



POLICY BRIEF

ON CHILD LABOUR IN THE NIGERIAN EXTRACTIVE SECTOR



**AFRICAN CENTRE FOR LEADERSHIP,
STRATEGY & DEVELOPMENT**

(Centre LSD)



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You are the best!

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1.0 BACKGROUND

Child labour is a common phenomenon around the globe, with developing countries being more heavily impacted. Millions of children under the age of 15 years are reportedly engaged in the workforce, while some families depend on income generated by such children who consequently lack proper education and schooling.¹ Working children are the objects of extreme exploitation in terms of toiling for long hours for minimal or no pay. Their work conditions are especially severe, often not providing the stimulation for proper physical and mental development, while many of them endure lives of pure deprivation. Child labour is a menace that has remained one of the great dilemmas of our time.²

In the extractive sector, child labour is a major issue, especially in the artisanal and small-scale mining sector (ASM), as it is estimated that about 1 million children are working in the mines worldwide.³ International Labour Organisation (ILO) estimates reveal that Nigeria has the highest number of Child labourers among ECOWAS countries, with around 10.5 million children toiling under different exploitative conditions. Nationally, it is estimated that children between the ages of 5 and 9 work nearly 18 hours per week on average, largely in unpaid activities, while children aged 10 to 14 years consistently exceed the internationally recognized threshold of 20 hours per week.⁴ According to ILO estimates, around 1 million children are affected by child labour in the mining sector, predominantly in artisanal and small-scale mining (ASM). Most of the work performed by children in the mining sector is considered hazardous and categorized as the worst form of child labour. In ASM, children perform the same work as adults, which involves climbing into (usually self-made) shafts, hammering minerals from rock, or using hazardous chemical substances to separate the minerals from the ore. Working in and around a mine poses a variety of risks for children, e.g. unstable tunnels collapsing or

¹ Grace Ayodele Arowolo, Child Labour In Nigeria: Need For Effective Legislative Framework, International Journal of Legal Studies and Research (IJLSR) Vol. 7 No. 1 March 2018.

² Ibid

³ International Labour Organisation, "Child Labour in the Artisanal and Small-Scale Gold Mining (ASGM) Sector in Nigeria" <<https://www.ilo.org>> accessed 15 September 2024

⁴ UNICEF "Household Services on the Measurement of Child Labour" Mics Methodological Papers, Paper No.7, 2023, Statistics and Monitoring Section, Division of Policy and Strategy, > <https://mics.unicef.org/files/> Accessed 16 September 2024



exposure to toxic gases and, in some cases, leads to death.

Statistics from the ILO report reveal that poverty is the major motivating factor for child labour in Nigeria.⁵ Other notable factors contributing to the incidence of children’s participation in ASM gold mining include the economic downturn and related cutbacks from expansive-scale mining operations and civil strife where ASM activities can be a funding source.⁶ It is important to note that both the Child’s Rights Act of 2003 and the Labour Act⁷ prohibit any form of child labour and prioritise the best interest of a child at all times.⁸ The provisions of Child protection laws in Nigeria have shown that Nigeria has substantially complied with regional instruments relating to Child labour issues.

The challenge remains a gap in the implementation of the policy and legal frameworks that have been adopted to address these challenges. Effective implementation of the provisions of the Child’s Rights Act 2023, which has been domesticated in 35 out of 36 States of Nigeria⁹, and the provisions of the Labour Act¹⁰ prohibition of child labour will address the increasing challenge of child labour in Nigeria, especially in the extractive sector. Also, there is a need for Mineral Right Holders (MRHs) and CSOs working in the Natural resource space to put in place CSR /advocacy programmes that will address the issue of Child labour in the various host communities where they operate.

2.0 ANALYSIS OF THE LEGAL AND POLICY FRAMEWORK

This section will analyse the legal and policy frameworks that prohibit child labour in the extractive industry.

