

**THE LIMITATIONS OF THE LEGAL FRAMEWORK IN ADDRESSING THE
PROBLEM OF CHILD LABOUR IN ARTISANAL AND SMALL-SCALE MINING
IN ZIMBABWE**

by

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ABSTRACT

The rights of children are protected in various legal instruments, both at domestic and international levels, reality stands in stark contrast to the aspirations for children expressed in these legal instruments. The socio-economic conditions of people in developing countries, particularly those in poor rural areas of developing countries like Zimbabwe, have pushed people into artisanal and small-scale mining (ASM) of various minerals for survival. Many children in these families and those of child-headed homes also participate in ASM and drop out of school. The ASM environment, which is largely informal and thus lacks government oversight, using rudimentary methods to extract minerals and host criminals and violent gangs, is not conducive for children. The thesis shows how the ASM environment violates children's rights in several ways. Children are involved in hazardous and hard work in violation of international standards governing child labour. Children are also exposed to toxic chemicals, harmful to their physical development and prostitution, drug abuse, sexual abuse, and human trafficking in ASM. This research examines the problem of child labour and recommends that the government formalise ASM in Zimbabwe to enhance oversight on conditions of work, restrict child participation, and ensure that participants in ASM develop skills and derive value for their mineral output. The doctrinal methodology in this study focuses on analysing the laws, legal principles, and existing literature applicable to the problem of child labour in ASM in Zimbabwe. The formalised ASM industry, through legislative and other measures, must specifically accommodate women and mature children to earn a living. Further, the government must expand funding for primary and secondary school education and social security for families to eliminate the urgency of drawing children into ASM.

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CHAPTER 1

INTRODUCTION

1.1 Background

Artisanal and small-scale mining (ASM) is a poverty-driven activity. ASM refers to the manual, low technology and labour-intensive mineral extraction and processing mainly practised for subsistence purposes in developing countries.¹ ASM activity involves hand-digging methods using hammers, picks and shovels among other rudimentary tools.² It is undertaken by millions of people around the world, usually in developing countries,³ and mostly by the poor in rural areas, where other employment opportunities are meagre.⁴ In Zimbabwe, ASM activities are a last resort to sustain livelihoods during periods of economic recession.⁵ Most Artisanal and small-scale miners in Zimbabwe (as in many other countries) are women and regrettably also children. This research focuses on children involved in mining activities. As, demonstrated across this research and as echoed by the title of this study, there is a notable inadequacy in the regulatory framework protecting children from child labour in the informal mining sector.

Child labour has become an ordinary occurrence in ASM, a concerning trend in the sector, together with safety and health issues, community impoverishment and environmental degradation.⁶ Children from poor backgrounds often get roped into the ASM sector, especially

¹ S Rupprecht 'Bench mining utilizing manual labour and mechanized equipment – a proposed mining method for artisanal small-scale mining in Central Africa' (2017) 117 *The Journal of Southern African Institute of Mining and Metallurgy* at 25; Gavin Hilson & James McQuilken 'Four decades of support for artisanal and small-scale mining in sub-Saharan Africa: A critical review' (2014) 1 *The Extractive Industries and Society* 104 at 102.

² Interview with district-level small-scale miners' association, Zimbabwe, December 2017, see S Spiegel 'Shifting formalisation policies and recentralizing power: the case of Zimbabwe's artisanal gold mining sector' (2015) 28(5) *Society & Natural Resources* at 543.

³ T Hentschel, F Hruschka, & M Priester 'Artisanal and Small-scale Mining: Challenges and Opportunities' (2003) *Mining, Minerals, and Sustainable Development (MMSD) Report of the IIED* at 1.

⁴ The term poverty-driven refers to the significance of poverty as a push factor of the prevalence and growth of the ASM industry, see G. Mpufane 'Perils and Opportunities: Artisanal, Small-scale and Informal Mining' *International Union Rights*, Vol. 19, No. 3, Focus on mining and union rights: South Africa: the massacre at Marikana Informal mining: an under-unionised sector Mexico: The Struggle continues at Cananea (2012), pp. 10-11 at 10; Hilson G & Pardie S 'Mercury: An agent of poverty in Ghana's small-scale gold mining sector?' (2006) 31 *Resource Policy* 106-116 at 106; T Hentschel, F Hruschka, & M Priester 'Breaking New Ground' (2017) *Mining, Minerals, and Sustainable Development (MMSD) Report of the IIED* at 314

⁵ T Hentschel, F Hruschka, & M Priester 'Breaking New Ground' (2017) *Mining, Minerals, and Sustainable Development (MMSD) Report of the IIED* at 315.

⁶ Bastida, E, Walde, T, & Warden-Fernandez, J (Eds.), *International and Comparative Mineral Law and Policy: Trends and Prospects*, Kluwer Law International (2005) at 506.

where their families are involved in ASM activities.⁷ There is a correlation between the rise of ASM and the prevalence of child labour.⁸ ASM involves hazardous work. When child labour is used, the affected children's lives and health are endangered. They engage in activities such as digging or handpicking ore without protective gear, carrying heavy loads, and tunnelling in confined and unstable ground.⁹ Performing such tasks, children are exposed to injuries, death from collapsing tunnels, respiratory diseases due to dust and inhaling toxic chemicals, musculoskeletal disorders, a lawless environment and disruption to school attendance and performance.¹⁰

There is a higher concentration of child workers in poor communities and countries.¹¹ Poverty is therefore a driving factor of both ASM and child labour.¹² Despite the domestic and international prohibition of child labour, though inadequate, poverty justifies the prevalence of child labour in ASM activities, where orphaned children or children from poor families have no choice but to participate in ASM activities to earn a living or assist their families.¹³ Chapter 2 of this thesis examines the notion of poverty argued to be the driver of child labour in ASM. The chapter magnifies the problem of poverty by examining what "poverty" means, how it is measured, the poverty trend across communities where ASM is practised and in Zimbabwe and the causes of the poverty.

The number of people working in ASM could rise as economies continue to deteriorate.¹⁴ In Zimbabwe, as in other parts of Southern Africa, economic recession has been predicted to have the capacity to triple the prevalence of ASM over the next decade.¹⁵ Such an increase is bound to threaten the rights and safety of children, because of the obvious links between poverty, ASM and exploitative child labour practices. This concern is at the heart of this research as it synthesizes the problem of child labour in the ASM sector in Zimbabwe. Considering this

⁷ Hentschel, Hruschka, & Priester op cit note 3 at 18.

⁸ Hilson, Gavin, 'Child Labour in African artisanal mining communities: Experiences from Northern Ghana', *Development and Change*. 41(3), pp.445 – 473, at 453.

⁹ ILO, 1998. International Labour Organization, Sector Publications. Child Labour in Small Scale Mining: Examples from Niger, Peru & Philippines. <http://www.ilo.org/public/>.

¹⁰ Nalule V.R. *Social and Environmental Impacts of Mining*. In: *Mining and the Law in Africa*. (2020) *Palgrave Pivot, Cham* at 62. https://doi.org/10.1007/978-3-030-33008-8_3.

¹¹ L. Ersardo 'Child Labor and Schooling Decisions in Urban and Rural Areas: Comparative Evidence from Nepal, Peru, and Zimbabwe' (2004) *World Development* Vol. 33 455 – 480 at 456.

¹² Hilson op cit note 8 at 446.

¹³ International Labour Office, 'Social and Labour Issues in Small-Scale Mining' Report for discussion at the Tripartite Meeting on Social and Labour Issues, Geneva 1999 at 38.

¹⁴ Social and Labour Issues in Small-scale Mines, Report for discussion at the Tripartite Meeting on Social and Labour Issues in Small-scale Mines, Geneva, 17-22 May 1999, ILO, Geneva.

¹⁵ Dreschler, B. *ASM Southern Africa (Zimbabwe Country Study)* (2002) MMSD.

possibility, ASM cannot continue operating without regulatory measures which are effectively implemented and which specifically target the elimination of child labour in the sector. This thesis explores the potential of the law to achieve solutions to these problems of child labour exploitation in Zimbabwe's ASM sector.

1.2 Research Question

The main research question to be answered by this research is "How adequate is the framework for the eradication of child labour in ASM in Zimbabwe?"

In answering the foregoing question, the following sub-questions are dealt with.

- i. What is the nature, extent and impact of child labour perpetrated in the ASM sector in Zimbabwe?
- ii. What is the social, economic, and political climate in Zimbabwe, in relation to the causation and perpetuation of child labour in ASM?
- iii. How progressive or regressive is the Zimbabwean legal framework concerning ASM and child labour?
- iv. To what extent is the current legal framework sufficient to address the prevalence of child labour in ASM?
- v. Given all the challenges, what legislative reforms should be put in place to provide potential solutions to child labour practices in the ASM industry in Zimbabwe?

1.3 Methodology

The nature of this research is doctrinal. It is an analytic study of discourse conducted by critically synthesising a literature review of the challenges and impact of child labour in the Zimbabwean ASM sector. To devise practical solutions to the problem of child labour in Zimbabwean ASM, the study undertakes to interrogate and assess broadly the relevant international, regional and national legal frameworks on ASM, anti-child labour and other related aspects such as access to education and economic livelihoods. Furthermore, existing normative and other theories that constitute the theoretical base of this study are critically reviewed. This consists mainly of books and peer-reviewed journal articles. Broad literature on

the Zimbabwean ASM will also be consulted. Academic studies, journal articles, as well as newspaper interviews, depending on their academic value, are referred to throughout this thesis.

The author appreciates the limitedness of the law protecting children in ASM space in Zimbabwe. At the core, this research is an exploratory study of the legal framework, aimed to clarify and explain the causes, relationships, and reasons behind child labour in ASM. It also includes an analysis of the socio-economic conditions causing the exploitation of children in the ASM space in Zimbabwe. Therefore, this research seeks to propose reforms to the legal framework for Zimbabwe, borrowing from the international and regional labour and mining regulatory frameworks.

1.4 Research Chapters

Chapter 1 – Introduction

The chapter introduces the study, unpacking the meanings of child labour and ASM as well as establishing the relationship between the two. It further provides the background to the study and introduces the mining sector in Zimbabwe and the position of ASM in the country and its economy.

Chapter 2 – Contextual Background

The chapter complements chapter 1 by providing a comprehensive background to this study by examining the key issues arising from the interaction between child labour and ASM in Zimbabwe. In essence, the chapter defines the concept of ASM and the causes and impact of the participation of children in ASM.

Chapter 3 – Poverty and Child Labour

The chapter explores the notion of poverty by examining the definition, domestic, global and regional trends and the link between poverty and child labour. The concept of poverty is linked to the discourse on child labour, before venturing into the discussion on the notion of child labour and ASM. The chapter magnifies the problem of poverty by examining what “poverty” means, how it is measured, poverty trends across communities where ASM is practised (specifically in Zimbabwe) and the causes of the poverty.

Chapter 4 – Regulatory Framework on Child Labour

The chapter unpacks the meaning and laws proscribing child labour. Further, the chapter makes a distinction between child labour and child work. The chapter defines child labour and sets out the types of child labour, to qualify the work done by children in ASM as illegal. The Chapter also goes through the relevant international, regional and Zimbabwean legal instruments, discussing how the law prohibits the practice of child labour.

Chapter 5 – Artisanal Small-scale Mining in Zimbabwe

The chapter is dedicated to understanding the ASM industry in Zimbabwe. This includes the definition and nature of ASM. The purpose of this chapter is to provide the context for the ASM industry in which this research seeks to tackle the problem of child labour. This includes how the system of ASM works, which minerals are exploited and who the participants are. This chapter introduces the participation of children in the ASM sector which is detailed in the next chapter.

Chapter 6 – Child Labour in Artisanal and Small-scale Mining in Zimbabwe

The chapter sheds light on the reality and illegality of child labour in ASM in Zimbabwe. The chapter examines the factors and key players driving children into ASM, the ages of children involved, the work they perform and the consequences of child participation in ASM. The objective of this chapter is to raise awareness of the realistic nature and depth of the problem of child labour in ASM in Zimbabwe. Further, this chapter discusses the structural challenges enabling the problem of child labour in the ASM sector despite the prohibition of this practice by the law. The factors to be discussed include the non-formalisation of ASM and how this harbours child labour, the lack of fair-trade policies across the value chain of ASM, and the deteriorated education sector of Zimbabwe.

Chapter 7 – Conclusion and Recommendations

The chapter concludes this research by providing a summary of findings and recommendations towards solving the problem of child labour in ASM in the Zimbabwe context.

CHAPTER 2

CONTEXTUAL BACKGROUND

2.1 Introduction

This chapter complements Chapter 1 by providing a comprehensive background to this study by examining the key issues arising from the interaction between child labour and ASM in Zimbabwe. In essence, the chapter briefly defines the concept of ASM and the causes and impact of the participation of children in ASM. In other words, the chapter problematises this research by unpacking and magnifying the problem of child labour in ASM in Zimbabwe.

2.2 Artisanal and Small-Scale Mining (ASM)

Although attempts at defining ASM often overlook that ASM is a poverty-driven activity, this research places the poverty-driven characteristic of ASM at the centre of its understanding of the phenomenon, as poverty follows the practical meanings of ASM.¹⁶ Other key features that are associated with ASM, and which are explored in the research, are the informality and illegality of the activity, particularly in Zimbabwe.

The term ASM is defined in Chapter 1 as the manual, low technology and labour-intensive mineral extraction and processing mainly practised for subsistence purposes in developing countries constitutes artisanal mining and small-scale mining on the other hand.¹⁷ Small-scale mining is used to refer to more mechanical activity which uses basic mining and processing technology such as mechanical drilling, hauling and loading.¹⁸ Small-scale mining in Zimbabwe is operated by semi-skilled and skilled individuals, cooperatives and companies.¹⁹ Albeit with many challenges, small-scale mining tends to be registered while artisanal mining consists of unregistered or unlicensed mining.²⁰ For this research, ASM will refer to all

¹⁶ Hilson 'Farming, small-scale mining and rural livelihoods in Sub-Saharan Africa: a critical overview' (2016).
³⁽²⁾ International Institute for Environment and Development (IIED) Issue Paper (March 2016) at 4.

¹⁷ Hentschel, Hruschka, & Priester op cit note 3.

¹⁸ Rupprecht op cit note 1 at 26.

¹⁹ Ry and E Worby 'The Mining Industry in Zimbabwe: Labour, Capital, and The State' *Africa Development / Afrique et Développement* Vol. 10, No. 4 (Oct. - Déc. 1985 / Oct. - Dec. 1985), pp. 143-169.

²⁰ Marcena Hunter 'Follow the Money: A Rapid Assessment of Gold Supply Chains and Financial Flows Linked to Artisanal and Small-Scale Gold Mining in Zimbabwe': United Nations Industrial Development Organisation, April 2018.

unformalised and unregulated mining activities operating below the industrial scale, often involving poverty-stricken Zimbabweans, including children.

2.3 Child Labour

Not all work done by children is classified as child labour which should be targeted for elimination.²¹ Work that does not affect the health and personal development, or interfere with education, is generally regarded as being positive and does not fall under illegal child labour.²² Under Zimbabwean law, 15-year-old children are legally permitted to engage in light work.²³ Light work constitutes work that is not harmful to the child's health or development.²⁴ However, child work in ASM can hardly be justified in these terms because the activities involved are mostly qualified as hazardous work.²⁵ The nature and conditions of the work done in this sector consist of unlawful child labour²⁶ and fall under the worst forms of child labour.²⁷ These activities include working underground, working with dangerous and rudimentary tools, carrying heavy loads and work that exposes them to dangerous substances such as mercury.²⁸ The term child labour (in ASM) in this dissertation therefore refers to unlawful child labour that must be targeted for elimination.

²¹ Facts About The International Labour Organization – International Programme for The Elimination Of Child Labour, <http://www.ilo.org/ipec/facts/lang--en/index.htm> (Accessed on 26 March 2020).

²² Inter-Parliamentary Union/International Labour Office 2002 - Adapted in International Labour Office, *Child Labour: A Textbook for University Students* (2004) at 16.

²³ Section 2 of Labour Act Chapter 28:01 of 2002; this is consistent with: Article 7, ILO Convention 29 of 2002 which provides that children above 13 years may engage in light work.

²⁴ B. Vambe, 'Elimination of Forced Child Labour in Zimbabwe' (2013), *Commonwealth Youth Development*, Volume 11, Issue 2, 16 – 31 at 18.

²⁵ Certain activities are classified as hazardous work to regulate child labour, see ILO Conventions No. 138 and No. 182; hazardous work is recognised in Zimbabwe with respect to child labour, see Section 11(4) of the Labour Act; and Section 10A of the Children's Act.

²⁶ The type of work and conditions under which it is performed constitute some of the guidelines provided by the ILO in identifying whether work done by children consists of child labour, in the Inter-Parliamentary Union/International Labour Office 2002 – see International Labour Office, *Child Labour: A Textbook for University Students* (2004) at 16.

²⁷ Worst forms of child labour refer to certain situations of child labour which are so grave and inhumane that they require more immediate elimination, see Handbook for Parliamentarians, No. 3 – 2002. Elimination of Worst Forms of Child Labour. A Practical Guide to ILO Convention No 182, pg. 19.; International and Comparative Mineral Law And Policy at 506 – most child labour in ASM can be classified as among the worst forms of child labour in terms of the ILO Convention no 182 on Eliminating Worst Forms Of Child Labour; 209+213 reading pg. 3.; Hilson child labour in ASM op cit note 10 at 448 (referring to the ILO's World Day against Child Labour 2005)

²⁸ Practical forms against worst forms of child labour pg. 9; Zimbabwe ASGM pg. 7, shows the high levels of mercury used in ASGM; Stephan Bose-O'Reilly et al., 'Mercury as a serious health hazard for children in gold mining areas' *Environmental Research*, vol. 107, (2008), pp. 89-97 shows the exposure of child labourers in ASGM in Zimbabwe and Indonesia.

For regulatory purposes, child labour is defined based on the effects it has on the child. Child labour is defined as work that is mentally, physically, socially or morally dangerous and harmful to a child and interferes with their schooling.²⁹ The latter occurs through deprivation of the opportunity to attend school, or by obliging a child to leave school prematurely.³⁰ Children may also be required to combine school work with excessively long and heavy physically, emotionally or mentally taxing work.³¹ Child labour occurs when children are forced to work regularly to earn a living for themselves and their families in conditions that are exploitative and harmful to their health, and physical and mental development.³² These definitions set out by the International Labour Organisation (ILO) have been adopted in Zimbabwe, a signatory to all key international and regional instruments concerning child labour.³³ These are the Minimum Age Convention, the Worst Forms of Child Labour Convention, the United Nations Convention on the Rights of Children, and the African Charter on the Rights and Welfare of the Child.³⁴

In Zimbabwe, child labour is recognised as a violation of children's human rights.³⁵ Child labour is also indirectly prohibited through entitlement of the child to the right to education, and not be subjected to any form of abuse.³⁶ Parents, guardians or any person allowing the employment of a child causing an interference with their education, or exposing them to hazardous work, is guilty of an offence which attracts a fine or imprisonment.³⁷ In line with the United Nations Convention on the Rights of Children (UNCRC), a child is defined in Zimbabwe as any person below the age of eighteen.³⁸ Similarly, in line with the ILO Convention 138, the minimum age for work is sixteen, and the minimum age for hazardous labour is eighteen.³⁹ However, despite the efforts made through the legislative framework, and

²⁹ Handbook of Parliamentarians, No 3 – 200. Eliminating Worst Forms of Child Labour. A Practical Guide to ILO Convention No 182, at 15.

³⁰ Ibid.

³¹ Ibid.

³² ILO Convention 182 (2002); Hasnaim, Ali and Khan, Samsuddin. 'The Overcoming of Child Labour in India: In Perspective of constitutional and legislative framework' (2012) *JBM & SSR* Vol 1, No. 3 at 83.

³³ The applicable ones to the proposed research include ILO Convention 138, Minimum Age; ILO Convention 182, Worst Forms of Child Labour; UN Convention on the Rights of the Child, 1989; and African Charter on the Rights and Welfare of the Child.

³⁴ Minimum Age Convention No. 18 of 1973, the Worst Forms of Child Labour Convention of 1999, the United Nations Convention on the Rights of Children 1989, and the African Charter on the Rights and Welfare of the Child of 1990.

³⁵ Section 81(1)(e) of the constitution of Zimbabwe.

³⁶ See Section 81 of the Constitution of Zimbabwe.

³⁷ International Labour Organization International Programme on the Elimination of Child Labour (IPEC) page (2007) 10-14

³⁸ Article 1 of the Convention on the Rights of the Child; Section 81(1) of the constitution of Zimbabwe

³⁹ Section 11(1) and section 11(4) respectively, Labour Act, [Chapter 28:01].

enforcement measures through the Ministries of Social Welfare, and Justice and Legal Affairs, among other labour law enforcement agencies, child labour exists on a large scale in Zimbabwe due to the combination of factors that will be explored in this dissertation including poverty and non-formalisation of the ASM sector.⁴⁰

2.4 Dynamics of Child Labour in ASM in Zimbabwe and the Sub-Sahara

This section discusses the dynamics of child labour in ASM, focusing specifically on the African (Sub-Saharan) context, how it impacts children, and how it intertwines with the phenomenon of poverty and lack of education.

2.4.1 Child Labour in ASM: The Zimbabwean and Sub-Saharan Context

Child labour has been widespread in Zimbabwe, due to the country's struggling economy.⁴¹ Most child labour in Zimbabwe occurs in rural areas, and poverty is a principal cause.⁴² This follows the poverty hypothesis, which portrays child labour as a necessary consequence of hardship in livelihoods.⁴³

Child labour is a significant social and labour problem across the world. Although it is difficult to determine with certainty the number of economically active children, the global estimate is three-hundred-and-fifty million working children.⁴⁴ Sub-Saharan African countries have been infamous for carrying the globe's highest concentration of child labour.⁴⁵ The number of children being exploited is more difficult to estimate in ASM because the sector mostly operates informally and illegally.⁴⁶

One significant factor that contributes to the high rates of child labour in Sub-Saharan Africa is de-agrarianising. This refers to the shift from farming to other activities, such as ASM, as an alternative source of income.⁴⁷ The decline in agriculture led to economic distress, which in

⁴⁰ Mandizha, R. 'Poverty breeds child workers' September 11, 2015. <http://www.thezimbabwean.co/2015/09/poverty-breeds-child-workers/>.

