislation to prohibit child trafficking and forced slavery, child prostitution and the use of children for hazardous work.¹¹² For hazardous work, in particular, states have either prohibited such work generally or introduced a list of hazardous work.¹¹³ Many states have also introduced time-bound measures to eradicate WFCL.¹¹⁴ These time-bound measures may apply to some forms of hazardous work, and others may address hazardous work in specific sectors such as construction, mining and plantation farming.¹¹⁵ It has also been suggested that some time-bound measures identify priority areas within its broad framework, and these priority areas could be child domestic labour, mining and quarrying, deep-sea fishing, footwear-making, and so forth.¹¹⁶

A review of Ghana's child and labour laws shows that no piece of legislation references WFCL. Perhaps WFCL are covered by other enactments. For instance, the Criminal Offences Act 29 of 1960 bans slavery and customary servitude. The Human Trafficking Act 694 of 2005 also criminalises the trafficking of persons within and outside Ghana's borders.

4 Policy measures and institutional responses to child labour

While the country appears to have not effectively tackled the problem of child labour, it is important to acknowledge that some interventions have in the past been introduced to address the issue. This part examines some of the policy measures and interventions that have been implemented by the government of Ghana and other partners to address child labour in Ghana since 2000.

Ghana adopted a National Plan for the Elimination of Child Labour in 2001 with the help of ILO-IPEC and the United Nations Department of Labour. The programme aimed to eliminate customary servitude in the Volta region, domestic servitude in the Kumasi metropolis, and child labour in the tourism industry in some areas of the Central

112 Rishikesh (n 108) 92-93.

113 Rishikesh (n 108) 96-97.

114 As above.

115 Rishikesh (n 108) 97.

116 As above.

region.¹¹⁷ The project also sought to prevent the movement of child porters, popularly known as *kayaye*, from Northern Ghana.¹¹⁸ The project was instrumental in establishing the Child Labour Unit at the Ministry of Manpower Development and Employment, now the Ministry of Employment and Labour Relations, and the National Steering Committee on Child Labour. The National Steering Committee is a multisectoral committee of representatives from different government ministries, departments and agencies working together to enhance cross-sectoral collaboration in the fight against child labour.

The ILO-IPEC Time Bound programme was subsequently initiated in 2004 to help Ghana eradicate WFCL.¹¹⁹ District and community child protection committees were set up and tasked with developing child labour plans and monitoring systems.¹²⁰

Hilson argues that the Time Bound programme was based on a 'small information base and inconclusive evidence about the drivers and implications of child labour in rural Ghana' as the statistics often relied on by the ILO, and the government data did not consider the fact that many children who worked on farms were in fact children 'going to farm' and not children being exploited.¹²¹ Hilson, who conducted his research in the artisanal mining communities of the Talensi-Nabdam district of the Upper East region, indicates that the increase in the number of children who supposedly are engaged in artisanal mining activities may be part of a result of widespread economic diversification in the area. Thus, some of the children in mines are actually children who accompany their parents to the mine and perform light work just like children who 'go to farm' with their parents.¹²² Hilson also argues that the link between education and child labour is often drawn as inversely related, which is more complex than it is, as there is evidence to show that many of these children work to support their education.¹²³

Ghana also participated in the ILO-IPEC's West Africa Cocoa/Commercial Agriculture Programme (WACAP), which was launched in 2002 and implemented in Ghana, Guinea, Cameroon, Côte

117 ILO *Evaluation Summaries: National programme for the elimination of child labour in Ghana* (2004) 1.

118 As above.

119 Hilson (n 30) 452.

120 As above.

121 Hilson (n 30) 453.

122 As above.

123 Hilson (n 30) 461-465.

d'Ivoire and Nigeria.¹²⁴ The US\$6 million programme carried out studies in child labour, particularly in the cocoa sector, developed a training manual for farmers, improved basic education and tested a novel child monitoring and reporting mechanism in some cocoa-producing districts in Ghana.¹²⁵ The project successfully withdrew 6 223 children from child labour and placed them in formal education, while another 3 457 were placed in vocational training programmes.¹²⁶