2.1 Analysis of the Legal and Policy Framework

Nigeria has a robust legal and policy framework that prohibits child labour, though there is no regulatory framework that expressly prohibits child labour in the extractive industry. However, various efforts have been made towards the elimination and prevention of child labour in Nigeria through the ratification and domestication of international instruments and the

⁵ International Labour Organisation, “Child Labour in the Artisanal and Small Scale Gold Mining (ASGM) Sector in Nigeria <<https://www.ilo.org>> accessed 14 September 2024

⁶ Maurice Ognonnaya “ How Illegal Mining is driving local conflicts in Nigeria” reliefweb, 16 Jun 2020> <https://reliefweb.int/report/nigeria/how-illegal-mining-driving-localconflicts-nigeria> accessed 16 September , 2024

⁷ Labour Act Cap L1 LFN 2004

⁸ Child’s Right Act 2003, S. 28 and 1

⁹ Partners West Africa Nigeria, <<https://www.partnersnigeria.org/childs-rights-law-tracker>> accessed 17 September 2024

¹⁰ Labour Act Cap L1 LFN 2004

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enactment of domestic laws. The focus in this section is on the domestic laws that prohibit child labour in Nigeria. The domestic Laws and policies that prohibit child labour in Nigeria include the Constitution of the Federal Republic of Nigeria 1999 (as amended), the Child's Rights Act 2003 and the Labour Act, CAP L1, LFN, 2004

The Constitution of the Federal Republic of Nigeria 1999 (as amended) in section 34(1) (c)¹¹ prohibits any form of forced or compulsory labour; this also extends to child labour. Also, the Child's Rights Act (CRA) and the Labour Act prohibit child labour. The Child's Rights Act is a comprehensive legislation which protects the rights of a child in Nigeria; it contains relevant provisions that prohibit child labour. The relevant provisions that prohibit child labour are found in Sections 28, 29 and 30.

Section 28 (1)¹² provides that “subject to this Act, no child shall be (a) subjected to any forced or exploitative labour, (b) employed to work in any capacity except where he is employed by a member of his family on light work of an agricultural, horticultural or domestic character; or (c) required, in any case, to lift, carry or move anything so heavy as to be likely to adversely affect his physical, mental, spiritual, moral or social development; or (d) employed as a domestic help outside his own home or family environment. (2) No child shall be employed or work in an industrial undertaking, and nothing in this subsection shall apply to work done by children in technical schools or similar approved institutions if the work is supervised by the appropriate authority. (3) Any person who contravenes any provision of subsection (1) or (2) of this section commits an offence and is liable on conviction to a fine not exceeding fifty thousand Naira or imprisonment for a term of five years or to both such fine and imprisonment. (4) Where an offence under this section is committed by a body corporate, any person who at the time of the commission of the offence was a proprietor, director, general manager or other similar officer, servant or agent of the body corporate shall be deemed to have jointly and severally committed the offence and may be liable on conviction to a fine of two hundred and fifty thousand Naira”.

Section 29 ¹³ makes the provisions of sections 59-63 of the Labour Act ¹⁴ applicable to children

¹¹ The Constitution of Federal Republic of Nigeria 1999(as amended)

¹² The Child 's Right Act 2003

¹³ Ibid

¹⁴ Labour Act Cap L1 , LFN 2004

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under the CRA. Section 30 (1) prohibits the buying, selling, hiring or dealing in children. Section 32 (2) prohibits the use of children for the following: begging for alms, prostitution, domestic or sexual labour or other immoral purposes; as a slave or for practices similar to slavery-like, sale or trafficking, debt bondage or serfdom and forced or compulsory labour, hawking of goods or services on main streets, brothels or highways, for production of pornography or pornographic performance, for the production or trafficking of illegal drugs and for any purposes that deprive the child the opportunity to attend and remain in school.

The Labour Act¹⁵ in Section 59 (1) provides that “no child shall (a) be employed or work in any capacity except where he is employed by a member of his family on light work of an agricultural, horticultural or domestic character approved by the Minister; or (b) be required in any case to lift, carry or move anything so heavy as to be likely to injure his physical development. Section 60 prohibits the employment of children in night work except for young persons who are over the age of sixteen years and are employed in industrial undertakings like in the manufacture of iron and steel in which reverberatory or regenerative furnaces are used and in the galvanizing of sheet metal or wire (except the pickling process), glass works, manufacture of paper, raw sugar, gold mining reduction work and in cases of emergency.