⁴¹ African Independent. Zimbabwe fails to deal with child labour scourge. August 11, 2017. <https://www.africanindy.com/news/zimbabwe-fails-to-deal-with-childlabour-scourge-10723133>.

⁴² G Hilson, 'Child Labour in African Artisanal Mining Communities: Experiences from Northern Ghana' *Development and Change* 41(3): 445–473 International Institute of Social Studies (2010) at 448.

⁴³ Ibid.

⁴⁴ ILO textbook on child labour - for university students, 8.

⁴⁵ Hilson op cit note 41 at 447.

⁴⁶ André, G., & Godin, M. 'Child labour, agency, and family dynamics' (2013) *Childhood*, 21(2), 161- 174. doi:10.1177/0907568213488966.

⁴⁷ Banchirigah, S.M. 'How Have Reforms Fueled the Expansion of Artisanal Mining? Evidence from Sub-Saharan Africa', (2006) *Resources Policy* 31(3): 165–71; Hilson op cit note 41.

turn contributed to resorting to ASM and also increased the pressure on children to work and support household income.⁴⁸ De-agrarianisation breeds child labour in general whilst it causes a higher concentration of child labour in ASM, this is due to the easy access and perceived fortunes in the ASM sector.⁴⁹ In the past, child labour was mainly concentrated in the agricultural sector, and the shift of focus and labour to ASM has led to the transfer of child labour to the growing ASM sector.⁵⁰

In Zimbabwe, smallholder or subsistence farming has been largely replaced by ASM due to farming becoming less profitable, following the liberalisation of the agricultural market.⁵¹ The liberalisation of the agricultural market in Zimbabwe means that the state no longer subsidises crucial farm inputs such as fertilizers. Similarly, state support services for smallholder farmers, such as the provision of inputs, have ceased.⁵² With the devaluation of the Zimbabwean currency, farmers end up receiving fewer ‘real dollars’ for their produce.⁵³ Even among persistent farmers, ASM has been taken up for income to purchase farming inputs.⁵⁴ The failure of the agricultural sector is also due to the erratic rain patterns, which have made reliance on farming income uncertain.⁵⁵

The weakening agricultural sector is among other causes of poverty. Zimbabwe has been in economic recession since 2000.⁵⁶ By mid-2005, the local currency had devalued by 99% and unemployment, poverty, and the cost of living had all skyrocketed dramatically.⁵⁷ By 2007, inflation was over 1,280%, unemployment had reached 70%, and the poverty headcount ratio

⁴⁸ G Hilson, ‘Child Labour in African Artisanal Mining Communities: Experiences from Northern Ghana’ (2010) at 449. Hilson Op cit note 41 at 449.

⁴⁹ G Hilson, (2010) at 449.

⁵⁰ G Hilson, (2010) Ibid. Child Labour in ASM at 449, explains how children are carried from one activity (farming) to the other (mining).

⁵¹ Ibid at 449.

⁵² Ibid at 449 defines a liberalised market. Maponga O. & Ngorima C.F ‘Overcoming environmental problems in the gold panning sector through legislation and education: the Zimbabwean experience’, (2003) *Journal of Cleaner Productions* – explains this in the context of Zimbabwe.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Mtetwa C and Shava S. ‘A Sociological Survey of Small-Scale Artisanal Gold Mining in the Kadoma-Chakari Area’ (2003) DPC Professional Services; ASM has grown significantly during the 1982, 1992 and 1994 due to drought, see Hollaway J. *Lessons from Zimbabwe for best practice for small and medium scale mines*. Minerals and Energy Raw Materials Report 2000;15(1):16–22.

⁵⁶ When livelihoods take a batter pg. 36 (chapter in Journal); other factors include the politicised land reform programme which crippled the commercial farming sector, see A Review of Policy and Legal Framework to promote Zimbabwe’s competitiveness in the Mining Sector pg. 24.

⁵⁷ Clemens M. & Moss T. ‘Costs and causes of Zimbabwe’s crisis’ (2005) CDG Notes, Washington DC: Centre for global Development.; Gono G. (2005) ‘2005 Third Quarter Monetary Policy Statement’, Harare: Reserve Bank of Zimbabwe.

had reached 70%.⁵⁸ These examples prove that the once-thriving Zimbabwe has become an example of a country where currency devaluation and inflation led to intense poverty, rising unemployment and excessive costs of living for citizens.⁵⁹

Livelihood struggles in ASM and in Zimbabwe also result from political instability caused by politicized land reforms and state-induced displacements.⁶⁰ The Zimbabwean formal sector has severely deteriorated, and the informal sector, particularly ASM, has become increasingly important as a source of income.⁶¹ An increasing number of Zimbabweans have resorted to pans, picks, and shovels, as well as simple mechanized equipment, as they turned to ASM.⁶²

One outstanding case study is the frenzied diamond rush which resulted from the discovery of diamonds at Chiadzwa in Eastern Zimbabwe in 2006.⁶³ This led to the establishment of ASM communities around Chiadzwa.⁶⁴ Such communities mostly consisted of ordinary citizens driven by the hardships of Zimbabwe's dramatic post-2000 economic recession, now seeking livelihoods through unlicensed diamond mining.⁶⁵ Children, who became known as "gwejanas," were part of this rush, some abandoning school together with their teachers to make a living at Chiadzwa.⁶⁶ The case at Chiadzwa is only an example, reflecting the wider patterns across the Zimbabwean ASM industry where children from economically struggling households have resorted to this burgeoning informal sector.

Regulation of ASM in Zimbabwe has been regressive, meaning that the laws and policies have moved backwards, becoming less effective and less supportive of progress. Regulation shifted from a period of decentralisation and development to one of crisis and nationwide crackdown against ASM miners.⁶⁷ In the 1990s, several measures were adopted to support ASM miners through the decentralization of mining control and supporting local ASM populations.⁶⁸ These

⁵⁸ International Monetary Fund (2005) 'Staff Report for the 2005 Article IV Consultation', Washington DC: IMF.

⁵⁹ The World Bank in Zimbabwe 'The World Bank's lending program in Zimbabwe is inactive due to arrears and the role is now limited to technical assistance and analytical work through Trust Funds'. <https://www.worldbank.org/en/country/zimbabwe/overview> .

⁶⁰ Human Rights Watch, *Fast Track Land Reform in Zimbabwe*, 8 March 2002, A1401, available at: <https://www.refworld.org/docid/3c8c82df4.html> [accessed 14 August 2020].

⁶¹ Spiegel op cit note 2 at 543.

⁶² Ibid.

⁶³ Nyota S & F Sibanda 'Digging for Diamonds, Wielding new Words: A Linguistic Perspective on Zimbabwe's Blood Diamonds' (2012) *Journal of Southern African Studies* Vol 38 No. 1 at 129

⁶⁴ Ibid at 130.

⁶⁵ Ibid.

⁶⁶ Ibid at 137 – the term "gwejana" was derived from the term "gweja", a nickname given to an illegal diamond panner, combined with the diminutive "-ana" to refer to the young ones of these panners.

⁶⁷ Spiegel op cit note 2 at 544.

⁶⁸ Ibid – mining activity was to be controlled through national-district-local decision making.

initiatives involved training ASM miners to secure access by acquiring prospecting and mining licences, as well as mining technologies and microfinancing.⁶⁹ One such important development was the engagement of Zimbabwe with the United Nations Department for Economic and Social Development to design the Harare Guidelines.⁷⁰ The Guidelines reflect a vision to promote the legalisation of ASM and its recognition and treatment as a poverty-alleviation mechanism.⁷¹ Governance of ASM was left to the local government, with less complication and technicalities compared to large-scale mining, and to be formalised as a pro-poor activity.⁷² Although these developments did not directly target child labour in ASM, the alleviation of poverty in ASM communities meant addressing the principal cause of child labour.⁷³

2.4.2 Child Labour in ASM: The Impact

Mining is one of the most hazardous work industries in the world, yet child labour is common in this sector.⁷⁴ Due to the rudimentary nature of ASM, children involved in mining activities are at risk of injuries from accidents, and even death. The most cited causes of accidents include lack of ventilation in the mines, misuse of explosives, lack of knowledge and training, and mine collapses.⁷⁵ ASM in Zimbabwe has a well-established reputation for having a disproportionately high number of fatalities compared to other countries and these necessitates immediate removal of children from the industry.⁷⁶ The ASM environment itself exposes children to instances of sexual abuse, violence, harassment and drug abuse. These factors are likely to result in behavioural disorders in children involved in mining activities.

⁶⁹ Ibid at 544.

⁷⁰ Harare Guideline on Small-scale Mining 1993.

⁷¹ Spiegel op cit note 2 at 547.

⁷² Ibid.

⁷³ The End of Child Labour: Within Reach Report of the Director-General Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work International Labour Conference 95th Session 2006 Report I (B).

⁷⁴ Human Rights Watch, 'A Poisonous Mix: Child Labour, Mercury, and Artisanal Gold Mining in Mali', 2011 p.at 6.

⁷⁵ International Labour Office, 'Social and Labour Issues in Small-Scale Mining' Report for discussion at the Tripartite Meeting on Social and Labour Issues, Geneva 1999 at 16.

⁷⁶ Geneva Report 21. see also: JP Casey, 'Nine artisanal miners assumed dead in Zimbabwe following shaft collapse' <https://www.mining-technology.com/mining-safety/nine-artisanal-miners-assumed-dead-in-zimbabwe-following-shaft-collapse/>. (Accessed: 01 March 2020) reports that in 2019 alone the flooding of Battlefields mine in Kadoma killed twenty-eight, the collapse of Eldorado mine in Chinhoyi killed eleven children and in Shurugwi's Wanderer mine, nine died when fifty miners were trapped underground; Nugget gold mine collapsed in May, while eight died during a blast at Mazowe mine see SARW at 31.

Child labourers in ASM in Zimbabwe have been found to have significantly high levels of mercury poisoning in their blood, hair, and urine.⁷⁷ They also showed symptoms of mercury intoxication including tremors, headaches, vision impairment, coordination problems (ataxia), and memory problems.⁷⁸ The effects of mercury develop over time, but child labourers are also exposed to immediate health hazards such as painful heads, necks or spines from carrying heavy loads and executing other mine works.⁷⁹ In addition, child labour in ASM severely impacts on school attendance and performance of children, as they are forced to abandon school attendance or school work to earn an income in ASM.⁸⁰ A comprehensive discussion on the impact of child labour in ASM will be provided in chapter 6. For now, the following two points are salient:

2.4.2.1 Financial Inclusion and Support: From a Poverty Trap to a Sustainable Economic Activity

Poverty is identified as the major cause of child labour and ASM. The formalisation and regulation of the ASM sector without an incentive of economic benefit will not discourage child mining. Where the profitability and sustainability of the ASM sector are enhanced, players in the sector see the benefit of compliance with laws barring child labour. Further, this growth and sustainability of ASM operations improves the fortunes of families whose children are forced into ASM therefore removing the poverty which is the primary driver of child labour in ASM. This research focuses on strategies through which ASM can be transformed from the current state of the poverty trap into a profitable activity.⁸¹ This is recommended through the lens of the anticipated regulatory framework, which should promote financial inclusion, investor and donor attraction, and technical support to ASM miners. For instance, the state must establish an ancillary supply chain for ASM miners. Currently, the profitability of the sector is compromised. That is because quick returns are preferred even though they are low, compared to higher returns that take longer to materialise.⁸² In addition, the state must support novel projects aimed at supporting ASM. Some best funding opportunities, such as the Shamva project of 2006, fall to the lack of state support and corruption.⁸³

⁷⁷ Bose-O'Reilly et al op cit note 28.

⁷⁸ Human Rights Watch, *A Poisonous Mix: Child Labour, Mercury, and Artisanal Gold Mining in Mali*, 2011 at 37.

⁷⁹ *Ibid* at 6.

⁸⁰ Nyota & Sibanda op cit note 62 at 137.

⁸¹ See Hilson & McQuilken op cit note 1 at 107 – ASM miners while in search of incomes to improve their livelihoods, lack of access to equipment and other capital as well as manipulative markets results in lack of profits.

⁸² Maponga & Ngorima op cit note 51 at 155.

⁸³ The Shamva project was one of the best initiatives that provided technical support to local ASM miners in Zimbabwe – See Spiegel 2015 op cit note 2 at 548.

In the context of ASM gold miners, illegal middlemen who offer on-the-spot quick cash take advantage of the lack of knowledge among the ordinary Zimbabweans taking up this rudimentary extraction.⁸⁴ The research explores ways in which the government can replace this market, without burdening the unsophisticated sector with formal methods like the centralised gold marketing system controlled by the Reserve Bank of Zimbabwe.⁸⁵ Such efforts would not be new to Zimbabwe, but rather a revival of the development strategies that were adopted pre-2000 when the country was considered a global leader in supporting and incentivising ASM.⁸⁶ These interventions would have to consider, and be compatible with the structures of artisanal mining rather than being accessible only to the more developed and structured counterpart, small-scale mining.

2.4.2.2 Education

Child labour disrupts the education of children where they are forced by circumstances to engage in ASM activities to fend for a living. It is generally argued that education is a key antidote for child labour.⁸⁷ The deterioration of the economy and insufficiency of education laws in Zimbabwe have also contributed to the disruption of school attendance. The devaluation of the Zimbabwean currency and inflation have led to the escalation of the cost of education. This has resulted in some children dropping out of school and becoming available for cheap labour, while others engage in child labour as a means to fund their schooling.⁸⁸ Unfortunately, Zimbabwean law does not mandate free basic education to assist such children.⁸⁹ Financial aid mechanisms for disadvantaged children such as the Orphans and Other Vulnerable Children National Action Plan (OVC NAP), and the Basic Education Assistance Module (BEAM) have severely deteriorated due to the economic recession.⁹⁰ More so, these mechanisms have not been sufficient to cater for the increasing number of children involved in child labour due to poverty.⁹¹ Zimbabwe has also been failing to provide a large number of

⁸⁴ Maponga & Ngorima op cit note 51 at 155.

⁸⁵ Ibid.

⁸⁶ Hunter op cit note 20 at 8.

⁸⁷ Nieuwenhuys, O. 'The Paradox of Child Labour and Anthropology' (1996) *Annual Review of Anthropology* 25: 237–51.

⁸⁸ See in general: Nazneen Kanji and Niki Jazdowska. 'Structural Adjustment and Women in Zimbabwe' *Review of African Political Economy* No. 56, Challenging Gender Inequalities in Africa (1993), pp. 11-26.

⁸⁹ Section 6 of the Education Act of Zimbabwe, 2004.

⁹⁰ 2010 Zimbabwe: Evaluation of Programme of Support for National Action Plan for Orphans and Vulnerable Children Impact/ Outcome Assessment https://www.unicef.org/evaldatabase/index_60354.html.

⁹¹ See in general: S Munyati, B Chandiwana & S Mahati, Stanford et al. (2008). 'Situation analysis of orphaned and vulnerable children in eight districts in Zimbabwe. (2008).

children in rural areas with accessible schools, and most schools in these areas have poor infrastructure and, a lack of teachers and other resources.⁹²

In addition, the law requires that a child compulsorily attend school only up to the age of twelve.⁹³ This creates a gap in the framework whereby children involved in mining activities between the ages of twelve and fifteen are neither protected through the compulsory school-going age nor the minimum age of work in Zimbabwe. These factors indicate that the state of the schooling system in Zimbabwe, mostly in rural areas contributes to children's absence from school and non-schooling in turn results in high incidents of child labour.⁹⁴ This research reviews the education system in Zimbabwe and recommends reforms that can draw children out of ASM.

2.5 Conclusion

This chapter discussed the various dynamics of child labour and ASM, acknowledging that child labour is a chronic problem across the world and various other industrial sectors. Different meanings and connotations are attributed to ASM. To some, it is dirty, dangerous, disruptive and must be discouraged. To others, it is profitable, productive, or simply the only way out of poverty.⁹⁵ Some key observations relating to child labour and ASM are that child labour is destructive to children as it disrupts the development of children into adults reaching their full potential. Child labour is a poverty-driven problem where children from poor families seek to supplement family incomes and finance their education and basic needs. Generally, child labour occurs in many sectors and is more defined in ASM among other sectors. In Zimbabwe, child labour in ASM is widespread and children are exposed to sexual abuse, violence, harassment, and drug abuse. The provision of funding for education and robust employment creation are argued to be possible effective solutions to curb child labour in Zimbabwe.

This chapter expanded the background of this research and hinted that child labour in ASM is poverty-driven. This prompts an in-depth enquiry into the concept of poverty in Zimbabwe. Therefore, the next chapter magnifies the problem of poverty by examining what "poverty"

⁹² International Labour Office, 2007, 'Harvest for the future: Agriculture without Child Labour', Geneva: ILO. at 6.

⁹³ Section 5 of the Education Act of Zimbabwe, 2004.

⁹⁴ I. Chinyangarara, et al, 'Indicators for children's Rights, Zimbabwe Case Study'. http://child-abuse.com/childhouse/childwatch/cwi/projects/indicators/Zimbabwe/ind_zim_ch4.html. Accessed 26 March 2020.

⁹⁵ International Labour Office, 'Social and Labour Issues in Small-Scale Mining' Report for discussion at the Tripartite Meeting on Social and Labour Issues, Geneva 1999 at 3.

means, how it is measured, poverty trends across communities where ASM is practised (specifically in Zimbabwe) and the causes of the poverty.

CHAPTER 3

POVERTY AND CHILD LABOUR

3.1 Introduction

ASM is undertaken by millions of people around the world, usually in developing countries,⁹⁶ and mostly by the poor in rural areas where other employment opportunities are meagre.⁹⁷ In Zimbabwe, ASM activities are a last resort to sustain livelihoods during periods of economic recession.⁹⁸ Most Artisanal and small-scale miners in Zimbabwe (as in many other countries) are women and regrettably also children. There is a higher concentration of child workers in poor communities and countries.⁹⁹ Therefore, due to this correlation between poverty, ASM and child labour in ASM activities, poverty is argued to be a driving factor of both ASM and child labour.¹⁰⁰ Despite the domestic and international prohibition of child labour, though inadequate, poverty justifies the prevalence of child labour in ASM activities where orphaned children or children from poor families have no choice but to participate in ASM activities to earn a living or assist their families.¹⁰¹

Having provided the background to this research in chapter 2, this chapter examines the notion of poverty, due to it being key to the discourse on child labour, before venturing into the discussion on the notion of child labour and ASM. The chapter magnifies the problem of poverty by examining what “poverty” means, how it is measured, poverty trends across communities where ASM is practised (specifically in Zimbabwe) and the causes of the poverty.

⁹⁶ Hentschel, Hruschka, & M Priester op cit note 3 at 1.

⁹⁷ The term poverty-driven refers to the significance of poverty as a push factor of the prevalence and growth of the ASM industry, see G. Mpufane, ‘Perils and Opportunities: Artisanal, Small-scale and Informal Mining’, *International Union Rights*, Vol. 19, No. 3, Focus on mining and union rights: South Africa: massacre at Marikana Informal mining: an under-unionised sector Mexico: The Struggle continues at Cananea (2012), pp. 10-11 at 10 ; Hilson & Pardie op cit 4 at 106; Hentschel, Hruschka, & Priester op cit note 5 at 314.

⁹⁸ Hentschel, Hruschka, & Priester op cit note 5 at 315.

⁹⁹ Ersardo op cit note 11 at 456.

¹⁰⁰ Hilson op cit note 41 at 446.

¹⁰¹ International Labour Office, ‘Social and Labour Issues in Small-Scale Mining’ Report for discussion at the Tripartite Meeting on Social and Labour Issues, Geneva 1999 at 38.

3.2 Poverty

It is crucial to understand the meaning of the concept of poverty in its general sense and in the specific cases of children who end up as child labour in ASM in Zimbabwe. This appreciation will inform the recommendations that will come out of this dissertation towards eradicating child labour since poverty is argued to be a key driver of ASM and child labour in ASM.

3.2.1 Poverty: Attempted Definitions and Classifications

At the outset, it must be restated that poverty “is one of the defining challenges of the 21st Century facing the world”.¹⁰² The concept of poverty is dynamic, and it is difficult to find an all-compassing definition. Poverty exists in many ways including financial, health, economic, social, and political, and can also be seasonal.¹⁰³

According to Chambers, the leading scholar on poverty and development, poverty definitions fall into four groups which focus on:

- a. Income poverty – absence or lack of income.
- b. Material lack or want – entails the absence, inadequacy of or poor-quality shelter, clothing, furniture, personal means of transport amongst other things).
- c. Capability deprivation – represents the absence or inadequacy of human capabilities such as skills and self-respect in the community etc.
- d. Multidimensional deprivation – represents a lack of all types of human needs and wants stated above.¹⁰⁴

Whilst all the dimensions of poverty are important, the most relevant dimension for this dissertation is the financial dimension. The financial dimension of poverty represents a situation where one lacks or earns little income; usually below a country’s minimum wage or

¹⁰² Gweshengwe, B., Hassan, N. H., & Maricar, H. M. A. ‘Perceptions of the language and meaning of poverty in Brunei Darussalam’ (2020) *Journal of Asian and African Studies*, 1–18. <https://journals.sagepub.com/doi/10.1177/0021909619900218> at 1. Liu, Qian-Qian, Mn Yu, and Xiao-Lin Wang, ‘Poverty reduction within the framework of SDGS and Post-2015 Development Agenda’ (2015) *Advances in Climate Change Research* 6, no.1, 67-73.

¹⁰³ Ali-Akpajiak, S. C. A., & Pyke, T. ‘Measuring poverty in Nigeria’ (2003) Oxfam GB. Bourguignon, F., & Chakravarty, S. R. ‘The measurement of multidimensional poverty’ (2003) *Journal of Economic Inequality*, 1(1), 29–49. <https://doi.org/10.1023/A:1023913831342>.