The country adopted a new national plan of action towards eliminating child labour (NAP I) for the years 2009 to 2016. The NAP phase had among its objectives the review, revision and enforcement of the laws on child labour; making education affordable, accessible and quality, especially in deprived communities; and strengthening institutions and empowering them to identify, withdraw and reintegrate children who are victims of the worst forms of child labour. The NAP's performance was lacklustre, and it was blamed on institutional, technical and logistical incapacity.¹²⁷ During the period, though, the government developed a Hazardous Activity Framework (HAF), a standard operating procedure to address the worst forms of child labour and community and district action plans in over a hundred districts in the country.¹²⁸ The Anti-Human Trafficking Unit of the Ghana Police Service was also noted for intercepting child trafficking incidents.¹²⁹

In 2009 the Eliminating the Worst Forms of Child Labour in West Africa and Strengthening Sub-Regional Cooperation through ECOWAS I project was initiated to support the efforts of Côte d'Ivoire, Ghana and Nigeria in fighting child labour and by enhancing cooperation among sub-regional policy makers in West Africa.¹³⁰ This was followed up by the Eliminating the Worst Forms of Child Labour

124 ILO 'West Africa cocoa/commercial agriculture programme to combat hazardous and exploitative child labour (Cameroon, Côte d'Ivoire, Ghana, Guinea and Nigeria)', https://www.ilo.org/wcmsp5/groups/public/---africa/---ro-abidjan/-/ilo-abuja/documents/publication/wcms_303658.pdf (accessed 17 February 2024).

125 Bureau of International Labour Affairs 2004 *Findings on the worst forms of child labour – Ghana, United States Department of Labour* (2005), <https://www.refworld.org/reference/annualreport/usdol/2005/en/62366> (accessed 20 February 2024).

126 ILO (n 124) 4.

127 Ministry of Employment and Labour Relations and Partners *The national plan of action phase II (NPA2) for the elimination of the worst forms of child labour in Ghana – 2017-2021* (NPA II) 22-23 (NPA II).

128 NPA II (n 127) 22.

129 As above.

130 'Eliminating the worst forms of child labour in West Africa and strengthening sub-regional cooperation through ECOWAS – I', https://www.ilo.org/africa/WCMS_303810/lang--en/index.htm (accessed 20 February 2024).

in West Africa and Strengthening Sub-Regional Cooperation through ECOWAS II.¹³¹

In 2015 the Convening Stakeholders to Develop and Implement Strategies to Reduce Child Labour and Improve Working Conditions in Artisanal and Small-Scale Gold Mining (CARING Gold Mining) Project by ILO-IPEC and the United States Department of Labour was launched to reduce the child labour in artisanal small-scale mining in Ghana and the Philippines.¹³²

The country adopted another national action plan (NAP II) in 2017 to run from 2017 to 2022.¹³³ The goal of the policy was 'to reduce the worst forms of child labour to the barest minimum (<10 per cent), by 2021 while laying strong social, policy and institutional foundations for the elimination and prevention of all forms of child labour in the longer term'.¹³⁴

The NAP II identified specific priority areas that were to receive specific focus, with emphasis placed on the WFCL.¹³⁵ Among the priority areas were public awareness creation and the implantation of education, rural economy and youth employment policies, law enforcement, withdrawal of children aged 15 or less from child labour and the protection of those above 15 from hazardous work and the operationalisation of the HAF. The NAP II blended upstream measures with community and district mechanisms to directly implement interventions where they occurred. The government, committed to achieving SDG 8.7, adopted the Protocols and Guidelines for Establishing Child Labour Free Zones (CLFZs) in 2019, to complement the NAP II. A CLFZ is defined as 'a geographical area (metropolitan, municipal or district) in which incidence of child labour is eradicated'.¹³⁶ The CLFZ Protocol contains the conditions and modalities under which a geographical area may be declared a CLFZ.

¹³¹ 'Eliminating the worst forms of child labour in West Africa and strengthening sub-regional cooperation through ECOWAS – II', https://www.ilo.org/africa/WCMS_304007/lang-en/index.htm (accessed 20 February 2024).

¹³² 'Convening stakeholders to develop and implement strategies to reduce child labour and improve working conditions in artisanal and small-scale gold mining (CARING Gold Mining) project', https://www.ilo.org/ipec/projects/global/WCMS_460499/lang-en/index.htm (accessed 20 February 2024).