Section 61¹⁶ prohibits the employment of a young person under the age of fifteen years in any vessel except where the vessel is a school or training vessel, and the work is approved by the Minister and supervised by a public officer or by a public department or where the members of the young person’s family are employed. Under section 62, a register of young persons in industrial undertakings must be kept. Section 63 empowers the Minister to make regulations regarding the provisions of sections 59-62 of the Act, and by virtue of section 64, the penalty on conviction for the contravention of the provisions of sections 59- 62 is a fine of N100.

Nigeria also has the National Policy on Child Labour¹⁷ in place. The policy is complimentary to all existing laws, policies, and regulations regarding all matters relating to children, especially at work. The policy recognises the need for networking among the stakeholders and provides them with the opportunity to contribute to efforts on the elimination of child labour, particularly its worst forms. The ultimate goal of the policy is to provide legally binding and standardised guidelines for actors implementing the national programme on child labour,

¹⁵ Labour Act, Cap L1 LFN 2024

¹⁶ Ibid

¹⁷ National Policy on Child Labour (Phase II) 2022





especially in its worst forms.

Further, Nigeria is a member of the ILO and has ratified the fundamental Conventions for the protection against child labour. These international legal instruments are as follows: the Convention on the Rights of the Child, The Minimum Age Convention No. 138 of 1973, The Programme of Action for the Elimination of the Exploitation of Child Labour, The Convention on the Worst Forms of Child Labour, No. 182 of 198 which calls for the elimination of the worst forms of child labour and The African Charter on the Rights and the Welfare of the Child.

2.2 Judicial Decisions on Child Labour in Nigeria

There are no reported cases of child labour in the extractive industry in Nigeria. However, there are cases of child labour that will be relevant in this policy brief and will also serve as a precedent on cases involving child labour in the extractive industry. In the case of *Attorney General of the Federation v. Ummi Nurrudeen*¹⁸, the accused employed an 11-year-old as a domestic house help outside her hometown. Upon arraignment, the accused pleaded guilty, and his counsel pleaded for leniency. The court awarded a fine of N20,000 or a year of imprisonment in lieu. In another case of the *Federal Republic of Nigeria v. Hassana Ibrahim*¹⁹ where, the accused was charged with procuring 25 children from Kwara State for the purpose of forced labour in Kano State. The court awarded a fine of N10, 000 or a year of Imprisonment in default. The above cases though not in the extractive industry, have shown that Nigeria has domestic laws that prohibit child labour.

2.3 Comparative study of Nigeria Legal Framework and the Regional Instruments (ECOWAS) that prohibit Child Labour in the Extractive Sector.

In the ECOWAS region, child labour is highly persistent in the semi-formal and informal sectors, with a few cases in the formal sector. In its worst forms, child labour in the ECOWAS region is exhibited as the involvement of children in child trafficking, mining and quarrying and in industries involving the use of chemicals, to name a few. Child labour constitutes an

¹⁸ FHC/K/CR/102/08 of 2008 (Nigeria F.H.C) (unreported) cited in Grace Ayodele Arowolo, Child Labour In Nigeria: Need For Effective Legislative Framework, International Journal of Legal Studies and Research (IJLSR) Vol. 7 No. 1 March 2018.

¹⁹ FHC/K/CR/35/08 of 2008 (unreported) cited in Grace Ayodele Arowolo, Child Labour In Nigeria: Need For Effective Legislative Framework, International Journal of Legal Studies and Research (IJLSR) Vol. 7 No. 1 March 2018.



assault on the health, safety, morals and overall development of the child.²⁰ It is a serious derogation from the peace, security and development aspirations of the ECOWAS region. It also contributes to the structural causes of poverty, instability, and youth unemployment caused by children's absence from education opportunities.