¹⁰⁴ Chambers, Robert, *What is poverty? Who answers?* 2006.

income-poverty line. This also includes restricted access to financial products such as loans, not having savings or having debts.¹⁰⁵

In its financial dimension, poverty is mostly expressed as a function of income.¹⁰⁶ In 1990, poverty in developing countries was expressed as any income below the extreme poverty line set at US\$ 1 per person per day.¹⁰⁷ This poverty line is continuously reviewed with time.¹⁰⁸ The United Nations 2015 adopted 17 Sustainable development goals, terms of which Goal 1 is to eradicate poverty by ensuring that no person earns income below United States \$1.25 a day by 2030.¹⁰⁹

Further to the multidimensional nature of poverty, this research relies on the point that poverty is “experienced differently by men and by women and can differ according to a geographical area, social group, and political or economic context”.¹¹⁰ As confirmed by Sen and Begum, poor people are distinguishable in terms of their “sex, region, occupation, land ownership, housing, education, access to infrastructure and even clothing”.¹¹¹ Therefore, the discussion on child labour focuses on poor *children*, calling for tailored solutions to deal with child labour in ASM driven by poverty. This allows for the crafting of effective child labour eradication solutions that consider the subjects involved.

3.2.2 Causes of Poverty

With some understanding of the various definitions and classifications of poverty forged, this analysis now turns to examine the root causes of poverty, to build understanding and guide the effective eradication of child labour by dealing with such root causes. The problem of poverty is attributed to numerous factors including social exclusion and inequality. Social exclusion is the “process of marginalisation and deprivation” related to the presence and absence of power.¹¹² Marginalization may manifest in the disproportionate allocation of a country’s

¹⁰⁵ Banerjee, M. M. “We routinely borrow to survive”: Exploring the financial capability of income-poor people in India’ (2016) *Social Work*, 61(4), 349–358. <https://doi.org/10.1093/sw/sww045>. Chambers, R. *Provocations for development* (2012). Practical Action Publishing.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ UN ‘Goal 1: End poverty in all its forms everywhere. <https://unric.org/en/sdg-1/>.

¹¹⁰ Ali-Akpajiak & Pyke op cit note 103 at 5.

¹¹¹ Sen, B., & Begum, S ‘Identifying and targeting the extreme poor: A methodology for rural Bangladesh’ . (2008) (Chronic Poverty Research Centre Working Paper No. 123). Bangladesh Institute of Development Studies at 4.

¹¹² Swiss Agency for Development and Cooperation, ‘Poverty Brief – Understanding Poverty’. Accessible at <https://www.shareweb.ch/site/Poverty-Wellbeing>.

resources and political power amongst various geographical locations and communities where one location, due to one or more reasons gets more resources than the other. These resources may range from infrastructural development such as schools, hospitals, and industry which has the effect of sustaining the livelihoods of people in that community. As hinted in Chapter 2 and as shall be seen in subsequent chapters, ASM in Zimbabwe occurs in mostly rural and poor communities than in urban and well-to-do areas such as the rural Matabeleland as indicated below under section 3.3. These communities are underdeveloped (marginalised) for reasons that resources are insufficient and are not strategically placed economically. One may also argue that this structure of the economy and the location of the various communities is a legacy of colonisation which the democratic government has not improved. The marginalisation may also take the dimension of the unfair distribution of political power in a country along ethnical groups and Matabeleland is a case in point as seen by the highest rates of poverty and ASM activities as noted below.

In our context, the Inequality of concern is the wealth and income inequality. This represents the uneven, or at least unbalanced distribution of income and wealth amongst the various communities. To put the problem of inequality into perspective, wealth, and income inequality across the world and communities has increased. Wealth inequality is far worse compared to income inequality.¹¹³ Statistics, on the available data, show that about half of total wealth is held by the 10% of the wealthiest households compared to 3 % of wealth held by the poorest 40%.¹¹⁴ To further magnify the problem of wealth inequality globally, a report by Oxfam Davos Report indicated that in 2015 about half of the wealth on earth was held by 62 individuals.¹¹⁵

To effectively deal with poverty, the 1995 World Social Summit stressed that a people-centred approach which emphasises the principles of equity and equality must be adopted to guarantee equal access to opportunities and resources for all people.¹¹⁶

¹¹³ Thomas Piketty, *Capital in the Twenty-First Century*, 2014 (Cambridge, MA: Belknap Press in Chapter 9 and 10 differentiate between income and wealth inequality; income inequality refers to disparities in earnings from wages, salaries, investments, and other sources over a specific period. It reflects the unequal distribution of income among individuals or households, and wealth inequality refers to the uneven distribution of assets such as real estate, stocks, savings, and inherited wealth. Unlike income, wealth accumulates over time and is often passed down through generations, making it more persistent and difficult to reduce.

¹¹⁴ OECD 'Inequalities in Household Wealth and Financial Insecurity of Households' July 2021.

¹¹⁵ Oxfam Report, 'An Economy for the 1%' 2016. <https://www.oxfam.org/en/research/economy-1>.

¹¹⁶ United Nations 'World Summit for Social Development' 6 – 12 March 1995, Copenhagen, Denmark. <https://www.un.org/en/conferences/social-development/copenhagen1995>. At the summit, the delegates of 186 countries that were represented pledged to deal with social ills including poverty adopting an approach that puts people at the centre of development.

3.3 Poverty Trends – Global and in Zimbabwe

As stated earlier, countries across the world and global institutions are in a constant struggle to eradicate poverty. Poverty is a global phenomenon with more poor people in developing countries. Consequently, the elimination of all forms of poverty across the world has been a key goal in the 2030 Global Agenda for Sustainable Development Goals.¹¹⁷ The elimination of poverty also previously formed part of the eight goals of the Millennium Development Goals (MDGs).¹¹⁸

To put things into perspective, a study by the UN indicated that in 2019, about 1.3 billion people in 101 countries were living in poverty.¹¹⁹ Two of the world's poorest countries recently exchanging the top spot in extreme poverty are Nigeria and India. In 2022, the World Poverty Clock (WPC) data indicated that India overtook Nigeria in being the poverty capital of the world with an estimated 83 million people plunging into extreme poverty in 2022.¹²⁰

The outbreak of the COVID-19 pandemic and the consequent lockdowns have aggravated the rate of global poverty.¹²¹ In other words, the pandemic is argued to have reversed successes in the eradication of poverty.¹²² In essence, the pandemic has undermined existing global efforts to deal with poverty in the attainment of specific Sustainable Development Goals (SDGs) by 2030.¹²³ Indications are that because of the spread of the pandemic in developing countries, 680 million people in extreme poverty cannot successfully be helped.¹²⁴

Zimbabwe, like many developing countries, has a significant part of the population living in poverty. The World Bank classified around 74% of the Zimbabwean population as poor in 2018 based on the International Poverty Line (IPL) of US\$1.90 purchasing power parity

¹¹⁷ Koehler, G. 'The 2030 agenda and eradicating poverty: New horizons for global social policy?' (2017). *Global Social Policy*, 17(2), 210–216. <https://doi.org/10.1177/1468018117703440>.

¹¹⁸ UN (United Nations), 2013. *A New Global Partnership: Eradicate Poverty and Transform Economics Through Sustainable Development*. United Nations Publication, New York. <https://sustainabledevelopment.un.org/content/documents/8932013-05%20-%20HLP%20Report%20-%20A%20New%20Global%20Partnership.pdf>.

¹¹⁹ United Nations Development Programme and Oxford Poverty and Human Development Initiative. (2019). *Global multidimensional poverty index 2019: Illuminating inequalities*. United Nations Development Programme and Oxford Poverty and Human Development.

¹²⁰ Ezinwanne Onwuka, 'India Overtakes Nigeria as World's Poverty Capital', *PilotNews*, 12 March 2022.

¹²¹ Dzawanda, Beauty, Mark Matsa, and Melanie Nicolau, 'Poverty on the rise: the Impact of the COVID-19 lockdown on the informal sector of Gweru, Zimbabwe', *International Social Science Journal*, 71(S1), pp. 81-96 at 81.

¹²² *Ibid.*

¹²³ *Ibid.*

¹²⁴ Olajide, O. 'Nigerian government's plan to tackle COVID-19 leaves urban poor further disadvantaged' 2020 *The Conversation*, 20 May. Available from: <https://phys.org/news/2020-05-nigerian-tackle-covidurban-poor.html>. Also see - United Nations, 2020. Policy brief: COVID-19 in an urban world. July 2020. Available from: https://www.un.org/sites/un2.un.org/files/sg_policy_brief_covid_urban_world_july_2020.pdf.

(PPP).¹²⁵ The high level of poverty in Zimbabwe is due to a plethora of factors the major of which is the prolonged economic crisis.¹²⁶ The poverty in Zimbabwe manifests in other variables such as the level of employment.¹²⁷ Zimbabwe is dominantly an informal economy with about 60 % of the national GDP contributed by the informal sector whilst over 80 % of the economically active population is employed in the informal sector, a highly volatile sector.¹²⁸

3.4 Child Poverty in Zimbabwe

At the core of this research is child labour in ASM driven specifically by child poverty. Child poverty occurs in the wider poverty phenomenon. However, the plight of poor children can be better understood by examining the poverty-related to children. Poverty affects different groups of people differently, but typically children and women are the most affected by poverty. Globally, UNICEF and Save the Children projected the Covid-19 pandemic to plunge 86 million children into poverty.¹²⁹

Zimbabwe has a significant number of children living in poverty, as evidenced by the large number of children increasingly resorting to child labour in ASM.¹³⁰ This is aggravated by the fact that Zimbabwe has a relatively young population with at least one child under the age of 18 in about 79 % of all households.¹³¹

A survey conducted by UNICEF in 2019 on child poverty in Zimbabwe provided critical insights on child poverty in Zimbabwe including the variations in poverty amongst children of different ages and in different geographical areas.¹³² The survey found that of all children in Zimbabwe, an estimated 60.7 % are multidimensionally poor. In other words, these children are poor in more than one of the three abovementioned conceptual categories of poverty. Further, the survey found that younger children are more exposed to multidimensional poverty. It is estimated that 89.3 % of children below 23 months of age are multidimensionally poor

¹²⁵ World Bank, 'World Bank Report on Poverty in Zimbabwe'. 2019, *The World Bank Group*.

¹²⁶ Ibid.

¹²⁷ Ibid.

¹²⁸ Ibid.

¹²⁹ Nordic Africa Institute, 2020. 'We cry because we cannot sell': Restricted mobility in the wake of the Covid-19 pandemic. 16 June. Available from: https://nai.uu.se/news-and-events/news/2020-06-16-wecry-because-we-cannot-sell_restricted-mobility-in-the-wake-of-the-covid-19-pandemic.html/Part1.

¹³⁰ UNICEF – Multiple Indicator Cluster Survey 6 (MICS6), 2019.

¹³¹ Ibid.

¹³² UNICEF Zimbabwe (2021) 'The Child Poverty in Zimbabwe: A Multiple Overlapping Deprivation Analysis of Multiple Indicator Cluster Survey 2019.

compared to 75.1 per cent of children aged 24–59 months. Only 44.8 % of children aged 15–17 years are exposed to multidimensional poverty.¹³³

Moreover, the survey indicated that child poverty is relatively more prevalent in rural areas at 69.2 % than in urban areas at 37.6%.¹³⁴ In Zimbabwe, the proportions of children exposed to multidimensional poverty is much lower in the metropolitan centres and affluent provinces with Bulawayo recording 37%, Harare - 39% and Mashonaland East - 56.3%. Child poverty is more pronounced in provinces such as Matabeleland North with more than 7 out of 10 children being multidimensionally poor, making 73.4% a rate almost double that of Bulawayo.¹³⁵ These patterns are consistent with the trends in child labour in ASM where there is prevalence in rural areas of Matabeleland provinces.

3.5 Conclusion

Poverty remains one of the major problems facing the globe and countries are constantly searching for ways to eradicate poverty. Poverty eradication is one of the UN's SDGs. As a result of poverty groups of people such as women and children suffer the most. Trends show that there are more poor people in developing countries than in developed countries and there are more poor people in rural areas than in urban areas. Zimbabwe is amongst the countries with some of the highest poverty rates due to a longstanding economic crisis aggravated by the COVID-19 pandemic. Since child labour is the focus of this research, this chapter examined child poverty in Zimbabwe and found that over 60 % of children are exposed to poverty with children in rural areas more exposed than their urban counterparts. These trends support the link between poverty, and child labour in ASM and ASM patterns. It can be reasonably argued that poverty is the major cause of child labour where children are forced by circumstances to fend for their poor families and themselves.

Given the socio-economic circumstances of children in poor countries like Zimbabwe who participate in ASM to sustain their livelihoods and the need to raise children who are responsible and skilled in life, there is a need to delineate what qualifies as child labour that warrants prohibition. This delineation is key to balancing the interests of the children, practicality and the law protecting children's rights. Therefore, the next chapter examines the

¹³³ Ibid.

¹³⁴ Ibid.

¹³⁵ Ibid.

concept of child labour and outlines the domestic and international regulatory framework prohibiting child labour.

CHAPTER 4

REGULATORY FRAMEWORK ON CHILD LABOUR

4.1 Introduction

The mining industry is one of the most hazardous sectors for workers and children. In 2017, it was in first position, topping agriculture and construction work which are its long-time competitors.¹³⁶ Many of the activities which are listed in international and domestic laws under hazardous work and worst forms of child labour also occur in the mining sector and this leads to the consensus that child labour in mining is the worst form of child labour.¹³⁷ The countries with the highest incidence of child participation in this risky sector are mostly African.¹³⁸ Almost all children involved in mining activities in these countries are involved in artisanal and small-scale informal mines.¹³⁹ This introduction highlights and reaffirms the reason why researching, raising awareness, and more importantly coming up with legal responses to child labour in ASM is of great relevance.

The socio-economic circumstances of children in poor countries like Zimbabwe who participate in ASM to sustain their livelihoods and the need to raise children who are responsible and skilled in life calls for the need to delineate what qualifies as child labour that warrants prohibition. This delineation is key to balancing the interests of the children, practicality and the law protecting children's rights. Although this research is based on combating child labour in artisanal and small-scale mining in Zimbabwe, this chapter provides

¹³⁶ OECD (2017), Practical actions for companies to identify and address the worst forms of child labour in mineral supply chains at 9.

¹³⁷ See Paragraph 3 in International Labour Organisation Worst Forms of Child Labour Recommendations, 1999 (No. 190) which elaborates on worst forms of child labour as including; "work underground, under water, at dangerous heights or in confined spaces; work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads; work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health..."

¹³⁸ Gallinetti, J. 'Worst Forms of Child Labour: A View from Out of Africa', in Sloth-Nielsen J. (eds) *Children's Rights in Africa: A Legal Perspective* (2008) *Ashgate Publishing*, 323 – 341 at 328.

¹³⁹ O'Driscoll op cit note 76 at 4.

clarification and a general understanding of child labour before venturing into the specific subject of study in the latter chapters. In so doing, this chapter discusses the definition and nature of child labour, the relevant international, regional and domestic regulatory frameworks, and the nature and extent of child labour in Zimbabwe in general *vis-à-vis* the available regulatory frameworks.¹⁴⁰ Reference is made to relevant ILO conventions, the UN Convention on the Rights of the Child (UN CRC), the African Charter on the Rights and the Welfare of the Child, and domestic laws.

4.2 Defining Child Labour

“Child labour” refers to work done by young persons under the working age specified by the law.¹⁴¹ The practice is harmful, and exploitative, and often disrupts their right and access to education.¹⁴² Age, the harmful nature of the work done, and the disruption to education, are used to define child labour in international and legal instruments.¹⁴³ In terms of age, child labour is when a young person is admitted to hazardous work or the worst forms of child labour before they reach the age of eighteen, or admitted to work or employment in general before they reach the age of fifteen.¹⁴⁴

Based on harmfulness, child labour is often defined as work that deprives a child of their childhood, potential and dignity and is physically, mentally, socially, or morally harmful to children.¹⁴⁵ In addition or alternative to being of a harmful nature, child work becomes child labour when it interferes with a child’s schooling.¹⁴⁶ Work interferes with a child’s schooling by depriving them of the opportunity to attend school, causing them to leave school

¹⁴¹ Inter-parliamentary Union/ International Labour Office, 2002 quoted in International Labour Organisation, *Child Labour: A Textbook for University Students*, 2004.

¹⁴² Images of child labour <http://www.childlabourphotoproject.org/childlabour.html> (Accessed 01 April 2021).

¹⁴³ The international legal instruments which have been widely ratified and adopted into national laws on child labour.

¹⁴⁴ See United Nations Convention on the Rights of the Child, 1989, Article 1 read with 32; International Labour Organisation Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour No. 182, 1999, Article 2; International Labour Organisation Minimum Age Convention No. 138, 1973, Article 3.

¹⁴⁵ See United Nations Convention on the Rights of the Child, 1989, Article 32; International Labour Organisation Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour No. 182, 1999. International Labour Organisation Minimum Age Convention No. 138, 1973; African Charter on the Rights and Welfare of the Child, 1990, Article 15.

¹⁴⁶ United Nations Convention on the Rights of the Child, 1989, Article 1 read with 32; International Labour Organisation Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour No. 182, 1999, Article 2; International Labour Organisation Minimum Age Convention No. 138, 1973, Article 3.

prematurely, or requiring them to attend school attendance whilst simultaneously engaging in excessively long and heavy work.¹⁴⁷

Alternatively, child work that is legally permissible for the child's age, that is not harmful to their health and development, and that does not interfere with their schooling does not fall under child labour and is therefore not prohibited.¹⁴⁸ Child work, such as helping around the home, assisting in a family business, or earning pocket money after school, is often considered beneficial to the development and education of the child and the welfare of their families.¹⁴⁹ Most African countries regard this engagement of children in certain work as essential training or socialisation.¹⁵⁰ Some child work can help build a child's character, by teaching them punctuality and rigour which are important social values and prepare them for adult life. Such practices are not, however, the focus of this dissertation.

Child labour also excludes all work that is part of vocational training that forms part of the child's education, skills training programs, or work that forms part of career guidance or orientation.¹⁵¹ The ILO Minimum Age Convention also excludes from child labour, under certain circumstances, child work that involves their participation in artistic performances, a provision which is progressive to foster a child's talents and development.¹⁵² The ILO therefore recognises that certain child work is unavoidable and or produces skills and attitudes that children will use as future workers and useful members of the community.

With this in mind, and the widespread agreement that poverty is a major cause of child labour, and that child labour has economic benefits, the international regulation and definition of child labour has been designed to promote child work, but only in its non-hazardous forms. This informed the classification of child labour into different categories, where child work only constitutes child labour depending on the age of the child and the harmful nature of the work.¹⁵³ The strict abolition of work or employment for all children, being humans under the age of

¹⁴⁷ International Labour Organisation: What is Child Labour, Available at <https://www.ilo.org/ipec/facts/lang--en/index.htm> (Accessed on 30 March 2021).

¹⁴⁸ Inter-parliamentary Union op cit note 140 at 16.

¹⁴⁹ Inter-parliamentary Union/ International Labour Office, 2002 quoted in International Labour Organisation, *Child Labour: A Textbook for University Students*, 2004, 16. Ibid.

¹⁵⁰ Ayifah, R. 2018, 'Essays on child labour and schooling in Ghana' 2018, *University of Cape Town*, at 5.

¹⁵¹ ILO Minimum Age Convention, Article 6.

¹⁵² ILO Minimum Convention, Article 8.

¹⁵³ See the Minimum Age Convention.

eighteen, only applies to the most hazardous and worst forms of child labour, and there is more tolerance for child work in developing countries.¹⁵⁴

The type of work and extent to which children are allowed or expected to be doing before it is ruled out as hazardous varies depending on differing socio-economic backgrounds,¹⁵⁵ cultures and traditions, among other factors.¹⁵⁶ This created a requirement for the ILO to set some basic standards rather than leaving it up to different societies to decide when work ceases to have a positive contribution and amounts to a violation of the child's rights. This is because, in many instances, even the most accepted child work can be potentially harmful to a child and a violation of their rights.¹⁵⁷ While a child helping around the house or watching their younger siblings may seem harmless to many societies, this can become child labour if the child is too young for such duties, or their schoolwork suffers as a result, or the child must drop out of school.¹⁵⁸ The engagement of children in economic activities, although commonly justified as positively training children for the future, the reality is that tangible economic benefits accrue to parents and household members while a child's rights are violated.¹⁵⁹ For instance, children working alongside their families in a "so-called" family business or helping after school in dangerous ASM pits, are in many cases simply playing a role in enhancing family earnings rather than receiving valuable training or development.¹⁶⁰

The above shows the need for the law to distinguish between positive child work and the occurrence of unlawful child labour and set standards for types of child labour.

4.3 Classifications of Child Labour

Child labour is classified into four categories namely, light work, child labour other than non-hazardous child labour, hazardous child labour and worst forms of child labour.¹⁶¹ This differentiation is based on the understanding that there is positive child work and that not all

¹⁵⁴ Minimum Age Convention flexibility clauses.

¹⁵⁵ Anker, Richard. "The economics of child labour: A framework for measurement." *Int'l Lab. Rev.* 139 (2000): 257.

¹⁵⁶ Kolk, Ans, and Rob Van Tulder. "The effectiveness of self-regulation: Corporate codes of conduct and child labour." *European Management Journal* 20, no. 3 (2002): 260-271.

¹⁵⁷ IPEC 2003,12.

¹⁵⁸ Green Governance Zimbabwe Trust 'Double Dilemma: How COVID-19 is Entrenching Child Labour in Artisanal Small Scale Gold Mining' 6 July 2021. <https://kubatana.net/2021/07/06/double-dilemma-how-covid-19-is-entrenching-child-labour-in-artisanal-small-scale-gold-mining/>.

¹⁵⁹ Ibid.

¹⁶⁰ Ibid.