¹³³ NPA II (n 127).

¹³⁴ NPA II (n 127) 28.

¹³⁵ NPA II (n 127) 24.

¹³⁶ Ministry of Employment and Labour Relations and Partners *Establishing child labour free zones (CLFZS) in Ghana: Protocols and guidelines* 5.

While the NAP II appeared to have worked better than its predecessor, several issues remained.¹³⁷ Despite increased awareness of child labour, a significant number of children continued to engage in perilous labour in mines, at sea and other places.¹³⁸ A lack of resources also hindered the ability of the Child Labour Unit to monitor compliance.¹³⁹ Although social intervention services had been expanded, there was poor communication between the Ministry of Employment and Labour Relations and the Ministry of Gender, Children and Social Protection.¹⁴⁰ Both used different management and monitoring systems. The Ministry of Employment and Labour Relations used the Ghana Child Labour Monitoring System (GCLMS), while the Ministry of Gender, Children and Social Protection used the Social Welfare Information Management System (SWIMS). Thus, social protection efforts entered into the SWIMS were not recorded in the GCLMS.¹⁴¹ Additionally, it was found that there was no coordination between the district labour officers and the social services sub-committees of the district because the district labour officers were not members of the sub-committees, which made implementation at the decentralised levels difficult.¹⁴²

In 2021 the European Union (EU) also launched the Trade for Decent Work Project to, among other things, build the country's capacity to enable it to comply with its reporting standards to the ILO's CEACR, help review the list of hazardous work and enhance advocacy towards the elimination of child labour in the cocoa industry.¹⁴³ In 2022 the EU, Ghana and Côte d'Ivoire committed to the Alliance for Sustainable Cocoa initiative and agreed to take time-bound measures to make West African cocoa more sustainable.¹⁴⁴

A new national action plan aimed at building on the successes of NAP II while addressing the defects identified has been adopted for 2023 to 2027.¹⁴⁵ The plan was developed with the support of the United Nations Children's Fund (UNICEF) and the International

137 Ministry of Employment and Labour Relations and Partners *Ghana accelerated action plan against child labour (National plan of action for the elimination of child labour) (2023-2027)* 13-17 (NPA III).

138 NPA III (n 137) 13.

139 As above.

140 NPA III (n 137) 14.

141 As above.

142 As above.

143 'Trade for decent work project – Ghana', https://www.ilo.org/africa/countries-covered/ghana/WCMS_782061/lang--en/index.htm (accessed 21 February 2024).

144 Directorate-General for Trade 'EU, Côte d'Ivoire, Ghana and the Cocoa sector endorse an alliance on sustainable cocoa' 28 June 2022, https://policy.trade.ec.europa.eu/news/eu-cote-divoire-ghana-and-cocoa-sector-endorse-alliance-sustainable-cocoa-2022-06-28_en (accessed 21 February 2024).

145 NPA III (n 137).

Cocoa Initiative. NAP III draws inspiration from the HAF and will focus on child labour in the following priority areas: agriculture; street hawking; begging and portering; illegal small-scale mining and quarrying; transportation; child domestic work; plastic waste and scraps collection; commercial sex exploitation of children (CSEC); and gaming and betting.¹⁴⁶

The NAP III intends to 'build institutional capacity and empower communities to halve child labour in agriculture in particular and all other priority sectors of Ghana by 2027 towards a child labour-free Ghana in the long term'.¹⁴⁷

In order to do this, it establishes a very elaborate institutional framework. The highest policy institution in the framework is the National Steering Committee on Child Labour hosted by the MELR, which has a defined membership.¹⁴⁸ Sub-committees and technical working groups will be formed from these committees.¹⁴⁹ The Child Labour Unit will also be strengthened and renamed the Child Labour Coordinating Secretariat.¹⁵⁰ It is impressive that regional and district labour offices will also have additional roles as regional child labour coordinators and district child labour coordinators, respectively. Where a district does not have a child labour officer, an officer of the Department of Social Welfare may be recognised as the child labour coordinator.¹⁵¹ The child labour coordinators are responsible for implementing the NAP III in their respective locations. For the first time, there is a clear intention to give labour officers a greater role in the fight against child labour. Regional child protection committees, district child protection committees and community child protection committees shall also be established, and regional and district labour officers shall be co-opted into the social services sub-committee of the district assemblies.¹⁵² As part of the activities in the NAP III,

¹⁴⁶ NPA III (n 137) 21.