To address issues of child labour, the region has the ECOWAS Child Policy and Strategic Plan of Action (2019-2030) in place. The policy provides a regional framework for child protection in the region.²¹ The Policy reflects the regional commitment to recognize, respect and promote Children's Rights and their overall well-being. The policy addresses the issue of child labour and prohibits all forms of child labour in the region. The Child Policy and Strategic Plan of Action provides a comprehensive conceptual architecture and concrete guidance for coordinating the efforts of all member States in the ECOWAS region towards achieving the goals of extant international instruments relative to child rights. These include specifically the SDGs 1 – 6 (no poverty, zero hunger, good health and well-being, quality education, gender equality and clean water and sanitation); the Universal Declaration of Human Rights, the United Nations Convention on the Rights of the Child, the African Charter on Human and Peoples' Rights, the African Charter on the Rights and Welfare of the Child (ACEWC).

A comparative study between Nigeria's legal framework and the regional (ECOWAS) legal framework prohibiting child labour shows that Nigeria follows the requirements at the regional level. The Nigerian Child's Rights Act domesticates the provisions of both the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child, which the ECOWAS Child Policy incorporated to serve as a guide for coordinating the efforts of all member States²² to ensure child protection in the region, especially against child labour.

2.4 Gaps in the Extant Legal Frameworks

It is agreed that the Child's Rights Act (CRA) is the most comprehensive law that provides for the protection of the rights of the child in Nigeria. Despite this, the Act is not without gaps. First and foremost, by relying on the provisions of the Labour Act as applicable to children,

²⁰ ECOWAS Child Policy and Strategic Plan of Action (2019-2030) , <https://ecowas.int> <accessed 17 September 2024.

²¹ Ibid

²² ECOWAS Child Policy and Strategic Plan of Action (2019-2030) ,< <https://ecowas.int> >accessed 17 September 2024.

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the CRA compromises some of its provisions. This is because the Labour Act contains provisions that conflict with that of the CRA. For example, section 277 of the CRA defines a child as a person below 18 years, but section 91 of the Labour Act distinguishes between a child and a young person and perceives a child as a person below 12 years, while a young person is a person between 12 and 18 years.

The implication is that the Act permits the employment of such young persons in more dangerous works, especially industrial undertakings. This is against the provisions of section 277 of the CRA, which perceives all persons below 18 years as children who are not meant to work in industries. The Labour Act prescribes different ages for different types of employment, which ranges between 14- and 16-years, contrary to section 277 of the CRA, which prescribes the age of 18 years in all cases. Section 59 of the Labour Act allows the employment of persons below 14 years once it is on a daily wage or on a day-to-day basis, and so long as they return each night to the place of residence of their parents or guardian except for children in domestic service. The implication of this provision is that children below 14 years can work, and domestic service is also permitted under the Labour Act, contrary to section 28 of the CRA, which prohibits children from domestic service. Further, section 60 of the Labour Act allows the employment of persons over 16 years in industrial undertakings like in the manufacture of iron and steel, in processes in which reverberatory or regenerative furnaces are used and in the galvanising of sheet metal or wire (except the pickling process) glass works, manufacture of paper, and gold mining (the extractive sector) contrary to the provision of section 28 of the CRA which prohibits the employment of children in an industrial undertaking. Although both laws provide that children can be employed on light work (section 28 (b) CRA and section 59 (a) Labour Act), both laws also failed to define what amounts to light work.

Despite the contradictory provisions of the Labour Act, section 29 of the CRA makes the provisions of the Labour Act applicable to children. The consequence of the inconsistency in the provisions of the two laws is that it makes it difficult and confusing for one to understand the minimum ages that apply for certain types of work in the country. In a situation where the provisions of a subsequent statute are inconsistent with the provisions of an earlier statute, it is implied that the legislature intends a repeal of the earlier statute. This means that the provisions of the CRA would have repealed that of the Labour Act. But this principle may not apply in this case since section 29 of the CRA discussed above has expressly enabled the application of the Labour Act to children despite the provision of section 274 of the CRA, which provides

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that the provisions of the Act supersede all other legislation that has a bearing on the rights of the child (Labour Act inclusive). A further implication is that section 29 of the Child Rights Act incorporates sections 58, 59, 60, 61, 62 and 63 of the Labour Act into the Child's Rights Act, consequently rendering the application of its own provisions ineffective.