¹⁶¹ Skyt, Helena. "Child Labour in Rural India 'Child Labour in Rural India: Niicro-Economic Perspective' (2002) *Indian Journal of Labour Economics* 45 at 3.

forms of child labour are equally harmful to children, especially considering differences in age and socio-economic factors.¹⁶² This is especially evident where work benefits the development and maturity of the child, or enhances the economic welfare of their family, especially in developing and poor countries.¹⁶³

The socio-economic realities of children who participate in artisanal mining require practicality and appreciation of the context. It is counterintuitive to consider child labour beneficial if one wears blinkers of the law protecting the rights of children. This law, whilst well-meaning, if followed may have the effect of harming some children in our African context given the lack of economic opportunities and social settings where a child's chance to survive and get an education solely depends on artisanal mining. Before the classifications and qualifications in the section that follows, child labour is beneficial to children as indicated above, in that children can have food and not starve, children develop skills and an entrepreneurial spirit at a young age, children develop confidence and life skills from their brave interaction with adults and buyers. Moreover, instead of relying on their poor families, children can prioritise their education whilst their parents focus on other needs. Whilst children must be protected, the realities of children in poor countries are that they must be tough and skilled to compete, it would be a disservice to want to abolish all forms of child labour. Therefore, the ILO correctly adopted a realistic approach, in regulating when the participation of a child in work constitutes a problem of child labour. This gave rise to different types of child labour and different minimum age for the prohibition thereof, based on the age of the child and the nature of the work involved.¹⁶⁴

4.3.1 *Light Work*

Light work refers to child work or employment that causes no harm to the health or well-being of a child nor hinders their schooling or other educational and vocational training. Such work is therefore legally acceptable or even beneficial to the child's development.¹⁶⁵ Although the minimum age of work or employment is fifteen and fourteen for certain developing countries,

¹⁶² Dessy, Sylvain E, and Stephane Pallage. "A Theory of the Worst Forms of Child Labour." (2005) *The Economic Journal* (London) 115.500 68–87, 68.

¹⁶³ Muzvidziwa, Victor Ngonidzashe. 'Child labour or child work? Whither Policy' (2006) *Institute of African Studies Research Review* 23-33.

¹⁶⁴ Myers, William E. 'Considering child labour: Changing terms, issues and actors at the international level' (1999) *Childhood* 6.1 13-26.

¹⁶⁵ ILO Minimum Age Convention, Article 7; David Tajzman (International Programme on the Elimination of Child Labour) (2007), *Child Labour: Modern Policy and Legislative Responses to Child Labour*, at 30.

light work is allowed for children as young as thirteen, or twelve where the minimum age of work or employment has been lowered to fourteen.¹⁶⁶ Light work is however not allowed to be combined with compulsory or basic education unless the child involved children reached the statutory minimum age of work or employment.¹⁶⁷ Some regional examples are Botswana, Ghana and Zimbabwe, which have legislated that children can do light work from the ages of fourteen, thirteen and fifteen respectively.¹⁶⁸

The ILO Minimum Age Convention requires that relevant national authorities determine the activities that should be permitted as light work and ensure that the working and resting hours and conditions of such activities are regulated and monitored.¹⁶⁹ The ILO however provides guidance that light work cannot exceed fourteen hours a week.¹⁷⁰ There are at least two ways in which light work is determined in national laws, either by listing specific tasks and occupations as light work or declaring that work is light if it meets certain prescribed conditions in addition to the ones stated above.¹⁷¹ Common conditions that have been set to qualify work as light include, work that is not done at night, work that is done with the consent of the parent and that the work must fall outside school hours.¹⁷² In conclusion, work done by a child below the ages and conditions permitted for light work suits the definition of child labour and is unlawful.

4.3.2 *Non-Hazardous Child Labour Other Than Light Work*

There is regular work, that neither falls under light work nor the category of hazardous work and worst forms of child labour. If a child reaches the general minimum age of work or employment as regulated by the Minimum Age Convention and national laws, it is legal to employ or engage them in any kind of work.¹⁷³ However, this type of child work will become child labour and therefore unlawful when the work conditions are tantamount to hazardous work and worst forms of child labour, which are strictly permissible to older children.

¹⁶⁶ Nardinelli, Clark. "‘Child labour and the factory acts’ (1980) *The Journal of Economic History* 40.4 (1980): 739-755.

¹⁶⁷ ILO Minimum Age Convention, Article 7(2).

¹⁶⁸ Dessy and Stephane op cit note 161.

¹⁶⁹ ILO Minimum Age Convention, Article (3).

¹⁷⁰ ILO, International Organisation of Employers, 2015, How to do business with respect for children’s right to be free from child labour: ILO-IOE child labour guidance tool for business. Available at: https://www.ilo.org/ipecc/Informationresources/WCMS_IPEC_PUB_27555/lang--en/index.htm (Accessed 05 April 2021).

¹⁷¹ Tajgman op cit note 164.

¹⁷² Ibid.

¹⁷³ ILO Minimum Age Convention, Article 2.

4.3.3 Hazardous Child Labour

Hazardous work is defined in the ILO Minimum Age Convention and the Worst Forms of Child Labour Convention as work that by its nature or the circumstances under which it is performed, is likely to jeopardise the health, safety or morals of a child and is prohibited for children under the age of eighteen.¹⁷⁴ Hazardous child labour was included in the Worst Forms Convention and forms a category of worst forms of child labour. Hazardous work is also known as conditional worst forms of child labour because their regulation is more flexible and can be determined at a national level.¹⁷⁵ This is different from other types of worst forms of child labour, the prohibition, regulation, and minimum age of which are unconditional.¹⁷⁶

4.3.4 Unconditional Worst Forms of Child Labour

The attack on the exploitation of children in international labour standards started as early as 1919.¹⁷⁷ Later in 1999, there was a global consensus that there are more heinous forms of child labour that require more immediate and rigid prohibition.¹⁷⁸ This led to the classification of certain child labour as the worst forms of child labour and the unanimous adoption of the ILO Convention on the Worst Forms of Child Labour.¹⁷⁹ Both hazardous work and unconditional forms of child labour are explained in more detail later in this chapter.

4.4 Regulatory Framework on Child Labour

This section outlines the regulatory framework governing child labour. The discussion covers international instruments, mainly the UN treaties, regional Instruments such as the AU treaties and Zimbabwe`s domestic laws. Like other African developing economies, Zimbabwe has ratified all the relevant international conventions in its battle against the child labour menace. To protect children, Zimbabwe has ratified other international instruments including the Parlemo Protocol on Trafficking in Persons; UN CRC Protocol on Armed Conflict and the UN

¹⁷⁴ Article 3(1) of Convention No. 138 and Article 3(d) of Convention No. 182.

¹⁷⁵ See ILO Child Labour Textbook, 47; ILO Minimum Age Convention, Article 3.

¹⁷⁶ See ILO Child Labour Textbook, 47; ILO Worst Forms of Child Labour Convention, Article 2.

¹⁷⁷ Noguchi, Yoshie. "ILO Convention No. 182 on the worst forms of child labour and the Convention on the Rights of the Child." (2002) *Int'l J. Child. Rts.* 10 (2002):355.

¹⁷⁸ Yoshie op cit note 176 at 355.

¹⁷⁹ ILO Worst Forms of Child Labour Convention, accompanied by Recommendations 190.

CRC Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.¹⁸⁰ The section explores the international, regional, and domestic instruments on child labour.

4.4.1. International and Regional Legal Instruments

As indicated above, the protection of the rights of children is defined in various international and regional human rights instruments some of which are dedicated only to children. The discussion below will unpack these instruments including Minimum Age Convention No. 138 of 1973, Worst Forms of Child Labour Convention of 1999, the United Nations Convention on the Rights of the Child of 1989, and the African Charter on the Rights and Welfare of the Child of 1990. The discussion unpacks the background to the convention and its scope towards the protection of the rights of the child. Key features distinguishing these instruments from each other are noted. Further, as shall be seen, some of these instruments overlap in certain aspects.

4.4.2 Minimum Age Convention No. 138, 1973

The ILO Minimum Age Recommendation (No. 146) and the African Charter on the Rights and Welfare of the Child (ACRWC) regulate the minimum wages and working conditions for children permitted to work, to ensure that child work is not exploited. This is necessary because even if allowed to work, children are physically weaker, mental immature, and general vulnerable.¹⁸¹

The ILO Minimum Age Convention (Convention 138) was the first universal treaty concerning child labour. It sets out the standards to be applied by member states with regards to work done by children, based mainly on the nature of the work and the age of the child.¹⁸² With the objective to abolish child labour effectively from the outset, convention 138 stipulates that member states must pursue a national policy designed to guarantee the protection of children from child labour.¹⁸³ Convention 138 also requires countries at the outset to raise those minimum ages set by the convention, as far as is necessary for the fullest physical and mental development of children.¹⁸⁴ With this, the convention intimates that the minimum ages must

¹⁸⁰ The Palermo Protocol on Trafficking in Persons, 2000; United Nations CRC Protocol on the Involvement of Children in Armed Conflict, 2002; UN CRC Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, 2000.

¹⁸¹ See UN CRC Preamble, ILO Conventions; ACRWC Preamble; Nhenga-Chakarisa, T C (2010), “Who does the law seek to protect and from what? The application of international law on child labour in an African context” (2010) *AHRLJ* 161 – 196, at 161.

¹⁸² International Labour Organisation Minimum Age Convention, 1973 (No. 138).

¹⁸³ *Ibid* - Article 1.

¹⁸⁴ *Ibid*.

not be set merely for formal compliance with the convention, but that children must be protected by member states as much as it is necessary in their best interests.¹⁸⁵

For a legal instrument aiming at global application, to countries with varying economic organisations, social and cultural circumstances and political structures, the minimum age standards below show that Convention 138 seems sufficiently flexible. The minimum age for admission to work is fifteen years, with the option that developing countries can lower the age to fourteen years if that will promote the country's development.¹⁸⁶ However, there is a condition that the minimum age set by national laws must be above the statutory age of completing compulsory and basic education.¹⁸⁷ Countries are also permitted to allow children under the general minimum age to engage in light work since this kind of work must neither interfere with a child's schooling nor be harmful.¹⁸⁸ The prioritisation of education, especially compulsory and basic education continuously looms at the centre of the definition and regulation of child labour.

The minimum age for hazardous work is eighteen years.¹⁸⁹ However, the Minimum Age Convention calls this, "work which by its nature or circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons."¹⁹⁰ The term "hazardous work" was attached to this definition in the Recommendation which accompanied the Worst Forms of Child Labour Convention in substantiating Convention 138, especially where such hazardous labour was concerned.¹⁹¹ This makes hazardous work one of the "worst forms" of child labour.¹⁹²

¹⁸⁵ For example, some countries have raised the minimum age to 16 years.

¹⁸⁶ ILO Minimum Age Convention. No. 138.

¹⁸⁷ The ILO Minimum Age Convention No. 138 and Recommendations, 1973 was the first of the international agreements that linked education and child labour, obliging member states to ensure that no child is employed or engaged in full-time work below the age of primary school completion, which mostly varies from 12 to 14 years – ILO Textbook, at 119.

¹⁸⁸ See section 2.1.1 above; This means for example, that a country that sets the minimum age of work at 15 can set the minimum age for light work at 13-14 years and a developing country with a minimum age of work of 14 can set the minimum age for light work at 12-13 years, see International Labour Organisation: ILO Convention No. 138 at a Glance (June 2018), 3. Available at https://www.ilo.org/ipecc/Informationresources/WCMS_IPEC_PUB_30215/lang--en/index.htm , Accessed 01 April 1, 2021.

¹⁸⁹ Bhukuth, Augendra. 'Defining child labour: A controversial debate' (2008) *Development in practice* 18.3 at 385-394.

¹⁹⁰ Anaie, Tamara. "Victimized perpetrators: child soldiers in ISIS and the need for a new international legal approach." (2018) *Rutgers Race & L. Rev.* 20 at 93.

¹⁹¹ Bhukuth op cit note 188.

¹⁹² Ibid.

The eighteen-year minimum age for hazardous work can however be lowered to sixteen years, but this must only be done with proof of strict and full protection of the health, safety and morals of the young persons involved has been arranged.¹⁹³ The convention also only allows the engagement of children from the age of sixteen in hazardous work where they have received adequate instructions or vocational training for the relevant activities.¹⁹⁴ Convention 138 is designed to be flexible to differing circumstances, for instance, in developing countries, where the youth may need to be fully allowed into economic activities including hazardous work at an earlier age.¹⁹⁵ However, the conditions attached to such discretions show that the need to protect children from harm and violation of their rights is indispensable.

While the Minimum Age Convention focuses on the exclusion of children from the workplace, it is complemented by a Recommendation which guides the protection of those children who can legally work, and on policy and enforcement of Convention No. 138.¹⁹⁶ For instance, the Recommendation includes the regulation of minimum wages, adequate rest periods and work safety, among other conditions of child employment.¹⁹⁷ This ensures that even when children are allowed to work, their rights and safety remain prioritised. The Minimum Age Convention has received widespread ratification and is in force in ninety percent of the world's countries.¹⁹⁸

4.4.3 *Worst Forms of Child Labour Convention, 1999*

With the fastest rate of ratification compared to all other ILO Conventions in history, the Worst Forms of Child Labour Convention 182 was adopted in 1999. In 2020 it achieved the status of the only ILO convention with universal ratification.¹⁹⁹ The extraordinary success of this convention shows global consensus to give more substance to the Minimum Age Convention and to prioritise the elimination of the most intolerable forms of child labour.²⁰⁰ The ILO

¹⁹³ See Article 3(3) of Convention No. 138 and Paragraph 4 of Recommendation No. 190.

¹⁹⁴ Ibid.

¹⁹⁵ Ibid.

¹⁹⁶ International Labour Organisation Minimum Age Recommendation No. 146, 1973.

¹⁹⁷ See for example, *Minimum Age Recommendation*, Art. 13(1)(a), 'the provision of fair remuneration and its protection, bearing in mind the principle of equal pay for equal work.

¹⁹⁸ International Labour Organisation Official Website, Available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312283:NO (Accessed on 05 April 2021).

¹⁹⁹ International Labour Organisation Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999 (No. 182); Noguchi op cit note 177.

²⁰⁰ This convention was initiated through the International Labour Organisation Report VI (I) *Child Labour: Targeting the Intolerable* (1998), which was circulated to seek advice from governments, employers' and workers' organisations, contained questionnaires, and surveys on international and national law and practices, to spearhead

recognised this historic first as a global commitment that the worst forms of child labour, like “slavery, sexual exploitation, the use of children in armed conflict or other illicit or hazardous work that compromises children’s health, morals or psychological wellbeing, have no place in our society”.²⁰¹ The main objective of Convention 182 is to call for immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour.²⁰² This convention is particularly important to the research on addressing child labour in the ASM sector of countries such as Zimbabwe since child mining falls under the worst forms of child labour.²⁰³

The Worst Forms Convention provides a list of factors that define the worst forms of child labour. The worst forms of child labour include all forms of slavery or similar practices to slavery, which include the sale and trafficking of children, debt bondage and serfdom and compulsory or forced labour, including in armed conflict.²⁰⁴ Use, procurement or offering of children for prostitution or offering a child for the performance in or production of pornography is also listed.²⁰⁵ Convention 182 also includes in the definition, the use, procuring, or offering of children for illicit activities, particularly the production and trafficking of drugs.²⁰⁶ These three categories are unconditional worst forms of child labour and are never permissible for children, unlike hazardous work which as explained earlier can be permissible for children under certain conditions.²⁰⁷ The fourth category is hazardous work, also listed under the definition of worst forms of child labour, which refers to work which by its nature or the circumstances under which it is carried out is likely to harm the health, safety and morals of a child.²⁰⁸ Chapter 6 below will illustrate that child labour in ASM fits the definitions of hazardous work.

the adoption of an additional international instrument to focus on the most intolerable forms of child labour; see also Gallinetti op cit note 137 at 328.

²⁰¹Guy Ryder, ILO Director-General (2020), *International Labour Organisation News: ILO Child Labour Convention achieves universal ratification*, Available at newsroom@ilo.org. (Accessed 01 April 2021).

²⁰² Yoshie pg. Op cit note 176 at 2.

²⁰³ O’Driscoll op cit note 76 at 3.

²⁰⁴ Avis, William. “Data on the prevalence of the worst forms of child labour.” (2017). Noguchi op cit note 176 at 355.

²⁰⁵ Noguchi op cit note 176.

²⁰⁶ ILO Convention 182.

²⁰⁷ See section 3.1.1 above; See Article 3(3) of Convention No. 138 and Paragraph 4 of Recommendation No. 190.

²⁰⁸ Noguchi op cit note 176.

Recommendation 190 further identifies the kinds of work which fall under the category of hazardous work as a kind of worst form of child labour.²⁰⁹ This includes a) work that exposes children to physical, psychological or sexual abuse; b) working underground, underwater, at dangerous heights or in confined spaces; c) working with dangerous machinery, equipment and tools, or d) work which involves the manual handling or transport of heavy loads.²¹⁰ The Recommendations also include working in an unhealthy environment which may expose children to dangerous substances, agents or processes, or to temperatures, noise levels, or vibrations that can jeopardise their health.²¹¹ Working under particularly difficult conditions such as long hours or during the night or work where the child is unreasonably confined to the premises of the employer also falls under hazardous work which is part of the worst forms of child labour.²¹²

The determination of the specific work and occupations that constitute hazardous work has been delegated to national laws, regulations, or competent authorities by both the Minimum Age Convention and the Worst Forms of Child Labour Convention. However, the clarity with which the ILO defines the worst forms of child labour and hazardous work leaves minimal room for certain work and occupations to escape from the list. The engagement of a child in mining would expose them to most of the hazards listed in the Recommendations, and in ASM, possibly to all of them. The application of the ILO legal instruments to child labour in ASM is dealt with in chapter 6, but suffice it to say that such child labour in ASM is by its nature one example of the worst forms of child labour that must be targeted for immediate elimination.²¹³

In addition to prohibiting the admission of children into the worst forms of child labour, Convention 182 requires the enforcement and implementation of its provisions necessary, through penalties and sanctions. The convention also calls for the prioritisation of education in the elimination of the worst forms of child labour. Thus, it calls on member states to remove, rehabilitate and take children, who are already involved in the worst forms of child labour, back into schools and society. Identifying children at risk of the worst forms of child labour, social and economic development and eradication of poverty are other factors that the convention points to as necessary in the attainment of its provisions. Another interesting provision is that

²⁰⁹ Ibid.

²¹⁰ KC, Bal Kumar, Govind Subedi Yogendra Bahadur Gurung, and Keshab Prasad Adhikari. " et al 'Investigating the Worst Forms of Child Labour No. 2.' "

²¹¹ Ibid.

²¹² Ibid.

²¹³ Application of ILO provisions on child labour in ASM is discussed in detail in Chapters 5 and 6 of this thesis.

member states must consider the special situation of girl children with respect to prioritising education and protection from child labour. This concern is similarly raised in the UN CRC and the ACRCW,²¹⁴ and as a result, an important obligation to member states is raised, especially in Africa where there is evidence of girl children being under-prioritised when it comes to education and school attendance.²¹⁵

4.4.4 *United Nations Convention on the Rights of the Child, 1989*

The adoption of the UN CRC has been credited for recognising young persons as subjects of rights, as part of the trend to break away from the treatment of children as objects that are attached to their parents and need protection. The UN CRC requires the recognition of the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous to the child.²¹⁶ This entails work that interferes with the child's education, or that is harmful to the child's health or physical, mental, spiritual, moral, or social development.²¹⁷ In so doing, states must, having regard to other relevant international instruments, provide for a minimum age or age for admission to employment in domestic laws.²¹⁸ Although leaving it to the Minimum Age Convention to set the specific standards on minimum ages, the UN CRC shows the general consensus and reaffirmation with respect to keeping children out of labour according to their ages. The convention also calls for appropriate penalties to render effective the prohibition of child labour.²¹⁹

The UN CRC is progressive in addressing the timeless concern of children being subjected to child labour at home or in domestic settings and distinguishing that from positive, necessary, and productive child work.²²⁰ The drafters separate economic exploitation from performing any work using the word 'and'.²²¹ This phrasing indicates that the convention was not only targeting the employment of children in economic settings as child labour. An application of the CRC

²¹⁴ Gallinetti op cit note 137. Vincent, Katrine. 'Protecting and Promoting the Rights of the Girl Child in the African Union: A study of the legal protection of girls in United Nations and African Union instruments and mechanisms' (MS thesis. 2008).

²¹⁵ Gallinetti op cit note 137. Katrine op cit note 213.

²¹⁶ United Nations CRC, Article 32(1); (2)(a).

²¹⁷ United Nations CRC, Article 32(1).

²¹⁸ United Nations CRC, Article 2(a).

²¹⁹ United Nations CRC, Article 32(2)(c).

²²⁰ Mitchell, Richard Charles. "'The UN Convention on the Rights of the Child in postmodernity: a grounded systemic analysis of children's rights educational policies in Scotland and Canada' (2006). John, Mary. 'Children's rights and power: Charging up for a new century' 2003 *Jessica Kingsley Publishers*, 2003.

²²¹ Nhenga-Chakarisa, Tendai Charity. "Who does the law seek to protect and from what? The application of international law on child labour in an African context." (2010) *African Human Rights Law Journal* 10, no. 1 161-196.

means that children have the right to work, in economic employment or otherwise, to the extent that it is not hazardous to them and their development.²²² This is also in line with the Minimum Age Convention, which allows children to work as long as they are above the minimum age required for the type of labour in question.²²³ The UN CRC also stipulate that state parties must not just regulate when a child goes into employment, but continue to protect children by providing appropriate regulation of the hours and conditions of their employment.²²⁴ Although it does not go as far as mentioning the worst forms of child labour,²²⁵ the UN CRC complements effectively the Minimum Age Convention and lays a foundation for the African Charter on Rights and Welfare of the Child.²²⁶

4.4.5 African Charter on the Rights and Welfare of the Child, 1990

The African Charter on the Rights and Welfare of the Child (ACRWC) is particularly important to this study because it shows concern for African children, noting that their welfare remains critical due to their unique socio-economic and cultural circumstances, natural disasters, armed conflicts and child exploitation.²²⁷ The objectives of the ACRWC which are of particular interest to research on child labour include the statement that children are vulnerable and need special safeguards, care and legal protection.²²⁸ These factors are for the sake of the child's health, physical, mental, moral and social development, as well as, the freedom, dignity and security of the child.²²⁹ From the outset, the Charter stipulates that the child's best interests must be the main priority in all matters and actions concerning children, undertaken by a person or authorities.²³⁰

The intention of the ACRWC to protect the rights and wellbeing of the child is clear, and this includes the protection from child labour. Reaffirming article 32 of the UN CRC in broader terms, the ACRWC provides that every child must be protected from "all forms of economic exploitation" and work that is likely to be hazardous or to interfere with their physical, mental,

²²² Abernethie, Loraine. "Child labour in contemporary society: Why do we care." (1998) *Int'l J. Child. Rts* at 81.