¹⁴⁷ NPA III (n 137) 22.

¹⁴⁸ From the policy members of the National Steering Committee are representatives from the following: Ministry of Gender, Children and Social Protection; Ministry of Food and Agriculture; Ministry of Fisheries; Ministry of Lands and Natural Resources; Ministry of Education; Ministry of Environment, Science, Technology and Innovations; Ministry of Local Government Decentralisation and Rural Development; Ministry of Interior; Ministry of Justice and Attorney General; the Trades Union Congress (TUC) and the Ghana Employers Association; Ghana Cocoa Board; Fisheries Commission; Minerals Commission, Forestry Commission, Commission on Human Rights and Administrative Justice (CHRAJ); National Development Planning Commission; National Commission for Civic Education (NCCE); Ghana Journalists Association; Federation of Muslim Councils; Christian Council; Civil Society Organisations and a representative of the Private Sector/ Industry; see NPA III (n 137) 24.

¹⁴⁹ NPA III (n 137) 24-25.

¹⁵⁰ NPA III (n 137) 25.

¹⁵¹ As above.

¹⁵² NPA III (n 137) 26-28.

the Attorney-General and the CHRAJ are to develop legislation to implement the Hazardous Activity Framework.¹⁵³

5 Identification of the gaps, limitations and deficiencies in the legal, policy and institutional framework on child labour in Ghana

5.1 The mismatch between the law and policy

The policy framework for the protection of child labour is far advanced and has consistently built on the progress made in previous policy and social interventions. The interventions described above illustrate that child labour in the mining and cocoa industry remains a pressing programme, and efforts have consistently been made over the years to reduce children's involvement in these industries. The development of the HAF is also commendable and, if implemented, will help provide normative ground for eliminating WFCL.

The institutional structure for eliminating child labour has also been strengthened. The National Steering Committee on Child Labour, the National Child Labour Coordinating Secretariat and the various regional, district and community protection committees with various levels of supervisory oversight hold promise for the full implementation of child labour programmes in Ghana.

All these innovations notwithstanding, the core policy documents, the NAPs, admit that there is a need for law reform to reflect higher labour standards and best practices, especially concerning the implementation of the HAF. However, these documents provide limited information regarding the specific nature of these changes or initiatives for legal reform. The various components of the institutional structures have never been officially introduced into the legislation. Labour officers still have very limited powers under the Children's Act, and the enhanced roles that will be given to them under the NAP III are not reflected in the Children's Act. It, therefore, appears to be the case that there is a strong mismatch between the law and the policy.

Other than the legal measures, which will be explained in the succeeding subparts, there is a pressing necessity to amend the Children's Act to incorporate some of the policy measures that

¹⁵³ NPA III (n 137) 38.

have been introduced or will be introduced. For instance, the institutional structure for child work should be more elaborate. The Children's Act, by law, should establish the National Steering Committee, the National Child Labour Secretariat, and the regional, district and community protection committees. The composition of these institutions should be stated, and their functions, duties and conditions under which they hold office should be described. The enhanced roles given to the labour officers should be reflected in the law. In light of this, the distinction between child labour in the formal and informal sectors as regards the enforcement of the provisions on child labour should be jettisoned, and a more collaborative posture between the labour officers and social services sub-committees of the district assemblies should be fostered. To supplement the implementation role of the labour officers, the vague and unhelpful powers given to labour officers to enforce the provisions on child work should be removed. We recommend that all enforcement, investigative and directive powers of the labour officers in the Labour Act should apply when the labour officers enforce the Children's Act provisions on children's work.

Generally, legislative measures possess great legal validity. Accordingly, legislating the various interventions will potentially increase the state's inclination to eliminate child labour. The policy prescriptions, while commendable, could remain merely aspirational.

5.2 There are no legislative provisions on conditions of work for light work

Children who are 13 years or over can do light work. However, the provisions do not specify the conditions of service which should apply when children do light work. The absence of such provisions opens children up to potential labour exploitation and manipulation. We recommend that the Children's Act be amended to introduce minimum labour protections for children engaged in light work.