The reliance of the CRA on the Labour Act is a compromise of its own provisions and tends to lower the status of the Act, which, therefore, needs urgent reform. In addition to the above, the penalties imposed by the Labour Act and the CRA against the perpetrators of child labour are neither sufficient nor adequate for the prohibition of child labour in Nigeria. This is based on the provisions of section 28 (3) and (4) of the Child Rights Act, which imposes a fine of N50,000 or 5 years imprisonment or both on individuals and a fine of N250,000 on a corporate body while section 64 (1) of the Labour Act imposes a fine of N100. 00. This is ridiculous now because the amount is too small in both cases and may not serve as deterrence for the prevention of future occurrences. Another major challenge to the effectiveness of the CRA in controlling child labour in Nigeria is the problem of implementation; the conflicting provisions of the CRA and the Labour Act make it difficult to implement the provisions of the Child Rights Act on child labour.

Closely connected with the challenge of implementation are the constitutional limitations imposed on the CRA with respect to child justice in relation to child labour issues. By virtue of section 254C (1) (b) and (i) of the Constitution of the Federal Republic of Nigeria, 1999, matters relating to or connected with or arising from the Labour Act, including child labour, have been placed within the exclusive jurisdiction of the National Industrial Court. It follows those sections 28 to 31 of the Child's Rights Act, which deals with "child labour", are exclusively within the jurisdiction of the National Industrial Court contrary to and in conflict with the provisions of sections 149 and 151 of the Child's Rights Act.

Section 149²³ provides for the establishment of the Family Courts. It states that "There shall be established for each State of the Federation and the Federal Capital Territory, Abuja, a court to be known as the Family Court (in this Act referred to as 'the Court') for the purposes of hearing and determining matters relating to children." Section 151 (1) also vests unlimited jurisdiction in the Court to hear and determine- "(a) any civil proceedings in which the existence or extent

²³ The Child Rights Act 2003



of a legal right, power, duty, liability, privilege, interest, obligation or claim in respect of a child is in issue; and (b) any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by a child, against a child or against the interest of a child.” Sections 149 and 151 of the Child’s Rights Act are, by virtue of sections 1(1) and (3) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), rendered null and void to the extent that they vest the power on the Family Court to hear and determine matters relating to children generally. This is due to the supremacy of the provisions of the Constitution over all other laws as conferred by section 1 of the Constitution stated above. The provision of the constitution in section 254(c)²⁴ in respect of the jurisdiction of the National Industrial has made it difficult to take issues of child labour to family court as provided in the CRA, thereby affecting the effective implementation of the CRA in Nigeria.

3.0 RECOMMENDATIONS

Following the analysis of the extant legal framework that prohibits child labour in the extractive industry in Nigeria, the following recommendations are preferred in this policy brief.

- i. The need for the reform of the Child’s Rights Act and the Labour Act to remove the conflicting sessions that make it difficult to address issues of Child labour in Nigeria
- ii. There is a need to monitor the effective implementation of the provisions of the Child’s Rights Act, especially on child labour, with a special focus on the extractive industry, as the Act has been adopted in 35 States of the Federation. This will help achieve effective natural resource governance as issues of vulnerability of children working in mines and oil exploration sites would have been addressed. Also, measures to return them back to school will also be in place.
- iii. There is a need to have a database of Children working in the extractive sector in order to address the challenge.
- iv. There is a need to review and increase the penalty in both the Child’s Rights Act and the Labour Act to deter future offenders.

²⁴ The constitution of Federal Republic of Nigeria 1999 (as amended)



4.0 CONCLUSION

Nigeria has a robust legal framework that prohibits child labour in the extractive industry; however, the conflicting provisions of the Child’s Rights Act and the Labour Act are gaps that need to be addressed through law reforms to ensure effective implementation of the Child’s Rights Act to address the issue of Child labour in the extractive sector. Though Nigeria is a signatory to international, continental and regional instruments that prohibit child labour, in practice, issues of child labour abound, hence the call for reform and implementation of the legal frameworks that address issues of child protection in Nigeria. Unless this is done, issues of child labour will continue to increase despite the fact that Nigeria is in compliance with the regional legal framework that prohibits child labour in the extractive industries.



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