²²³ International Labour Organisation, Minimum Age Convention No. 138, 1973, Article 3.

²²⁴ United Nations CRC, Article 32(2)(b).

²²⁵ This is unsurprising because the UN Convention on Rights of Children was adopted before the movement to distinguish and prioritise certain forms of child labour as worst forms and the subsequent adoption of the International Labour Organisation Worst Forms of Child Labour Convention No. 182, 1999. The same applies to the African Charter on Rights and Welfare of the Child.

²²⁶ African Charter on Rights and Welfare of the Child, Article 15, which is discussed in detail in 3.1.3 below.

²²⁷ African Charter on the Rights and Welfare of the Child, 1990, preamble.

²²⁸ *Ibid.*

²²⁹ *Ibid.*

²³⁰ African Charter on the Rights and Welfare of the Child, 1990, Article 2; 4.

spiritual, moral, or social development.²³¹ The reference to ‘hazardous’ and the development of the child in this provision shows consensus with the ILO criteria for defining child labour. The said criteria highlight that not all work done by a child qualifies as child labour, but rather the kind of work done by the child in relation to the impact of the work on the development of the child must be considered.²³² The ACRWC places the responsibility on children to do positive work, for the benefit of their family or national community, but this is subject to the age of the child, as well as, legal restrictions such as those on child labour.²³³

In addition to insisting on the protection of children against child labour, the Charter requires member states to take measures, legislative and otherwise, to ensure the implementation of this provision.²³⁴ The provision on child labour expressly refers to both the formal and informal employment sectors. The latter makes the Charter directly applicable to the elimination of child labour in the ASM industry in Zimbabwe, an informal sector which forms the subject of this research. Unlike the ILO Conventions addressing child labour and the UN CRC, the ACRWC does not mention interference with education in its child labour provision. This has been criticised as affording children narrower protection.²³⁵ However, the Charter dedicates an article to the right to education; including the provision of free basic education, encouragement of regular school attendance and equal accessibility to education for all sections of the community.²³⁶ As far as education is concerned to eliminate child labour, this provision can be applied.

The ACRWC is a positive regulatory effort in Africa, considering that the region has been infamous for the highest concentration of child labour and for justifying certain hazardous work or worst forms of child labour through cultural arguments.²³⁷ A notably progressive provision which adds to the potency of the ACRWC is the obligation on member states to disseminate information on the prohibition and dangers of child labour.²³⁸ A provision insisting on education and awareness of child labour to all sectors of the community ensures more

²³¹ African Charter on the Rights and Welfare of the Child, 1990 - Article 15 (1); United Nations Convention on the Rights of the Child, 1989, Article 32 only uses the ‘exploitation’ whereas the ACRWC mentions ‘all forms of exploitation’.

²³² Grimsrud, Bjørne. "Millennium development goals and child labour." Understanding Children’s Work Project, UNICEF (2003).

²³³ African Charter on the Rights and Welfare of the Child, 1990 - Article 31.

²³⁴ Ibid - Article 15 (2).

²³⁵ Gose, M. *The African Charter on the Rights and Welfare of the Child* (2002), (Bellville: Cape: Community Law Centre, University of the Western Cape), 62.

²³⁶ African Charter on the Rights and Welfare of the Child - Article 11.

²³⁷ Gallinetti op cit note 137 at 323.

²³⁸ African Charter on the Rights and Welfare of the Child - Article 15 (2)(d).

widespread access to information and implementation of the law and the objects of the ACRWC specifically. The importance of such a design cannot be overemphasised, especially with the knowledge that child labour is most common in rural and remote locations and among less privileged groups that may lack access to contemporary information.²³⁹ In so doing, the ACRWC also provided a precursor to the Recommendation to the Worst Forms of Child Labour Convention, which expressly calls for widespread social mobilisation.²⁴⁰

The Convention, in line with the ILO conventions, provides for the protection of children's rights, even those who can legally work or be in employment. The ACRWC requires state parties to provide through legislation, minimum wages for child employment and regulate the hours that such children must work.

4.5 Regulatory Framework for Child Labour in Zimbabwe

In addition to ratifying international instruments on child labour, the government has established laws prohibiting child labour, and the country has made efforts to put the laws in action through enforcement measures, coordination of government efforts and government policies, and social programs to address child labour. Although the incidence of child labour is still high in Zimbabwe, and so in its worst forms, Zimbabwe has nonetheless made reasonable advancements in its regulatory efforts to eliminate the problem and keep up with international standards.²⁴¹

4.5.1 Prohibition of Child Labour

The supreme law of Zimbabwe, the Constitution, leads in prohibiting child labour by stipulating that every child under the age of eighteen has the right to be protected from economic and sexual exploitation, and child labour from maltreatment, neglect, or any form of abuse.²⁴² The Constitution and other relevant legislative instruments in Zimbabwe however do not elaborate on what is meant by child labour, and therefore the internationally accepted

²³⁹ Gulati, Shalni. "Technology-enhanced learning in developing nations: A review" (2008) *The International Review of Research in Open and Distributed Learning* 9.1 (2008).

²⁴⁰ Gallinetti op cit note 137 at 327.

²⁴¹ International Labour Affairs Bureau (2019): *Findings on Findings on the Worst Forms of Child Labour – Zimbabwe*, Available at <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/zimbabwe> (Accessed 01 March 2021).

²⁴² Constitution of Zimbabwe Amendment (No.20) Act, 2013, S81.

definitions discussed in section 2 above apply in terms of section of 327 of the Constitution which provides for the application of international law in Zimbabwe.²⁴³

The Labour Act and the accompanying Labour Relations Regulations lay down the principles governing child labour in the employment sector, by setting the minimum ages for the different types of child labour.²⁴⁴ These two enactments also set principles relating to light work, hazardous work, and conditions of employment for children, in keeping with the requirements and standards set by international and regional laws.²⁴⁵ The prohibition of child labour and regulation of child work are also regulated by complementary enactments, including the Education Act which renders primary school compulsory and the Children's Protection and Adoption Act, as amended by the more recent Children's Act.²⁴⁶

4.5.2 *Minimum Age for Work*

An amendment to the Labour Act (the Act) in 2015 raised the general minimum age of employment to sixteen years, in line with the appeal by the Minimum Age Convention No. 138, 1973 for member states to progressively raise the minimum age from fifteen to fully protect the rights of children.²⁴⁷ This is a remarkable effort in prioritising the rights of children against child labour, regardless of the exemption allowed to developing countries to lower the minimum age to fourteen.²⁴⁸ The Labour Act stipulates that employers must not employ any person under the age of sixteen and that any contract concluded for such employment can neither be enforced nor avoided by the responsible employer.²⁴⁹ The minimum age for any form of vocational training or technical training is also set at sixteen years.²⁵⁰ The Labour Act prohibits hazardous work for any person under the age of eighteen, which again shows that the country opted for the stricter end of the standards set by the Minimum Age Convention even though there is a choice to lower the age to sixteen years.²⁵¹ The unconditional forms of worst forms of child labour are not mentioned, but these would be affected by national laws and must apply as stated in the Worst Forms Convention and the accompanying Recommendations.

²⁴³ Constitution of Zimbabwe Amendment (No.20) Act, 2013, S327.

²⁴⁴ Labour Act [Chapter 28:01] of 2002.

²⁴⁵ Ibid.

²⁴⁶ Children's Act [Chapter 5:06].

²⁴⁷ See ILO Minimum Age Convention, Article 1; Labour Act [28:01], s 11()

²⁴⁸ Ibid.

²⁴⁹ Labour Act [Chapter 28:01] of 2002. Sect 11.

²⁵⁰ Ibid.

²⁵¹ Labour Act, s 11(4): (4) No employer shall cause any person under the age of eighteen years to perform any work which is likely to jeopardise that person's health, safety, or morals, which work shall include but not be limited to work involving such activities as may be prescribed; read with Schedule 3(1) of the Regulations.

In addition to keeping children of certain ages out of work and employment, in consistency with the ILO standards, the Zimbabwean Labour Relations Regulations make provision for safe working conditions, including work hours and minimum wages for employed children.²⁵² The regulations also regulate the terms of the employment contracts, which include that children must be assisted in concluding the contracts and that no contract will include work during school terms.²⁵³ Employers of children are further obliged to keep certain records, in case of inspection and guilty of any offence if they violate the conditions set out in the regulations.²⁵⁴ Such regulations follow international law standards to attain effective protection of children's rights where child labour is concerned.²⁵⁵

4.5.3 Regulation on Hazardous Work and Worst Forms of Child Labour

The Labour Act adheres to the requirement found in both the Minimum Age Convention and the Worst Forms of Child Labour Convention, that member states must determine the activities which constitute hazardous work.²⁵⁶ In addition to strictly setting the minimum age for employment in hazardous work at eighteen in the Labour Act, the national law provides a list in the Labour Relations Regulations to determine what constitutes hazardous work. The list includes any work that interferes with the child's education, involves contact with hazardous substances or including radiation, any underground mining, work that exposes a child to electrical blades, work that exposes a child to extremes of heat, cold, noise or whole-body vibration, and any night shift work.²⁵⁷

When defining hazardous labour, the Children's Act provides the same list of factors provided in the Labour Relations Regulations, but here the scope of work is broader than just employment or economic activities as the provision refers to 'any work'.²⁵⁸ This therefore includes domestic or non-paid work, as long as it interferes with the education of the child or exposes the child to the other listed factors.²⁵⁹ The Act also uses the word 'work' in general terms when it defines a child in need of care as one whose parent or guardian cause to perform work that is likely to be hazardous or to interfere with their education. The Children's Act

²⁵² Zimbabwe Employment & Labour Laws and Regulations 2021.

²⁵³ Ibid.

²⁵⁴ Ibid.

²⁵⁵ Ibid.

²⁵⁶ Minimum Age Convention and the Worst Forms of Child Labour Convention.

²⁵⁷ Dessy, and Stéphane op cit note 161. Gallinetti op cit note 137.

²⁵⁸ Children's Act Section 2.

²⁵⁹ Ibid.

prohibits any parent or guardian of a child from allowing them to engage in hazardous labour, subject to the regulations in the Labour Act.²⁶⁰ Therefore, for prohibition of labour that is hazardous to a child either by interfering with their schooling or otherwise, the Children's Act is applicable, and when employment is involved, the Children's Act applies, subject to the Labour Act.

The issue with the Children's Act in its prohibition of child labour is that it does not prohibit child labour that is not extreme enough to be hazardous according to the prescribed list, or to interfere with a child's schooling but is nonetheless physically, socially, or morally harmful to a child.²⁶¹ This leaves the child exposed to these forms of child labour where the Children's Act would by silence and exclusion render them acceptable. The Children's Act must be broader in its prohibition of child labour to work that is physically, socially, and morally harmful to the child beyond its current scope of prohibitions.

Another gap in domestic law is that there is no recourse provided in the Act for when a child is involved in unpaid child labour, even if it is hazardous, and there is no parent or guardian to be held accountable as prescribed in the Children's Act. This is highly likely in Zimbabwe where many children involved in child labour are orphaned and in child-headed households. Such gaps are considered in detail in the next chapter. However, a simpler solution here to address the challenge would be to apply the Constitution which protects children from child labour without limitation to any circumstances and apply the international law regulations.

4.5.4 Education Laws

The discussion of the international regulatory framework shows the centrality of a child's education and access to schooling in the definition and prohibition of child labour. To meet these standards, the Children's Act of Zimbabwe²⁶² makes it a criminal offence for a parent or guardian to cause or allow a school-going child to be absent from school while engaging in employment, for gain or reward. The Act also makes it an offence to employ a child who is reasonably expected to be attending school.²⁶³ The Children's Act prohibits the involvement of children in any work that interferes with their schooling.²⁶⁴

²⁶⁰ Ibid.

²⁶¹ The widely accepted definition of child labour.

²⁶² Ibid.

²⁶³ Children's Act Chapter 5:06.

²⁶⁴ Ibid.

4.5.6 Government Efforts, Policies and Social Programs

The government of Zimbabwe has not invested significant efforts to address child labour in ASM and its impact. A noteworthy government initiative that partly addresses some challenges of child labour, though not specifically targeting child labour in ASM, is the Basic Education Assistance Module (BEAM)²⁶⁵ that was introduced to keep children in school by assisting poor families with school and examination fees.²⁶⁶ BEAM was established by the government of Zimbabwe in 2001 as part of the Enhanced Social Protection Programme (ESPP). BEAM is active in Zimbabwe's 61 districts, both urban and rural areas. This initiative has the potential to eliminate some of the motivations behind child participation in ASM including the need to fund school fees.

4.6 Conclusion

“Child labour” was defined as work done by young persons under the working age specified by the law. The practice is harmful, and exploitative, and often disrupts their right and access to education. Age, the harmful nature of the work done, and the disruption to education, are used to define child labour in international and legal instruments. Child labour is classified into four categories namely, light work, child labour other than non-hazardous child labour, hazardous child labour and worst forms of child labour.

Child labour remains one of the most pressing challenges across the world, mostly in developing countries. Governments and international institutions continue to grapple with the problem of child labour. The problem of child labour manifests in a wide range of other concerns including the exploitation of children through underpayment, sexual abuse, and drug abuse. As a result, numerous international instruments have been crafted to address the core areas of the child labour problem.

Some of the international instruments discussed in this chapter include the International Labour Organisation Minimum Age Convention, 1973 (No. 138), the ILO Minimum Age Recommendation and the ACRWC, Worst Forms of Child Labour Convention 182 of 1999. United Nations Convention on the Rights of the Child, 1989, United Nations Convention on

²⁶⁵ Harvey Smith, Patrick Chiroro and Paul Musker, ‘Zimbabwe: Evaluation of the Basic Education Assistance Module Programme’ UNICEF, Published: 2012. Mangwaya Ezron, ‘Implementation of the Basic Education Assistance Module (BEAM) Programme: The Case of Zaka North District in Masvingo.) Province., MSU Research.

²⁶⁶ Ibid.

the Rights of the Child, 1989 and African Charter on the Rights and Welfare of the Child, 1990 Regionally, the African Charter on the Rights and Welfare of the Child, 1990 was examined whilst domestically, Zimbabwe`s Constitution, Labour Act (the Act) and Children`s Act were discussed.

The totality of the instruments protecting children from child labour is that children should be allowed to be children, and whilst some work may be beneficial in the development of the child, the works that harm the health, physical and psychological development of the child must be prohibited. Further, even if certain work can be permitted, children must have reached a certain age to engage in such work. Whilst there are sufficient instruments to regulate child labour internationally, regionally, and domestically, challenges exist with implementation.

To understand the nature and extent of child labour in ASM and to provide informed recommendations at the end of this study, it is crucial to examine ASM specific to a given context as dynamics may vary from one area to another. Therefore, the next chapter investigates ASM in the Zimbabwe context. This includes how the system of ASM works, which minerals are exploited and who the participants are. Further, the chapter introduces the participation of children in the ASM sector.

CHAPTER 5

ARTISANAL SMALL-SCALE MINING: ZIMBABWE CONTEXT

5.1 Introduction

The definition of ASM tends to be country, purpose, and context-specific.²⁶⁷ However, one common definitive feature of ASM is that it is poverty-driven and sustains the livelihoods of individuals with meagre income opportunities globally.²⁶⁸ The term ASM is defined as constituting artisanal mining on one hand, and small-scale mining on the other hand.²⁶⁹ Small-scale mining is used to refer to more mechanical activity which uses basic mining and processing technology such as mechanical drilling, hauling and loading.²⁷⁰ Albeit with many challenges, small-scale mining tends to be registered while artisanal mining consists of unregistered or unlicensed mining.²⁷¹ Artisanal small-scale mining (ASM) is the exploration of marginal ore deposits on a small-scale, using rudimentary methods and tools.²⁷² The pattern of the spread of ASM in Zimbabwe is a near-accurate map of child labour in ASM in Zimbabwe. From the nature and extent of ASM in Zimbabwe, one can grasp the gravity of the problem of child labour in ASM.

Therefore, this chapter is dedicated to understanding the ASM industry in Zimbabwe. This includes the definition and nature of ASM. Further, this chapter provides the context for the ASM industry in which this research seeks to tackle the problem of child labour. This includes how the system of ASM works, which minerals are exploited and who the participants are. This chapter introduces the participation of children in the ASM sector.

²⁶⁷ T Hentschel, F Hruschka, & M Priester 'Global report on artisanal and small-scale mining' (2002) *Mining, Minerals and Sustainable Development (MMSD) Report of the IIED* pg.at xx; Kumar, R. and Amaratunga, D. (1994). 'Government Policies Towards Small-Scale Mining' (1994) *Resources Policy*, Vol.20, No. 1 at xx.

²⁶⁸ Smillie 'Foreword' in G Hilson (ed) *Small-Scale Mining, Rural Subsistence and Poverty in West Africa* (2006) at 1; G Hilson 'Farming, small-scale mining and rural livelihoods in Sub-Saharan Africa: a critical overview' (2016) 3(2) *International Institute for Environment and Development (IIED) Issue Paper* (March 2016) at 4.

²⁶⁹ Hentschel, Hruschka, & Priester op cit note 3.

²⁷⁰ Rupprecht op cit note 1 at 26.

²⁷¹ Hunter op cit note 20.

²⁷² Eniowo, Olushola Daniel, Sixta Raphael Kilambo, and Lambertus Daniel Meyer. "Risk factors limiting access to formal financing: Perceptions from artisanal and small-scale mining (ASM) operators in Nigeria." (2022) *The Extractive Industries and Society* 12 101181.

5.2 ASM in Zimbabwe

ASM in Zimbabwe mainly involves artisanal and small-scale gold mining (ASGM) or gold panning, which involves the rudimentary extraction of gold.²⁷³ ASM activities are legally recognised as Small-scale mining (SSM) once ASM miners are registered in terms of the Mines and Minerals Act.²⁷⁴ By 2008, Zimbabwe ranked fourth on the list of countries with the highest dependence on ASM, with over 25% of the population relying directly on this informal sector.²⁷⁵ Zimbabwe is also ranked fourth African country, behind Mali, the Democratic Republic of Congo (DRC) and Burkina Faso, in terms of child labour in the ASM sector.

It is the informal and illegal industry of ASM that harbours problems such as child labour and therefore forms the focus of this research.²⁷⁶ The informal and illegal nature of ASM is recognised as a major contributor to the prevalence of child labour in the industry. This chapter provides an understanding of how the ASM industry operates in the Zimbabwean context. Thus, the purpose of this chapter is to provide a context of the industry within which this research synthesises the problem of child labour in the mining sector.

ASM in Zimbabwe encompasses the following;

- (a) small-scale operations, exploiting only marginal and/or very small mineral deposits;
- (b) manual or use of very simple unconventional mining tools;
- (c) low recovery of valuable minerals;
- (d) individual or family labour;
- (e) haphazard exploitation due to lack of geoscientific knowledge and technical mining skills;
- (f) high mobility, with no fixed assets;
- (g) essentially seasonal mining operations alternating with agriculture; The reference
- (h) environmentally unfriendly and occupationally unsafe; and
- (i) informal, illegal or unregulated, without legal titles.²⁷⁷

²⁷³ Spiegel op cit note 2 at 544; Kamete, 'When Livelihoods Take a Battering', adds that 55% of the official population is involved in this gold panning.

²⁷⁴ T. Zvarivadza 'Artisanal and Small-Scale Mining as a challenge and possible contributor to Sustainable Development' (2018) *Resource Policy* 56 (2018) 49-58 at 1.

²⁷⁵ Spiegel op cit note 2 at 544.

²⁷⁶ Zvarivadza op cit note 272 at 1.

²⁷⁷ S. Takavarasha; G. Hapanyengwi; L. Mlambo, 'Poverty Reduction and Development Capacity of Artisanal and Small-Scale Mining in Zimbabwe and The Role of ICT' (2013) *International Journal of Management, IT and Engineering* Vol 2:6, 52-78, at 60.

The miners in these unlicensed and unregulated small-scale mining operations, operating below the industrial scale and often involving poverty-stricken Zimbabweans are commonly known by the local parlance as *makorokoza* (*illegal miners*), and the activity is called *chikorokoza* (*the act of illegal mining*), as explained below.²⁷⁸

5.3 ASM Mining Regulations

Policy and control of ASM took a sharp downturn at the beginning of the 2000s, largely driven by the economic crisis.²⁷⁹ The Ministry of Mines re-centralised power and other stakeholders such as the Rural District Councils that were previously working with the ASM miners, were isolated from the regulation of mining activities.²⁸⁰ This reflects a lack of representation of ASM miners who derived their livelihoods from local resources. The mining legislation in Zimbabwe does not recognise or define ASM, and there is no differentiation of any other form of mining from large-scale mining.²⁸¹ The only possible way for artisanal miners to operate formally and legally is to comply with the onerous requirements used in large-scale mining.²⁸² In addition, ASM in Zimbabwe has faced nationwide crackdowns involving problematic military and police force intervention.²⁸³ ASM was officially criminalised in the post 2000-era when the activity started expanding, with artisanal miners being depicted as bandits and criminal to be rounded up by the police for incarceration.²⁸⁴ Although these violent removals of artisanal miners on the generalisation that the sector is all about crime and banditry have been problematic and a subject of debate, there have not been any positive reforms towards formalising and supporting ASM miners again.²⁸⁵

²⁷⁸ Shona terms meaning illegal mining and illegal miners respectively – See S. Spiegel ‘Legacies of Nationwide Crackdown in Zimbabwe: Operation Chikorokoza Chapera in Gold Mining Communities’ (2014) *Journal of Modern African Studies* 52:4, 541-570, at 54.

²⁷⁹ S Mowawa, ‘The Political Economy of Artisanal and Small-Scale Gold Mining in Central Zimbabwe,’ (2013) *Journal of Southern African Studies*, 39, 4, 921-936 at 923.

²⁸⁰ C T Chawatama & A Oyelana ‘*Artisanal Gold Mining in Zimbabwe: Prospects and Challenges for the Low-Income Groups in the Chegutu Mining District*. 2019 Development Studies, University of Fort Hare.

²⁸¹ Mines and Minerals Act of Zimbabwe [Chapter 21:05].