Drawing inspiration from South Africa's Regulations on Hazardous Work by Children in South Africa,¹⁵⁴ we suggest that, at the very least, conditions of work should include a guarantee from an employer that the child's work will not affect the child's nutrition, access to primary healthcare services, and education if the child

¹⁵⁴ Government of South Africa. Basic Conditions of Employment Act (75 of 1997): Regulations on Hazardous Work by Children in South Africa, No 32862, (2010), https://www.saflii.org/za/legis/consol_reg/rohwbcsa545/ (accessed 21 February 2024) (South African Regulations).

is enrolled in an institution.¹⁵⁵ If a child remains separated from their parents or guardians, it is imperative to establish appropriate measures to guarantee the child's continued attendance at school, adequate shelter, and provision of sufficient bedding, lavatory or washing amenities. It is also imperative to ensure that the child is adequately supplied with nourishing food, either through direct provision or by granting them an allowance that enables them to purchase or obtain such items.¹⁵⁶ A child should be entitled to a minimum wage, and their remuneration should be determined by the successful completion of assigned tasks rather than the amount of work performed.¹⁵⁷ These measures will reduce the incidence of exploitation. There should also be a strict number of hours children are permitted to work. We suggest that no child should work more than eight hours on any day when not attending school or during school holidays.¹⁵⁸ When enrolled in school, children should not be allowed to work more than 20 hours a week.¹⁵⁹

5.3 Updating the hazardous work list

In 2008 the government adopted a policy framework to guide decision making in the area of hazardous work done by children in the Cocoa sector.¹⁶⁰ This policy framework, the Hazardous Child Labour Activity Framework for the Cocoa Sector in Ghana, identified work in the cocoa sector that the state considered hazardous. These included activities such as bush burning and forest clearing. As of 2016, the policy framework has been extended to other sectors where children are found to be doing hazardous work. The policy framework has recognised the insufficiency of the hazardous work list in the Children's Act. A new updated list has been developed, and the following types of work are considered hazardous in Ghana:¹⁶¹

- (1) fishing in open waters, that is, sea, river, lake and lagoon;
- (2) fish processing and sale (fish mongering);
- (3) mining and quarrying;
- (4) crop agriculture – cocoa, rubber, cotton, oil palm, citrus, rice, vegetables and fruits;

¹⁵⁵ Reg 3 South African Regulations.

¹⁵⁶ Reg 4 South African Regulations.

¹⁵⁷ Reg 7 South African Regulations.

¹⁵⁸ Reg 6 South African Regulations.

¹⁵⁹ As above.

¹⁶⁰ Ministry of Man Power, Youth and Employment *Hazardous child labour activity framework for the cocoa sector in Ghana* (2008).

¹⁶¹ Child Labour Unit of the Labour Department Ministry of Employment and Social Welfare (MESW) *Hazardous child labour activity framework for Ghana* (HAF) (nd) 38-39, https://www.cocoainitiative.org/sites/default/files/resources/Hazardous-Activity-Framework_2016-002.pdf (accessed 21 February 2024).

- (5) livestock keeping – cattle herding, goat and sheep rearing;
- (6) domestic work;
- (7) portering and carting of heavy loads, for instance, *kayaye*;
- (8) street hawking;
- (9) street beggars guide;
- (10) scavenging at garbage dumps;
- (11) working in commercial kitchens, that is, chop bars and restaurants;
- (12) working in the hospitality industry, that is, hotels, drinking bars, casinos and nightclubs;
- (13) small-scale textile manufacturing, that is, tie and dye;
- (14) foundries works, that is, aluminium and lead smelting and blacksmithing;
- (15) work at mills and machine shops, that is, sawmills and grinding mills;
- (16) transportation of passengers and goods, that is, drivers' mate;
- (17) workshops and garages, that is, fitting parts, welding and spraying of cars.

However, the Children's Act has not been updated to reflect this list. We join the ILO in calling for the state to 'take the necessary measures to ensure that the HAF is adopted in the near future'.¹⁶² Section 90(2) of the Children's Act should be amended to reflect the updated list in the HAF.