²⁸² Mining is regulated by the Mines and Minerals Act [21:05]; other legislation to be complied with includes the Gold Trade Act [Chapter 21:03] (for ASGM); Explosives Regulations; Environmental Management Act [Chapter 20:27]; Forestry Act [Chapter 19:05]; Water Act [Chapter 20:24]; and Zimbabwe National Water Authority Act [Chapter 20:25].

²⁸³ See Spiegel op cit note 2.

²⁸⁴ S K Lavigne; G. Mkodzongi; M Nyandoro, ‘Poverty Reduction and Development Capacity of Artisanal and Small-Scale Mining in the Democratic Republic of Congo and Zimbabwe’ (2024) *The Extractives Industry and Society* Vol 19, 1-12, at 10. <https://doi.org/10.1016/j.exis.2024.101504>.

²⁸⁵ S Knud. ‘The dynamics of artisanal and small-scale mining reform’ (2005) *Natural Resources Forum*. 29. 243 – 252.

5.3.1 Informality and Illegality of ASM in Zimbabwe

Illegality and informality are key topics in global literature on ASM.²⁸⁶ In some instances, ASM has been defined as ‘the most primitive type of informal, small-scale mining, characterised by individuals or groups of people exploiting deposits – usually illegally – with the simplest equipment.’²⁸⁷ In many developing countries, it has been argued that national governments have deliberately designed and implemented mining regulations and policies that exclusively favour the interests of large-scale mining (LSM) operations, leaving ASM outside the formal sector.²⁸⁸ This argument is fitting to the Zimbabwean regulatory framework which has failed to recognise, regulate and promote the ASM sector.

Defined in the context of ASM, the term illegality indicates activities that are neither licensed nor compliant with regulations, taxes, and other parts of the formal economy.²⁸⁹ In the same vein, the aspect of informality refers to how ASM activities are not regulated by the relevant institutions. This is either because regulatory frameworks are non-existent or because existing regulations set unreasonable barriers to compliance and the formalisation of ASM. In the case of Zimbabwe, such regulatory barriers include high licencing and Environmental Impact Assessment fees, unaffordability of mining claims, and onerous procedural requirements.²⁹⁰ Zimbabwean artisanal miners operate informally because they cannot reasonably comply with the existing government regulations.²⁹¹ ASM was criminalised expressly in 2016.²⁹² The

²⁸⁶ See; Lahiri-Dutt, K., K. Alexander, and C. Insouvanh, ‘Informal Mining in Livelihood Diversification: Mineral Dependence and Rural Communities in Lao PDR.’ (2014) *Southeast Asia Research* 22(1): 103–22.; Spiegel, S., ‘Governance Institutions, Resource Rights Regimes, and the Informal Mining Sector: Regulatory Complexities in Indonesia.’ (2011) *World Development* 40(1): 189–205; Fisher, E., ‘Artisanal Gold Mining at the Margins of Mineral Resource Governance: A Case from Tanzania.’ (2008) *Development Southern Africa* 25(2): 199–213.

²⁸⁷ This position was established was reached at the International Roundtable on Artisanal Mining hosted by the World Bank in May of 1995. See M Barry (ed) ‘Regularizing Informal Mining: A Summary of the Proceedings of the International Roundtable on Artisanal Mining, May 17-19, 1995’ (1996) World Bank Industry and Energy Department Occasional Paper No. 6.

²⁸⁸ Baker A et al. ‘Lao PDR Summary Report.’ 2007, United Nations Industrial Development Organization, Global Mercury Project. Available at <http://archive.iwlearn.net/globalmercuryproject.org/countries/laos/docs/Laos%20Final%20Report.pdf> pg. 13–14; Spiegel, S. and S. Hoeng, ‘Artisanal and Small-Scale Mining (ASM): Policy Options for Cambodians.’ (2011) *Policy Brief. Cambodia: United Nations Development Programme* at 2.

²⁸⁹ Daniele Moretti & Nicholas Garrett, ‘Artisanal and small-scale mining governance: The emerging issue of ‘unregulated mining’ in Lao PDR’ in *Between the Plough and Pick: Informal, artisanal and small-scale mining in the contemporary world*.

²⁹⁰ Spiegel op cit note 2.

²⁹¹ Ibid.

²⁹² Dalu, Mwazvita T.B., Wasserman, Ryan J., & Dalu, Tatenda, ‘A Call to Halt Destructive, Illegal Mining In Zimbabwe’ (2017) *South African Journal of Science*, 113(11-12) at 1. <https://dx.doi.org/10.17159/sajs.2017/a0242>. Spiegel op cit note 276.

increasing number of people from diverse backgrounds who are dependent on artisanal mining for income are therefore operating both illegally and informally.²⁹³

ASM in Zimbabwe has not always been informal and outrightly illegal/actively prohibited. The Mines and Minerals Act of 1961 criminalises artisanal mining. Since independence from colonial rule in 1980, there have been some efforts, although inconsistent, to formalise the sector.²⁹⁴ In the 1980s, the government of Zimbabwe recognised ASM as a viable economic fallback that could create employment for thousands of workers.²⁹⁵ The Zimbabwe Mining Development Corporation supported the opening of artisanal small mines and ASM was part of the country's economic strategy which was launched in the 1990s under the Economic Structural Adjustment Programme.²⁹⁶ Rural Development Councils were obliged by the government to support and license river gold mining and the ASM miners would sell to the Reserve Bank of Zimbabwe for good prices.²⁹⁷ Under these policies which legalised and promoted ASM, the country seemed ready to incorporate ASM in the Mining and Minerals Act and continue to sustain the industry as an integral part of the economy and governance.

The incorporation of ASM operations into the formal sector through licencing and registration would be capable of tackling illegal and destructive activities harboured in ASM like child labour exploitation.²⁹⁸ Such formalisation has also been acknowledged as beneficial in empowering the miners to run profitable and sustainable businesses while adding the government's aim to increase mining revenue up to \$12 billion United States dollars by 2023.²⁹⁹ An ASM industry that combats poverty like this would significantly reduce child

²⁹³ Spiegel op cit note 2 at 553.

²⁹⁴ Njabulo Chipangura, 'Towards the decriminalisation of artisanal gold mining in Eastern Zimbabwe' at 154.

²⁹⁵ Ibid at 155.

²⁹⁶ The Zimbabwe Mining Development Corporation was The Economic Structural Adjustment Programme

²⁹⁷ Mining (Alluvial Gold) (Public Streams) Regulations of 1991.

²⁹⁸ Section of the Environmental Management Act.

²⁹⁹ Godfrey Marwanyika 'Zimbabwe Unveils Plan for \$12 Billion in Mineral Revenue by 2023', Blomberg News Articles, available at https://www.bloomberg.com/news/articles/2019-10-14/zimbabwe-unveils-plan-for-12-billion-in-mineral-revenue-by-2023?utm_source=url_link; Transparency International – Zimbabwe (TI-Z), 'Usd 12 Billion Mining Economy By 2023: What Are The Key Enablers', Available at <http://kubatana.net/2020/07/31/usd-12-billion-mining-economy-by-2023-what-are-the-key-enablers/>; Mukasiri Sibanda, Zimbabwe Environmental Law Association, quoted in L. Ndhlovu, "Homes, Land destroyed as Desperate Zimbabweans Turn to Illegal Mining", (November 20, 2019), Reuters Available at <https://in.reuters.com/article/us-zimbabwe-mining-land-trfn/homes-land-destroyed-as-desperate-zimbabweans-turn-to-illegal-gold-mining-idUSKBN1XU04E>.

labour in Zimbabwe which as highlighted by this research is rooted in poverty.³⁰⁰ Unfortunately, positive policing of ASM in Zimbabwe did not last into the 2000s, which is ironic because the country's economy was dramatically declining and in need of the economic benefits of ASM more than in the previous decade.³⁰¹

The government outlawed ASM through the Environmental Management Act in 2002, arguing that the environmental damage caused by the sector warranted a total ban on the ASM economy.³⁰² The Mining (Alluvial Gold) (Public Streams) Regulations of 1991 which were the only regulations ever promulgated towards recognising and regulating ASM were outlawed in 2014.³⁰³ Artisanal miners, regardless of how simplistic their practice was, were mandated to carry out environmental impact assessments (EIA), provide proof of rehabilitation funds, and be registered.³⁰⁴ The requirement of EIA certification on all mining activities regardless of how simplistic, was beneficial to environmental protection and sustainability. ASM activities previously managed by the Rural District Councils at the local government level were rendered illegal and criminal unless they adhered to the onerous licencing regulations and standards at the national level.³⁰⁵ The licencing of ASM has been since placed under the Ministry of Mines, and treated similarly to large-scale mining (LSM) and the term ASM does not appear in mining regulation.³⁰⁶ In 2006, the government launched a nationwide clamp down on ASM miners through police raids which arrested over twenty-six thousand miners to ban the previously encouraged sector.³⁰⁷

³⁰⁰ James Mupfumi & Tyanai Masiya, 'An analysis of Zimbabwe's Mines and Minerals Amendment Bill' (2016) 1(1) *CRD Policy Analysis* 1,3 at 2 agrees that regularising ASM would promote sustainable ASM and uplift the living standards of ASM miners.

³⁰¹ Back this up with the worsening of the Zimbabwean economy in the 2000s; In 2014, the government had outlawed the Mining (Alluvial Gold) (Public Streams) Regulations of 1991.

³⁰² ASM has devastating impacts on the environment, such as deforestation, over-stripping, burning of bushes and use of harmful chemicals like mercury. These environmental impacts are a result of destructive mining, wasteful mineral extraction and processing practices and techniques used by the artisanal small-scale miners, see for example Siduziwe Ncube-Phiri, Blessing Mucherera, Alica Ncube 'Artisanal small-scale mining: potential ecological disaster in Mzingwane District, Zimbabwe: original research, Jamba': (2015) *Journal of Disaster Risk Studies*, 7 (1). Available at <https://doi.org/10.4102/jamba.v7i1.158> ; However, the government's radical response of totally banning ASM has not resolved these detriments but rather led to the prevalence of an underground and illegal and informal ASM industry which harbors human rights violations and crimes such as child labour.

³⁰³ Ibid 299.

³⁰⁴ Ibid.

³⁰⁵ Ibid at 155.

³⁰⁶ ASM requires tailored treatment from the treatment of LSM given the differences in the structures of the sectors. Further, excluding ASM from the regulations relegates ASM to informality hence regressing from formalisation efforts made.

³⁰⁷ This nationwide crackdown was called Chikorokoza Chapera, meaning No More Illegal Mining – Spiegel op cit note 276.

The same unlicensed ASM sector that was declared illegal has nevertheless remained increasingly prevalent in the deteriorated economy of Zimbabwe, with about two million people across the country relying on Artisanal Small-scale Gold Mining (ASGM) alone.³⁰⁸ ASM has become an underground practice that operates in constant evasion of law enforcement and monitoring. As a result, the use of child labour, environmental degradation, and other unlawful and disastrous conduct which prevail in the ASM sector go undetected and unmonitored.³⁰⁹ Where ASM has been detected, law enforcement has seldom taken place. Instead, the position of the law on ASM is abused by corrupt law enforcement authorities, state agents, and politicians who periodically facilitate raids on *makorokoza* to dispossess them of minerals and take control of the prolific mining areas.³¹⁰ Most gold-rich areas are currently controlled by authorities working for the ruling party's elite, and *makorokoza* once raided, are forced to provide cheap labour in exchange for protection from arrest.³¹¹ In other instances, ASM operators are allowed to operate by law enforcement in exchange for bribes.³¹²

Therefore, the criminalisation and non-regulation of ASM in Zimbabwe have not eradicated the practice but rather fostered it as one that is unsustainable. The non-formalisation of ASM enables the prevalence of a shady, corrupt, unequal, and unmonitored system of ASM where no one is particularly concerned with child labour or other challenges faced in the sector.³¹³ The Mines and Minerals Act which is discussed hereunder enables this status quo by being silent on the reality that ASM has remained an existing branch of mining and a source of livelihood for many, and that it requires formal regulation to become sustainable.³¹⁴

³⁰⁸ Spiegel op cit note 276 at 154.

³⁰⁹ Ibid.

³¹⁰ Ibid – enforcement authorities use the law to move into the ASM industry to take control the mining activities and illegal selling of minerals wherein they also gain; It was estimated that \$15 billion of potential revenue from Marange disappeared due to corruption involving public officials and private entities, see Nelson Banya, 'About the missing \$15 billion diamond revenue...' <<https://zimfact.org/did-zimbabwe-lose-15-billion-in-diamond-revenue-zimbabwes-15-billion-diamond-question/>> accessed 28 February 2021.

³¹¹ Spiegel op cit note 276.

³¹² Ibid at 154.

³¹³ Ibid.

³¹⁴ The first move towards making ASM in Zimbabwe sustainable to those who depend on it for their livelihood and address the social, economic, environmental, safety and health, and political challenges harboured in this industry is to formalise it, see for example the arguments made in Zvarivadza op cit note 272 at 49.

5.3.2 *The Mines and Minerals Act of Zimbabwe and ASM*

Present-day mining in Zimbabwe is still governed by a piece of legislation from the colonial era, that is the Mines and Minerals Act (MMA).³¹⁵ The MMA is the principal law for all mining operations through the Ministry of Mines and Mining Development and is complemented by the regulations made under it.³¹⁶ The MMA covers issues related to mining rights, mineral production, and the processes involved in obtaining licences, permits, leases, and prospecting orders. However, no provision mentions ASM. The MMA lacks provisions that define or regularise ASM, nor does it address issues related to the ASM sector, which include human rights violations such as child labour.³¹⁷ Failure by the MMA to recognise and regularise ASM despite its significant contribution to livelihoods and economic development, especially in ASGM is one of the major downsides of the country's mining sector.³¹⁸

5.4 Challenges to Formalising ASM Operations

Zimbabwe and Ghana were the pioneers of fostering ASM formalisation in sub-Saharan Africa.³¹⁹ In 1991, Zimbabwe enacted the Mining (Alluvial Gold) (Public Streams) Regulations which signified a strategic move towards recognising and regulating a sector that had become too significant to ignore.³²⁰ The Government recognised the growth of the sector, its socio-economic and environmental effects, and general regional importance, and incorporated ASM into national development policies to create conditions for its sustainability.³²¹ The Regulations also removed structural constraints that hindered ASM operations from gaining legal status through licensing, for instance by creating simpler and decentralised registration requirements governed at the local level.³²² ASM operations received development interventions from the government to help them formalise their operations, and

³¹⁵ Mines and Mineral Act [Chapter 21:05], 1961.

³¹⁶ Mining (General) Regulations, 1977 and the 2021 amendments; Mining (Management and Safety) Regulations, 1990; Mining (Health and Sanitation) Regulations, 1996; Mines and Minerals (Custom Milling Plants) Regulations.

³¹⁷ Mines and Minerals Act, 1961.

³¹⁸ Mines and Minerals Amendment Bill: Its Promises and Pitfalls.

³¹⁹ Gavin Hilson, 'Formalisation bubbles': A blueprint for sustainable artisanal and small-scale mining (ASM) in sub-Saharan Africa' (2020) *The Extractive Industries and Society*, Volume 7, Issue 4, 1624-1638, at 1627.

³²⁰ Maponga, and Ngorima, op cit note 51 at 150.

³²¹ Ibid.

³²² Hilson op cit note 316 at 1627.

there were incentives and rewards for licensing.³²³ However, these exemplary efforts by Zimbabwe as a global leader in ASM formalisation were abandoned in the 2000s.³²⁴

The current regulatory framework does not recognise ASM operations unless they are registered and operating legally under the Mines and Minerals Act, a process that would incorporate them into the small-scale or unlikely, the large-scale mining sector.³²⁵ However, the same regulatory framework is not accommodating for ASM operations to achieve this incorporation, despite the willingness of most ASM miners to become registered and mine under enabling and conducive environments.³²⁶ The formalisation procedures are expensive, highly bureaucratic, and overall impractical for ASM operators.³²⁷ Some of these difficulties are discussed below.

5.5 The Practice of ASM in Zimbabwe (Chikorokoza)

Artisanal mining – chikorokoza – is commonly stereotyped as being practiced by illegal villains who recklessly pollute the environment and commit crimes, yet in truth, artisanal mining is an economic activity driven by specific knowledge and entrepreneurship skills of makorokoza.³²⁸ Many Zimbabweans are driven to ASM by the escalating unemployment rate and poverty. Chikorokoza is not only largely driven by poverty and the lack of other viable income or economic alternatives in Zimbabwe, but it is an evolving cultural way of life,³²⁹ as the next paragraphs show. This section also considers the often-concealed social structures and occupational organisation of makorokoza.

³²³ M. Hunter, A ‘Rapid Assessment of Gold Supply Chains and Financial Flows Linked to Artisanal and Small-Scale Gold Mining in Zimbabwe’ (2018) *United Nations Industrial Development Organization, Vienna* at 8.

³²⁴ The Mining (Alluvial Gold) (Public Streams) Regulations, which had made Zimbabwe to be considered a global leader in ASM regulation in the 1990s were repealed in 2014; see for example the comment made by Hunter op cit note 320 at 8.

³²⁵ Spiegel op cit note 276.

³²⁶ Zvarivadza op cit note 272 at 51; the same sentiments are shared for sub-Saharan governments and mining regulations by researchers such as in G. Hilson & C. Potter, ‘Why is illegal mining activity so ubiquitous throughout rural Ghana?’ (2003) *African Development Review*, 15 (2), 237-270; Rupperecht, S.M., (2015a), “Needs analysis for capacity building of artisanal miners in Central Africa” in: Proceedings of the Copper Cobalt Africa, Incorporating the 8th Southern African Base Metals Conference, The Southern African Institute of Mining and Metallurgy, Livingstone, Zambia, 45–52; S.M. Banchirigah ‘How have reforms fueled the expansion of artisanal mining? Evidence from sub-Saharan Africa’ (2006) *Resource Policy* 31 (3), 165 – 171.

³²⁷ Spiegel op cit note 276.

³²⁸ Chipangura, N. ‘The social organization of ASM and its historical relationship with LSM in the Eastern Highlands of Zimbabwe’ (2018) *The Southern African Institute of Mining and Metallurgy*, at 195 – 208.

³²⁹ Ibid.

5.5.1 Participants and Key Players

There are several players in ASM in Zimbabwe. It is estimated that artisanal mining directly and indirectly supports the livelihoods of around two million people in Zimbabwe.³³⁰ Of these, estimates are that over 500,000 people are directly involved in ASM in Zimbabwe.³³¹ These participants include authorities who buy minerals on a no-questions-asked basis from illegal and small-scale miners. Further, politicians and members of the army and police are known to hold mines and protect some illegal miners while they benefit from the illegal small-scale mining activities.³³² Politicians participate in ASM in various ways in a general system of patronage between local politicians and artisanal miners.³³³ Politicians derive revenue from artisanal miners by extorting them, protecting them from arrest, or assisting them in navigating government bureaucracy.³³⁴ Other politicians own mills where artisanal miners process their ore or trade in materials, like mercury. Yet other politicians finance artisanal miners by covering operating costs in exchange for a cut of production.³³⁵

One can only understand child involvement in ASM by first understanding the participation of the whole community in this sector. At the centre of the chikorokoza are the makorokoza (illegal miners). Makorokoza are known to work in groups of two to twenty or slightly more consisting mainly of members of the same family.³³⁶ Male members of the family usually lead and control the earnings from the ASM activities of the family.³³⁷ Males also dominate in chikorokoza although there is a significant number of women who also participate, either as mine owners or as miners.³³⁸ Some areas where women have been observed conducting alluvial gold panning are the ASM areas in Nyanga, in Eastern Zimbabwe within the Nyangombe River.³³⁹ Most women are involved in the sale of wares and food to the makorokoza in the mining areas.³⁴⁰

³³⁰ Maponga & Ngorima op cit note 51.

³³¹ Nalule op cit note 10.

³³² Ibid.

³³³ Ibid.

³³⁴ Smith-Roberts, A, et al. 'All that glitters is not gold': the effects of the COVID-19 pandemic on artisanal and small-scale gold mining and supply chains in Peru' (2021) *Journal of Energy & Natural Resources Law*: 1-39.

³³⁵ Ibid.

³³⁶ Ibid.

³³⁷ Ibid.

³³⁸ Ibid.

Additionally, an increasing number of children are participating in ASM in Zimbabwe.³⁴¹ Estimates point to thousands of children who have joined illegal diamond mining syndicates in the Marange fields in Chiadzwa since March 2020.³⁴² ASM activities were ranked as the second biggest employer of children in 19 countries in 2018.³⁴³ Anecdotal evidence shows that these trends also exist in Zimbabwe, especially in the rural areas. The recent sharp increase in children participating in ASM in Zimbabwe was due to the COVID-19 pandemic-induced school closures and worsening economic conditions.³⁴⁴

In numerous cases, participants in ASM are former subsistence farmers whilst others follow enduring family traditions in ASM.³⁴⁵ In some instances, the participants undertake ASM activities temporarily, especially during the non-farming season in the case of miners who are also farmers. Participants in ASM are both from local areas as well as those travelling from areas across the country following the mining rushes.³⁴⁶

5.5.2 Minerals Exploited

Around 30 types of minerals are mined in the ASM sector in Zimbabwe.³⁴⁷ Some of these minerals include gold, diamonds, platinum group metals, base metals chrome, (ferrochrome), copper, iron ore(steel), nickel, manganese, tin, lithium, granite, dimension stones, limestone, aggregates, dolomites, graphite.³⁴⁸

However, ASM activities are concentrated in gold mining, which accounts for more than 90% of the ASM activities.³⁴⁹ The recently discovered diamonds in Zimbabwe drew significant attention for ASM in Zimbabwe.³⁵⁰ Despite harsh law enforcement on Makorokozas, they

³⁴¹ Nyasha Chingono, “‘I need money for school’: the children forced to pan for gold in Zimbabwe” The Guardian. See for example, the young boys who ran away from their homes to engage in ASGM in Chakari, in Jefferey Moyo, ‘Zimbabwe: Fragile economy forces children to labor in mines’ Anadolu Agency Report, 11 June 2020, Available at <https://www.aa.com.tr/en/africa/zimbabwe-fragile-economy-forces-children-to-labor-in-mines-/1873032>. Nalule op cit note 10.