5.4 There is no prohibition on WFCL in armed conflicts and the production of illegal drugs

WFCL in Ghana have been penalised under the Criminal Offences Act 29 of 1960, as amended, and other related statutes such as the Human Trafficking Act 2005. Slavery, trafficking and child prostitution have all been criminalised under these statutes. However, there is no clear prohibition on the use of children in the production of illicit drugs. Although Ghana's Narcotics Control Commission Act 1019 of 2020 creates several drug-related offences, none of these directly target the use of children for the production of such drugs. Hence, we recommend an amendment to Act 1019 to criminalise the use of children in the production of illicit drugs.

¹⁶² International Labor Organisation, 'Observation (CEACR) adopted 2022, published 111th ILC session', 2023, https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID%2CP13100_COUNTRY_ID:4312195%2C103236 (accessed 21 February 2024).

We also note that there is no clear prohibition on the use of children in armed conflict. The state's international obligations under Convention 182 require that steps be taken to remove and shield children from theatres of war. We recommend the inclusion of a provision in Act 29 to criminalise and impose severe penalties on any person who recruits and uses children in armed conflicts.

5.5 Criminalising illegal mining

Children's involvement in illegal mining is uncontested. However, the focus of legislative attention has consistently revolved around the criminalisation of illegal mining and the enhancement of penalties to deter persons from engaging in illegal mining.¹⁶³ The offences have often been about mining without a licence, and the prohibition on foreigners in the small-scale mining industry as main participants or mine service providers, among others. There have been no express provisions on the use of child miners. Thus, we recommend that legislative changes be made to the Minerals and Mining Act 703 of 2006 to criminalise the use of child miners in Ghana. The change should make it a crime to use, permit, require, transport, harbour or receive a child for illegal mining. The payment of 5 000 penalty units or a minimum sentence of seven years, in our view, seems justifiable and sufficiently deterrent to effectively eradicate child labour in the mining sector.

5.6 Extending registers to other undertakings

It is important to note that section 93 of the Children's Act requires employers in industrial undertakings to keep registers of children employed. However, this excludes agriculture and commerce. While we concede that many children who support their families in subsistence agriculture are not victims of child labour but rather are contributing to the sustenance of their families, the prevalence of subsistence agriculture should not serve as justification for excluding all forms of agriculture from strict anti-child labour laws. We also understand that many children do light work and help their families in trading. Again, this should not be a reason to exempt all employers in the commercial sector from complying with the provision on keeping registers. Overall, there is no justification for granting an exemption to plantations, commercial agricultural establishments, and medium to large commercial entities from the requirement

¹⁶³ See Mining and Minerals Amendment Act 2015 (Act 900) and Minerals and Mining (Amendment) Act 2019 (Act 995).

to maintain registers. We, therefore, suggest that the provisions on maintaining registers for employed children be extended to all forms of work save subsistence agriculture and small family-based businesses in which it is safe to conclude that children do only light work.

6 A summary of recommendations and conclusion

Ghana's ambitious target to eliminate child labour by 2025 is a daunting task that can only work if the country follows through with the actual implementation of proposed reforms in its National Action Plan III. Our observations show that some work remains to be done to bring the law in line with the aspirational policy goals in the NAP III. In conclusion, we propose the following:

- (1) The institutional structure for eliminating child labour, introduced and built upon by previous national action plans, should be established as fully-fledged legal institutions under the Children's Act. Labour officers, who will be called child labour coordinating officers in some cases, should also be given the power to enforce the Children's Act by exercising all the powers given to them under the Labour Act.
- (2) Conditions of employment for child workers as regards light work should be introduced. These conditions of service should guarantee the child's nutrition, education, access to health care, arrangements for shelter, hours of work, and remuneration.
- (3) The hazardous work list should be updated to reflect the Hazardous Activity Framework.
- (4) The Narcotics Control Commission Act should be amended to criminalise the use of child workers for illicit drug activities.
- (5) The Criminal Offences Act should be amended to criminalise the use of children in armed conflicts.
- (6) The Minerals and Mining Act should also be amended to criminalise the employment or use of children in mines.
- (7) The obligation to keep registers should be extended to commercial and plantation agriculture and medium to large-scale commercial enterprises.