³⁴² <https://www.state.gov/reports/2021-trafficking-in-persons-report/zimbabwe/>

³⁴³ (USDOL, 2018).

³⁴⁴ ‘2021 Trafficking in Persons Report: Zimbabwe’ <https://www.state.gov/reports/2021-trafficking-in-persons-report/zimbabwe/> (Last accessed: 29/11/21).

³⁴⁵ Ibid.

³⁴⁶ Ibid.

³⁴⁷ Dreschler, B., 2001. Small-scale mining and sustainable development within the SADC region. J. Min. Miner. Sustain. Dev (A report produced through collaboration of International Institute for Environment and Development (IIED), World Business Council for Sustainable Development (WBCSD), Intermediate Technology Development Group (ITDG) and Southern African Network for Training and Research on the Environment (SANTREN), no. 84). Zvarivadza op cit note 272 at 56.

³⁴⁸ Ibid.

³⁴⁹ Ibid.

³⁵⁰ Ibid.

continuously find ways into rivers, panning gold in areas like Mutare, Odzi, Nyamukwara, Ruenya, Nyangombe, and Mazowe Rivers.³⁵¹ Gold mining is also heavily conducted along the Insiza and Umzingwane rivers and in disused mines.

5.5.3 The ASM Value Chain and Economic Value

The minerals that are produced in ASM in Zimbabwe find their way to foreign countries through smuggling as discussed in section 6.2 below. The mine dealers derive significant profits while the ASM miners sell the minerals at very low prices. To deal with the smuggling of minerals out of the country, the government has opted to buy minerals from ASM on a no-questions-asked basis with Fidelity Printers and Refiners, a wholly owned subsidiary of the RBZ, at the forefront of buying minerals.³⁵²

5.5.4 Associated Problems and Criminal Activity

ASM in Zimbabwe, like in many other countries, is dented with many challenges. Inherently, ASM, unless conducted under registered small-scale miners, is illegal and renders participants criminally liable. The illegality of some form of chikorokoza breeds many challenges such as violence, exploitation and human trafficking, drug and alcohol abuse, child labour, prostitution, and sexual exploitation.³⁵³

Recently, there has been an emergence of violent machete-wielding gangs called mashurugwi who are notorious for killing other miners in ASM and forcefully taking minerals and mining spots from others.³⁵⁴ The absence of regulation results in murder cases going unreported for fear of prosecution.³⁵⁵

Additionally, numerous studies have shown that ASM is damaging to the environment due to the rudimentary methods and processes to extract mineral resources used by miners in the sector.³⁵⁶ This highlights the importance of formalising ASM and placing it within the purview of the law. Once formalised and legally recognised, ASM will be regulated by the

³⁵¹ Ibid.

³⁵² Chipangura op cit note 219 at 157.

³⁵³ Office to Monitor and Combat Trafficking in Persons, '2021 Trafficking in Persons Report: Zimbabwe' <https://www.state.gov/reports/2021-trafficking-in-persons-report/zimbabwe/> (last accessed: 28/11/2021).

³⁵⁴ Mkodzoni, Grasian, 'The rise of 'Mashurugwi' Machete gangs and violent conflicts in Zimbabwe's artisanal and small scale gold mining sector' *The Extractive Industries and Society* 7, no. 4 (2020): 1480-1489.

³⁵⁶ G. Hilson & Van der Vorst 'Technology, managerial and policy initiatives for improving environmental performance in small-scale gold mining industry' (2002) *Environmental Management*.

Environmental Management Act which sets out the requirement of Environmental Impact Assessments (EIAs) for mining and other projects that have the potential to damage the environment.³⁵⁷ EIAs refer to the evaluation by the Environmental Management Agency (EMA) of the impacts of a project on the environment, and setting out of the required environmental monitoring and management with which the project must comply.³⁵⁸ Operation or implementation of said projects without valid EIA certification or in violation of the standards set out by EMA during the Environmental Impact Assessment certification is an offence.³⁵⁹ This essential legislative effort to deter environmental degradation no longer applies to the unregulated activities of ASM.

The negative impacts of ASM on the environment are a result of poverty, lack of skills, knowledge, and valuing of the environment.³⁶⁰ Some of these environmentally harmful practices include deforestation, burning of bushes and use of harmful chemicals such as mercury. The use of mercury in ASM to amalgamate gold transforms the elemental mercury into methylmercury.³⁶¹ This methylmercury is a toxic organic compound which creates significant health risks to animals, humans, and aquatic life.³⁶²

Besides the harmful use of mercury, ASM is conducted along rivers and streams. This causes soil erosion and results in the deposit of significant amounts of sediments into the river systems and critical water bodies.³⁶³ The impact of siltation caused by ASM has been felt in Zimbabwe notably in the fall in the capacity of around 2168 dams (including Umzingwane, Upper Ncema, Lower Ncema, Inyankuni and Mtshabezi dams) located in the Limpopo basin by 29 million m³.³⁶⁴ This has caused severe water shortages in the city of Bulawayo.

Another challenge arising from ASM is the disintegration of law enforcement.³⁶⁵ In Zimbabwe and many other African countries, miners in ASM can disregard the law with impunity due to the involvement of powerful political figures behind some ASM activities.³⁶⁶ Due to fear of

³⁵⁷ Section 97, as read with Schedule 1 of the *Environmental Management Act*, [Chapter 20:27].

³⁵⁸ Section 4 of the *Environmental Management Act*, [Chapter 20:27].

³⁵⁹ Section 97, as read with Schedule 1 of the *Environmental Management Act*, [Chapter 20:27].

³⁶⁰ Veiga Marcello & Hinton J. Jenifer 'Abandoned artisanal gold mining in the Brazilian Amazon :a legacy of mercury pollution' (2002) *In Natural Resources Forum*.

³⁶¹ United Nations Environment Programme [UNEP] 2002).

³⁶² Tunhuma et al 'Environmental impact assessment of small-scale resource exploitation: the case of gold panning in Zhulube catchment, Limpopo basin, Zimbabwe'.

³⁶³ Van Straaten 'Mercury contamination associated with small-scale gold mining in Tanzania and Zimbabwe' (2000) *Science of the Total Environment*.

³⁶⁴ Ibid. Tunhuma op cit note 356.

³⁶⁵ Zvarivadza, op cit note 272.

³⁶⁶ Smith-Roberts op cit note 331.

victimisation, law enforcement officers turn a blind eye or do not effectively enforce the law despite the environmentally destructive illegal mining activities and the associated violence, trafficking and exploitation in ASM.³⁶⁷ In return for protection by politicians, the makorokoza either bribe the politicians to mine or sell their minerals at very low prices or they are given very low compensation to work underground for the politicians.³⁶⁸ Zimbabwe`s prosecutors have blamed several ZANU-PF members for encouraging artisanal miners to invade industrial mines.³⁶⁹ A former ZANU-PF MP, Vongai Mupereri was in 2019 found guilty of encouraging artisanal miners to mine illegally on an industrial site.³⁷⁰ He has not been arrested and still holds an important party position.³⁷¹ Dexter Nduna, another ZANU-PF MP denies similar charges as those of Vongai Mupeperi.³⁷² Local politicians share revenues with those above them in the patronage hierarchy for protection.³⁷³

5.5 Conclusion

This chapter briefly examined the notion of ASM and its contextual dynamics in Zimbabwe. ASM is understood to be informal small-scale mining involving the use of rudimentary mining methods. In Zimbabwe, ASM has been illegal since 2002 and is popularly known as ‘chikorokoza’. Like many countries in the region, Zimbabwe was once on a trajectory to formalise the ASM sector until the efforts were abandoned around the 2000s. The major drivers of ASM in Zimbabwe are poverty and high unemployment. As a result, the participants in the ASM sector include women and children who are most affected by poverty. ASM occurs across 30 minerals (including gold and diamonds) and the country of Zimbabwe, however, it is more widely spread in rural areas than urban centres. Whilst ASM occurs along rivers, illegal miners also exploit disused mines for their operations.

ASM supports the livelihood of over 2 million people in Zimbabwe whilst statistics show that over half a million people participate directly in ASM. These statistics point to the extent and significance of ASM in Zimbabwe as well as the extent to which children are exposed to child labour and the danger associated with illegal mining in the form of ASM. A prominent feature of the ASM sector in Zimbabwe is the meddling in the sector by politicians who appear to

³⁶⁷ Ibid.

³⁶⁸ Ibid.

³⁶⁹ Ibid.

³⁷⁰ Ibid.

³⁷¹ Ibid.

³⁷² Ibid.

³⁷³ Ibid.

encourage and fund ASM operations in exchange for low-cost labour, low-cost minerals, and bribes. This adds to the challenges toward the protection of children exposed to harm and formalising the sector.

The next chapter goes to the heart of the discussion of this dissertation having gained a thorough appreciation of the nature and scope of poverty, laws protecting children from child labour, and ASM in Zimbabwe. The next chapter examines the nature and extent of child work in ASM in Zimbabwe, to enhance the understanding of the problem for which this research seeks solutions. Further, factors such as the causes and catalysts of child work in ASM in Zimbabwe are dealt with including the contemporary impacts of COVID-19 lockdowns which exposed both the fragility and the unpreparedness of the country's legal and socio-economic systems in protecting children's rights.

CHAPTER 6

CHILD LABOUR IN THE ARTISANAL AND SMALL-SCALE MINES OF ZIMBABWE

6.1 Introduction

The illegalisation of ASM in Zimbabwe has enabled secrecy, which makes it difficult to gather data, monitor, and assess the involvement of children in the sector. This conceals the realities of children who spend hours in unstable ASM pits, carry heavy loads, use dangerous equipment, and handle toxic substances such as mercury.³⁷⁴ Children are also providing services to adult miners, ranging from selling food and illegal drugs, and smuggling minerals, to prostitution.³⁷⁵ Children participating on ASM sites cannot attend school and are exposed to illness, injuries and even death.³⁷⁶

The ASM sector is undergoing rapid growth due to increasing poverty in the country, an increase in the value of minerals and the deterioration of the agricultural sector, among other factors. The result is that, while global estimates show a general decline in child labour, the involvement of children in ASM in Zimbabwe is growing, as rapidly as the sector itself. The dearth of research on the topic of child labour in ASM, particularly in Zimbabwe, needs to be addressed, considering the rate at which ASM is growing, together with the number of children working in the sector. It is this realisation, along with the prevalence of child labour in the ASM sector in Zimbabwe, that motivates the discussions in this chapter.

This chapter studies the nature and extent of child labour in ASM in Zimbabwe, to enhance the understanding of the problem for which this research seeks solutions. This study is undertaken through a discussion of factors such as the causes and catalysts of child labour in ASM in Zimbabwe. This includes the contemporary impacts of Covid-19 lockdowns which exposed both the fragility and the unpreparedness of the country's legal and socio-economic systems in protecting children's rights. The chapter also analyses the role played by parents, guardians,

³⁷⁴ '2021 Trafficking in Persons Report: Zimbabwe' <https://www.state.gov/reports/2021-trafficking-in-persons-report/zimbabwe/> (Last accessed: 29/11/21).

³⁷⁵ Ibid.

³⁷⁶ ILO (2011). Children in hazardous work: What we know, what we need to do. International Labour Office Brookings Institution Press; <http://site.ebrary.com/id/10512167>.

and “employers” in the involvement of children in the sector.³⁷⁷ The type of work done by children and the consequences of this practice are also discussed.

6.2 Nature and Extent of Child Participation in ASM

Children involved in mining activities have always been part and parcel of ASM, particularly where they are very poor, and their families are involved in subsistence mining.³⁷⁸ Children in ASM start washing gold from the age of three, as toddlers are often carried along by their mothers or other caretakers who work in ASM.³⁷⁹ At the age of six children can be seen breaking rocks with hammers or washing ore at ASM sites.³⁸⁰ From as little as nine years old children begin to work underground, in deep, unstable, and filthy pits, and before they reach their teenage years, they are doing the same work as adult ASM miners.³⁸¹

Due to their physique, children are preferred underground workers because they can easily crawl into the often narrow and dark ASM mines.³⁸² Their lighter weight is also preferred because ASM excavations are unstable and prone to collapsing from human weight and scrapping. Unfortunately, the latter has not been fully effective, as children are frequently exposed to collapsing pits.³⁸³

Children become skilled ASM miners before they have even fully developed physically and psychologically.³⁸⁴ In ASGM, children involved in mining activities are already skilled in separating gold from ore using the notoriously toxic mercury amalgamation, and they do this with bare hands, and uncovered mouths and eyes due to lack of protective gear.³⁸⁵ Children are also used as load carriers at ASM sites, carrying heavy buckets and sacks of ore or river sand from excavation sites to the rudimentary mills or processors where the minerals are crushed

³⁷⁷ The term is in quotes because ASM is an informal and illegal sector in Zimbabwe and the individuals whom children may work for are not employers in the formal sense of the word.

³⁷⁸ Hentschel, Hruschka, & Priester op cit note 3 at 18.

³⁷⁹ Ibid at 33.

³⁸⁰ Ibid.

³⁸¹ Ibid. See also - Bujori J, ‘Child Labour in Artisanal and Small-scale Mining: The Case of North Mara Mine’, at 3.

³⁸² Hentschel, Hruschka, & Priester op cit note 3 at 33; see also Bujori J, Child Labour in Artisanal and Small-scale Mining: The Case of North Mara Mine, at 3.

³⁸³ Bujori op cit note 375.

³⁸⁴ Hilson G “‘A load too heavy’: Critical reflections on the child labour problem in Africa’s small scale mining sector” (2008) *Children and Youth Services Review* 30 no.1.

³⁸⁵ Ibid.

and separated.³⁸⁶ Where the ore is excavated underground, the child carriers carry the heavy loads out of the narrow, dark, dusty and deep ASM tunnels and pits.³⁸⁷ In gold-rich areas such as Marange and Chakari children are frequently spotted, in tattered, muddy clothes, sweating and carrying heavy buckets with ore or river sand to be scrapped later for minerals.³⁸⁸

Some children involved in mining activities have expressed in interviews that they are working in this strenuous field to raise money for school fees, uniforms and stationery, or because there is no food at home.³⁸⁹ A number of these children, as young as fourteen years, migrated from their homes in search of prolific ASM areas.³⁹⁰ It is usually groups of young boys who run away from their poverty-stricken homes to new places where they have no food, shelter, and security, with the hope of finding minerals and changing their living standards.³⁹¹ During the diamond rush and migration to Chiadzwa which started in 2006, some teenagers abandoned school and their families to settle in Chiadzwa where they had no established shelter, security, or adult supervision.³⁹²

The work done by children in ASM does not only involve digging, carrying, and separating minerals. Children also provide other services such as looking out for the authorities, smuggling minerals to buyers, smuggling and selling drugs and prostitution.³⁹³ The number of children working in ASM has been on a rapid rise, especially in the gold-rich areas of Zimbabwe such as Arda Transau, Penhalonga, Mudzi, Mazoe, and Marange among others.³⁹⁴

³⁸⁶ Bujori op cit note 375.

³⁸⁷ Ibid.

³⁸⁸ Jeffery Moyo, 'Zimbabwe: Fragile economy forces children to labor in mines', 11 June 2020, reporting from the Chakari ASM communities.

³⁸⁹ Nyasha Chingono, "'I need money for school': the children forced to pan for gold in Zimbabwe" The Guardian, 13 November 2020 reported - "It is my responsibility to look for school fees. I also need books and uniforms. I can only raise the money if I come here every day," says Tanaka Chikwaka who works in ASM to raise enough money to return to school.

³⁹⁰ See for example, the young boys who ran away from their homes to engage in ASGM in Chakari, in Jefferey Moyo, "Zimbabwe: Fragile economy forces children to labor in mines", Anadolu Agency Report, 11 June 2020, Available at <https://www.aa.com.tr/en/africa/zimbabwe-fragile-economy-forces-children-to-labor-in-mines-/1873032>.

³⁹¹ Moyo op cit note 382.

³⁹² The ASM communities that were established around Chiadzwa included children who became known as "gwejanas" and some of them were pupils who joined underpaid teachers when they left for the diamond rush, see; Nyota & Sibanda op cit note 62 at 137 which also explains that the term "gwejana" was derived from the term "gweja", a nickname given to an illegal diamond panner, combined with the diminutive "-ana" to refer to the young ones of these panners.

³⁹³ 2021 *Trafficking in Persons Report: Zimbabwe* op cit note 268.

³⁹⁴ Business and Human Rights Centre, Zimbabwe; Green Governance Zimbabwe Trust 'Double Dilemma: How COVID-19 is Entrenching Child Labour in Artisanal Small Scale Gold mining' 6 July 2021. <https://kubatana.net/2021/07/06/double-dilemma-how-covid-19-is-entrenching-child-labour-in-artisanal-small-scale-gold-mining/>.

The gradual deterioration of the economy, further weakened by the contemporary Covid-19 pandemic has been forcing more children into either helping their parents and guardians working in ASM to increase productivity, or to work independently for income.³⁹⁵ The pandemic led to the closure of businesses and loss of jobs, which worsened the economic crisis that has characterised Zimbabwe since the turn of the millennium.³⁹⁶ With the loss of income by breadwinners, and the banning of informal sector businesses such as street vending, the need for children to work in mines and contribute to the livelihood of the family intensified.³⁹⁷ COVID-19 lockdowns led to the closure of schools and therefore created an opportunity for more children to be used in the mining sector.³⁹⁸ Such recent developments maintain Zimbabwe's dubious leading position as a country dependent on ASM and blind to the use of child labour in this industry.³⁹⁹

The dangers of child mining are discussed later in this chapter, however, the nature of work discussed in this section hints at the tragic human rights transgressions, particularly children's rights transgressions, already being committed. The actors responsible for enabling this neglect of children's lives, security, education, and health for economic gains vary from parents and guardians, ASM employers to children themselves.⁴⁰⁰ However, the circumstances leading to child labour in ASM are more influential and do not leave children with much choice. These circumstances constitute the following discussion on the causes of child participation in ASM.

³⁹⁵ Business and Human Rights Centre, Zimbabwe: More children increasingly participating in gold mining activities as a result of Covid-19 & poverty available at <https://www.business-humanrights.org/en/latest-news/zimbabwe-more-children-increasingly-participating-in-gold-mining-activities-as-a-result-of-covid-19-poverty/>.

³⁹⁶ Green Governance Zimbabwe Trust 'Double Dilemma: How COVID-19 is Entrenching Child Labour in Artisanal Small Scale Gold mining' 6 July 2021. <https://kubatana.net/2021/07/06/double-dilemma-how-covid-19-is-entrenching-child-labour-in-artisanal-small-scale-gold-mining/>.

³⁹⁷ The Guardian Nov 2020 - <https://www.theguardian.com/global-development/2020/nov/13/i-need-money-for-school-the-children-forced-to-pan-for-gold-in-zimbabwe>.

³⁹⁸ Business and Human Rights Centre, Zimbabwe op cit note 389.

³⁹⁹ Due to the skyrocketing unemployment, inflation, and poverty, which have all seen the deterioration of the country's formal sector and the increasing importance of informal sector, thousands of Zimbabweans have resorted to ASM and by 2008 the country ranked fourth on the list of countries with the highest dependence on ASM. The country also ranked fourth in Africa with respect to child labour prevalence in ASM. See, Spiegel op cit note 2 at 45; Schipper et al, 2015 at 24.; Schipper et al, 2015 at 24 provides a map showing density of child labour in ASM in African countries.

⁴⁰⁰ '2021 Trafficking in Persons Report: Zimbabwe' op cit note 268.

6.3 Causes of Child Labour in ASM

Most press coverage and reports on ASM, particularly in sub-Saharan countries like Zimbabwe, focus on the industry's many ills such as child labour, prostitution, widespread HIV/AIDS in ASM communities and environmental damage.⁴⁰¹ There is a need to understand how these problems come about, or why the industry is as unsustainable and rogue as it is.⁴⁰² Understanding the causes of child labour in ASM paves the way for resolution and plans for sustainability compared to a widespread admonishing of ASM. The following causes provide an understanding of why children are driven into ASM in Zimbabwe, shedding light on what needs to be tackled to provide legal solutions for the problem.

6.3.1 *Economic Hardship and Poverty in Zimbabwe*

In a desperate effort to find alternative means to pay for basic needs of survival, such as food, education and other amenities, many Zimbabwean children have resorted to coping mechanisms – survival strategies - that violate their most fundamental human rights and freedoms.⁴⁰³ One of these strategies is resorting to the ASM to bring home food and money. They do so despite health hazards, violence and crime, sexual abuse, having to abandon school and other woes during their work.⁴⁰⁴ This is likely to continue as parents and guardians who are unemployed and have no source of income depend on the earnings that their children bring from ASM.⁴⁰⁵

6.3.2 *Failure of Agriculture and The Impact of De-Agrarianisation*

De-agrarianisation, which refers to a shift from agriculture as a source of livelihood towards other sources of income, contributes to child participation in ASM due to economic distress.⁴⁰⁶ Agricultural poverty is driving Sub-Saharan populations into ASM. Its contribution to the growth of ASM has been exponential over the past two decades.⁴⁰⁷ A decline in agriculture in

⁴⁰¹ Hilson and McQuicken op cit note 1 at 13.

⁴⁰² Ibid.

⁴⁰³ '2021 Trafficking in Persons Report: Zimbabwe' op cit note 268.

⁴⁰⁴ Ibid.

⁴⁰⁵ Ibid.

⁴⁰⁶ Hilson, G., & Garforth, C. 'Agricultural poverty' and the expansion of artisanal mining in sub-Saharan Africa: Experiences from southwest Mali and southeast Ghana' (2012). Population Research and Policy Review, 31(3), 435–464. <https://doi.org/10.1007/s11113-012-9229-6>.

⁴⁰⁷ Ibid.

countries like Zimbabwe that largely depended on the sector for food security and economic stability has led to large populations resorting to ASM.⁴⁰⁸

The decline of the country's agricultural sector has also impacted households directly because subsistence or smallholder farmers largely depended on farm produce for food security and for selling to create income.⁴⁰⁹ Most Zimbabweans relied on either growing their food or buying from small-holder farmers at local markets, such as local production which provided cheaper access to food compared to imported products.⁴¹⁰ The food available in Zimbabwe is now imported from neighbouring countries, mostly from South Africa.⁴¹¹ Due to hyperinflation, imported goods are expensive in Zimbabwean dollars because they are bought with foreign currencies that hold a significantly higher value.⁴¹² As a result, basic foods such as bread have become a luxury to most Zimbabweans.⁴¹³ More than 60% of the population is currently food insecure, with most households unable to afford enough food to meet basic needs. Consequently, adults and children resort to digging for gold and diamonds in the illegal ASM field, and this is most common amongst the rural population.⁴¹⁴

Subsistence farmers in rural areas have taken up ASM as a substitute or an additional source of income for less profitable agriculture.⁴¹⁵ For instance, the failed crops of 2019 caused by poor rains and erratic weather patterns left many rural communities battling with scarcity of food and basic commodities.⁴¹⁶

Under such conditions, ASM is an attractive resort because gold and diamonds are sold to buyers for United States dollars. Thus, earnings in this sector are not in the form of devalued

⁴⁰⁸ Ibid.

⁴⁰⁹ Ibid.

⁴¹⁰ Ibid.

⁴¹¹ The cost of food is skyrocketing while most Zimbabweans are unemployed, and those who are employed are paid very low wages.

⁴¹² Imported products are priced according to their value outside Zimbabwe, and often traders require United States Dollars or South African Rands which Zimbabweans can hardly afford because they have devalued Zimbabwean dollars at hand. Dube, Cornelius, and Erinah Chipumho. 'Response of the manufacturing sector to the Zimbabwe economic crisis.' (2016) *Economic Management in a Hyperinflationary Environment: The Political Economy of Zimbabwe, 1980–2008*.

⁴¹³ Ibid.

⁴¹⁴ Ibid.

⁴¹⁵ Maponga & Ngorima op cit note 51 at 147, explains how even those who have not abandoned farming have resorted to ASM to buy farming inputs and supplement their income.

⁴¹⁶ Ngcamu, Bethuel Sibongiseni, and Felix Chari. 'Drought influences on food insecurity in Africa: A Systematic literature review'(2020) *International Journal of Environmental Research and Public Health* 17.16: 5897. Walker, Sara. "Triple Threat: Water, Energy and Food Insecurity." World Resources Institute <https://www.wri.org/insights/triple-threat-water-energy-and-food-insecurity> (last accessed: 30/11/2021).

Zimbabwean dollars that do not have purchasing power.⁴¹⁷ Families that used to be sustained by agriculture now seek prosperity in ASM, where minerals can quickly be sold for cash.⁴¹⁸ The intensity of agricultural poverty is such that even school-age children are forced to share in the burden of seeking income.⁴¹⁹ At the same time, the returns of ASM are so small that children must help their parents and guardians work for the household to earn enough to make a living.⁴²⁰

De-agrarianisation further imposes the same cultural role that children have always occupied in farming on the more dangerous and strenuous activity of ASM. Farm work was always a traditional part of childhood in sub-Saharan Africa and Zimbabwe.⁴²¹

6.3.3 Cost of Education and Dilapidated Schooling System

Child labour in ASM in Zimbabwe is partly caused by the high cost of living, including high school fees, thereby prompting parents to bring their children into ASM to supplement the cost of education, where parents feel they cannot manage on their own.⁴²² Furthermore, it is argued that a working education system which equips children with skills to generate income will help in eradicating child labour in ASM. Areas with the highest number of children in ASM, usually rural areas,⁴²³ are also characterised by dilapidated educational systems, including a lack of qualified teachers, school infrastructure, textbooks, and long distances to schools.⁴²⁴ This dilapidated school system, coupled with the general poverty in such areas, means that access to quality education is restricted, pushing children into ASM, where they have a better chance of earning a living.⁴²⁵ Further, indirectly, a dilapidated educational system failing to create

⁴¹⁷ Hilson, Gavin, and Clive Potter. 'Why is illegal gold mining activity so ubiquitous in rural Ghana?' (2003) *African Development Review* 15.2-3: 237-270. Hilson, and Garforth op cit note 400. Chigumira, Esther. 'Political ecology of agrarian transformation: The nexus of mining and agriculture in Sanyati District, Zimbabwe.' (2018) *Journal of rural studies* 61: 265-276.

⁴¹⁸ Chigumira op cit note 411.

⁴¹⁹ '2021 Trafficking in Persons Report: Zimbabwe' op cit note 268.

⁴²⁰ Ibid.

⁴²¹ Hilson, op cit note 49.

⁴²² Zvarivadza, T., and A. S. Nhleko. "Resolving artisanal and small-scale mining challenges: Moving from conflict to cooperation for sustainability in mine planning." (2018) *Resources Policy* 56 78-86 at 81.

⁴²³ Ray, R. "The determinants of child labor and child schooling in Ghana" (2020) *Journal of African Economies*, 11(4), 561–590.

⁴²⁴ Bonnet, M. "Child labor in Africa" (1993) *International Labor Review*, 132(3), 371–389.

⁴²⁵ Zvarivadza and Nhleko op cit note 416.

livelihoods for educated professionals who end up in ASM convinces both children and parents that education will not earn them a livelihood that participation in ASM can.⁴²⁶

To further show that working school systems play a role in keeping children out of ASM, the outbreak of the COVID-19 pandemic, with its resultant stagnation of the school during lockdowns, pushed an increasing number of children into ASM in Zimbabwe. While reflecting on the impact of the COVID-19 pandemic and poverty on children, the director of the Zimbabwe Environmental Law Association, Shamiso Mtisi, said that “an increasing number of children in Arda Transau along Odzi River, Penhalonga, Mudzi, Mazoe, among other areas, are involved in gold mining. Some of these children are being forced to accompany their parents while others are in paid work”.⁴²⁷

6.3.4 Orphanhood and Child-Headed Households

Many African countries have a high orphanage rate, with Sub-Saharan Africa experiencing the most significant orphan crisis in the developing world.⁴²⁸ At least 12% of children are orphans in the region, and this is highly related to the HIV/AIDS epidemic.⁴²⁹ It is no coincidence that the region also holds the highest incidence of child labour worldwide, including in ASM, with at least 30% of economically active children.⁴³⁰ Orphans are generally less likely to attend school and more likely to work in the ASM industry.⁴³¹

In Zimbabwe, in addition to the high incidence of poverty, ASM and child labour, the country is one of the most affected by orphanhood due to HIV/AIDS.⁴³² Studies conducted in 2007 indicated that HIV and AIDS account for approximately 75 per cent of the orphan children

⁴²⁶ Gootaert, C., & Kanbur, R. ‘Child labor: An economic perspective.’ (1995) *International Labor Review*, 132(2), 187–203.

⁴²⁷ Alois Vinga, ‘Zimbabwe: More children increasingly participating in gold mining activities as a result of Covid-19 & poverty’ 10 Sep 2020 <https://www.business-humanrights.org/es/%C3%BAltimas-noticias/zimbabwe-more-children-increasingly-participating-in-gold-mining-activities-as-a-result-of-covid-19-poverty/> (last accessed: 28/11/2021).

⁴²⁸ In comparison to the 7 per cent of children in Latin America and the Caribbean who are orphans and the 6.5 percent in Asia (UNICEF, UNAIDS and USAID, 2002).

⁴²⁹ In 2015, more than 13 million of people younger than 17 years old worldwide had lost one or both parents to AIDS and approximately 80% of these (10.9 million) live in sub-Saharan Africa (UNICEF, 2016).

⁴³⁰ Ibid.

⁴³¹ Orphanhood, children working in ASM are sometimes those left vulnerable because of the loss of parents from the HIV/AIDS epidemic. See, Schwartz, F. W., Lee, S., & Darrah, T. H. ‘A Review of Health Issues Related to Child Labor and Violence within Artisanal and Small-Scale Mining’ (2021) *GeoHealth*, 5, e2020GH000326. <https://doi.org/10.1029/2020GH000326>, pg. 9.

⁴³² Novella, Rafael. ‘Orphanhood, Household Relationships, School Attendance and Child Labor in Zimbabwe’ (2018) *Journal of International Development*, 30 at 726 – in 2007, orphans in Zimbabwe were approximately 1.3 million and 24 per cent of the child population.

population in Zimbabwe.⁴³³ These orphans are more vulnerable to working on ASM sites, and even more so where orphanhood has left them in a child-headed household without any adults to fend for them.⁴³⁴

6.3.5 *The New Normal: The Impact of COVID-19 on Child Labour*

Amidst Zimbabwe's woes, such as the high unemployment rate, skyrocketing inflation, agricultural poverty, and the deterioration of the once prestigious education system, a worldwide pandemic has further wrecked the country and worsened the child labour problem.⁴³⁵ Due to the rampant spread of the virus and the initial unavailability of a pharmacological response, countries, including Zimbabwe, enforced lockdown regulations.⁴³⁶ These regulations restricted gathering and mobility to prevent the spread of the virus. This included closing borders and international travel, informal and formal businesses, schools, social gatherings, and regulating the times when people are allowed to move outside their households.⁴³⁷ The COVID-19 virus, during the past two years, has brought what has become known as a 'new normal, in this new normal of which a surge has been noticeable in the number of child labourers in Zimbabwe and other developing countries.⁴³⁸ This impact on child labour has been mostly a result of the drastic changes engendered by the pandemic on the economic and education systems.⁴³⁹

The nationwide lockdown regulations enforced by the Zimbabwean government to manage the spread of COVID-19 in the years 2020 and 2021 included the removal of all informal businesses from the streets.⁴⁴⁰ This includes vendors, informal transport service providers, car washers and cobblers, among others. In a country infamous for its high rate of unemployment, the informal sector constitutes a large proportion of the workforce in Zimbabwe.⁴⁴¹ Formal businesses were also closed during the highest levels of lockdown regulations, except for

⁴³³ The Joint United Nations Programme (UNAIDS, 2008).

⁴³⁴ Joint United Nations Programme (UNAIDS, 2008).

⁴³⁵ Ibid.

⁴³⁶ Chigevenga, Rosemary. 'Commentary on COVID-19 in Zimbabwe.' (2020) *Psychological Trauma: Theory, Research, Practice, and Policy* 12.5 (2020): 562.

⁴³⁷ Ibid.

⁴³⁸ Green Governance Zimbabwe Trust op cit note 157.

⁴³⁹ David Mhlanga & Emmanuel Ndlovu 'Socio-economic Implications of the COVID-19 for Smallholder Livelihoods in Zimbabwe.' (2020) *Preprints* 2020040219 (doi: 10.20944/preprints202004.0219.v1)

⁴⁴⁰ Ibid.

⁴⁴¹ Ibid.

essential workers such as healthcare providers.⁴⁴² As a result, businesses began to suffer losses, and there was a rise in retrenchments.⁴⁴³

Retail business, for example, took a hit because Zimbabwe's production is very low, and most goods sold in the country are imported from countries such as South Africa.⁴⁴⁴ The closure of borders, therefore, led to the closure of shops and businesses as well as the loss of jobs and income streams.⁴⁴⁵ The small percentage of locally produced goods found in the country consists of farm produce, a source of livelihood for farmers and rural communities.⁴⁴⁶ When the lockdown was imposed, farmers were banned from trading their produce on the streets or markets.⁴⁴⁷ COVID-19 worsened the economic crisis in the country and intensified household poverty, which in turn is a direct and main cause of child labour.⁴⁴⁸

6.3.6 Non-formalisation of ASM

While the above-discussed factors drive children into mining, the non-formalisation of ASM may be a significant factor perpetuating child labour in the system. ASM is a poverty-driven practice, and so is child labour.⁴⁴⁹ Non-formalisation of ASM has an aggravating effect on the economic hardships already experienced by ASM miners, including child labourers, and therefore fuelling child labour.⁴⁵⁰ In other words, non-formalisation, which implies the exclusion of the ASM sector from oversight by the government in terms of workplace health and safety, treatment of workers, remuneration and recruitment, means that the law turns a blind eye to the plight of children in the sector. Further, the non-formalisation and criminalisation of ASM enables child labour by making the practice difficult to detect and monitor.⁴⁵¹

⁴⁴² Chigevenga op cit note 430.

⁴⁴³ Ibid.

⁴⁴⁴ Ibid.

⁴⁴⁵ Ibid.

⁴⁴⁶ Ibid.

⁴⁴⁷ 'Zimbabwe reopens produce markets after protests by drought-hit farmers' Daily Maverick 09 April 2020. <https://www.dailymaverick.co.za/article/2020-04-09-zimbabwe-reopens-produce-markets-after-protests-by-drought-hit-farmers/>.

⁴⁴⁸ Ibid.

⁴⁴⁹ '2021 Trafficking in Persons Report: Zimbabwe' op cit note 268.

⁴⁵⁰ Hilson & McQuilken op cit note 1 at 107 – ASM miners while in search of incomes to improve their livelihoods, lack of access to equipment and other capital as well as manipulative markets results in lack of profits which maintains rather than alleviate poverty.

⁴⁵¹ G. Mpufane, 'Perils and Opportunities: Artisanal, Small-scale and Informal Mining' at 10.

6.4 Outcomes of Child Labour in ASM: The Benefits

This section discusses the benefits of child work in ASM. This is to prove that the benefits, though far outweighed by the detriments of child labour in ASM discussed below, are so essential to the children and families involved that any successful legal solutions for child labour in ASM must provide alternative ways to acquire these benefits.⁴⁵² Whilst ASM has been considered harmful to children as discussed in the previous chapters, the socio-economic circumstances of communities where ASM is prevalent, that is the extreme poverty, mean that these families can put food on the table or generate school fees.⁴⁵³ In other words, despite the harm of child labour in ASM, children and poor families whose children are engaged in ASM can meet some of their needs. Despite the inefficiency and low profitability, as well as the dangerous, labour-intensive nature of ASM, children involved in mining activities depend on the sector, often as their only way out of poverty.⁴⁵⁴

Given the above challenges arising from non-formalisation, it is recommended that Zimbabwe revert to its previous efforts to formalise ASM operations. This formalisation must standardise the work of ASM operations, giving effect to the need for the participation of women and children in ways that do not harm children. This includes child participation within the parameters of the law, such as allocating children with light work and non-hazardous child work, both of which are defined in Chapter 4.3.⁴⁵⁵

⁴⁵² The legal solutions envisioned by this research mainly include poverty alleviation in ASM communities by providing alternative sources of income and livelihood and increasing the profitability of ASM so that children will not have to work.

⁴⁵³ Children in the rural and poor ASM communities of Zimbabwe are forced to work because there is barely anything to eat at home and they want to raise money for schooling, see The Guardian Nov 2020, available at <https://www.theguardian.com/global-development/2020/nov/13/i-need-money-for-school-the-children-forced-to-pan-for-gold-in-zimbabwe>.

⁴⁵⁴ A single miner can only process a small quantity of material, limiting the capacity for resource recovery. Also see source for - This is due to the rudimentary nature of equipment used in ASM, lack of skills and training, lack of organisation and support structures due to the informal and illegal nature of the industry. However, the fact that thousands or tens of thousands of people are involved in ASM, the production total production of minerals becomes a significant fraction of a country's production (Geo Health Page 1), e.g., ASM mined gold forms x% of the total gold mined in Zimbabwe.

⁴⁵⁵ ILO Minimum Age Convention, Article 2 and Article 7; David Tajgman (International Programme on the Elimination of Child Labour) (2007), *Child Labour: Modern Policy and Legislative Responses to Child Labour*, at 30.

6.5 Outcomes of Child Labour in ASM: The Detriments

Child labour in ASM has serious detriments to children and those around them. This section discusses the negative outcomes of child labour in ASM. These include health risks, drug abuse, and sexual exploitation.

6.5.1 Health Risks: Illness, Injury, And Mortality

Mining poses a very high health risk for children, and ASM, given the rudimentary processes and lack of any appropriate health and safety measures, is devastating to children who must not be engaged in such backbreaking work. According to the ILO, ‘working in mining...poses extreme health risks and hazards for...children...[who] may [also] be torn from their habitual living environment and forced to live under extreme conditions in mining camps’.⁴⁵⁶ The ILO further states that:

‘Mining and quarrying are, in virtually all cases, the Worst Form of Child Labor (WFCL) because of the extent and severity of the hazards and risks of injury and disease. There is no justification — poverty included — for children to work in this sector. It is literally back-breaking work.’⁴⁵⁷

Children engaged in ASM are known to suffer from joint/muscle stiffness, muscle pain, muscle weakness, poor appetite, back pain, skin lesions, and sleep disorders amongst other health problems.⁴⁵⁸ Other problems include sexually transmitted infections, comorbidities around silicosis, HIV, and tuberculosis. In worst cases, children die in the course of work in ASM.⁴⁵⁹

The health risk of child labour in ASM is magnified by the fact that children are actively growing physically and mentally and are, therefore, highly susceptible to injuries.⁴⁶⁰ Reflecting on the impact of child health problems arising in ASM, the ILO indicated that these problems that occur at an early age are an economic cost on society as health systems must continuously

⁴⁵⁶ ILO Report ‘Combating Child Labour through Education’ (2004) at 7.

⁴⁵⁷ International Labor Organization (ILO) (2004). Action against child labour and quarrying: A thematic evaluation. Geneva: International Labor Organization (ILO).

⁴⁵⁸ ILO, 1998. International Labour Organization, Sector Publications. Child labour in Small-Scale mining: Examples from Niger, Peru & Philippines. (<http://www.ilo.org/public/english/dialogue/sector/papers/childmin/137e3.htm#3>).

⁴⁵⁹ Nalule op cit note 10.

⁴⁶⁰ ILO (2011). Children in hazardous work: What we know, what we need to do. International Labour Office Brookings Institution Press; <http://site.ebrary.com/id/10512167>.

deal with such problems whilst the various sicknesses keep the children from effectively contributing to society in their adulthood since their potential is diminished by ill-health.⁴⁶¹

Child labour in ASM has not produced fewer health risks for Zimbabwean children. A case in point is a 2020 report of an incident of child labour in ASM involving a 14-year-old, a Grade 7 pupil at Rukanda Primary School in Mutoko, who suffered spinal cord damage during a mine shaft collapse in Mutoko. Consequently, the boy got paralysed and needed financial help for advanced treatment. There is a dearth of literature on the health impact of child labour in ASM on children in Zimbabwe, as with many other areas. However, due to the lack of documentation on the nature of ASM in Zimbabwe, there is more that remains unknown that is possibly happening in the country's ASM sector..

6.5.2 Associated Criminality and Violence

Besides the above challenges caused by ASM, the practice of ASM in an area creates a certain social environment in which some aspects put children involved in mining activities at risk.⁴⁶² These social challenges include crime, prostitution, conflict and violence, drug abuse and neglect of human rights.⁴⁶³ Although such social ills threaten peace and stability in the entire ASM community, they pose a greater threat to the physical, psychological, and moral development and well-being of children involved in mining activities who are inexperienced and gullible to exploitation.⁴⁶⁴

Chikorokoza (the act of illegal mining) itself is (now) a criminal activity in Zimbabwe and therefore introduces children involved in mining activities to arrests and the life of evading authorities at a tender age.⁴⁶⁵ Between March 2019 and February 2020 alone, the police arrested at least eight thousand ASM miners during raids, including children.⁴⁶⁶ The social challenges encountered by ASM children involved in mining activities lead to injuries and physical harm.⁴⁶⁷ Such challenges also traumatise children and cause behavioural disorders such as

⁴⁶¹ Ibid.

⁴⁶² O'Driscoll op cit note 76 at 14.

⁴⁶³ Zvarivadza, & Nhleko op cit note 416 at 80.

⁴⁶⁴ '2021 Trafficking in Persons Report: Zimbabwe' op cit note 268. Green Governance Zimbabwe Trust op cit note 157.

⁴⁶⁵ International Crisis Group Africa Report N°294: All That Glitters is Not Gold: Turmoil in Zimbabwe's Mining Sector, November 2019.

⁴⁶⁶ Ibid.

⁴⁶⁷ Ibid.

patterns of violence, drug abuse and criminal conduct.⁴⁶⁸ The impact of the ASM social environment on children involved in mining activities is discussed by way of key examples below.

6.5.2.1 Violence

Criminality and violence are not unexpected where high-value commodities and strategic metals are in poor communities. An example of violence is the recent escalation of the machete-wielding gang violence in ASGM communities in Zimbabwe.⁴⁶⁹ These marauding gangs, commonly known by the local parlance “mashurugwi”, have been involved in illegal mining for decades and are found wherever rich deposits of minerals are found.⁴⁷⁰ Unlike other ASM miners operating unlawfully, these gangs are experienced criminals, highly organized and use extreme violence to displace miners from prolific areas and to steal minerals from ASM miners.⁴⁷¹ Female and children involved in mining activities are at greater risk as they are viewed as soft targets at ASM sites.⁴⁷² Mashurugwi gangs use machetes to injure or kill their targets in robberies, and the death toll they leave behind has established them as a terror group.⁴⁷³

⁴⁶⁸ O’Driscoll op cit note 76 at 14. Other research that studies the psychological impact of the ASM social environment on children involved in mining activities include; Schwartz, Lee, & Darrah op cit note 425.

⁴⁶⁹In the last quarter of 2019 Zimbabwe experiences a dramatic increase in machete gang violence across ASGM areas, see Grasian Mkodzongi, ‘The Rise of “Mashurugwi” Machete Gangs and Violent Conflict in Zimbabwe’s Artisanal and Small-scale Gold Mining’ (2020) *The Extractives Industries and Society*, 7 1480 – 1489, at 1; These gangs have existed since the 1980s, one of the earliest incarnations of these gangs is argued to have arose in the Zimbabwean town of Shurugwi (hence the name mashurugwi) when a group of criminals on the run from the authorities took hiding at an empty gold mine which was hardly accessible and on difficult terrain, see Simukai Tunhu ‘Why is Zimbabwe doing so little to tackle growing gang violence?’, African Arguments, February 19 2020, available at <https://africanarguments.org/2020/02/zimbabwe-gangs-mashurugwi-mnangagwa-chiwenga/> ; Also see International Crisis Group Africa Report N°294: All That Glitters is Not Gold: Turmoil in Zimbabwe’s Mining Sector, November 2019 on the rise and origins of mashurugwi gangs.

⁴⁷⁰ Before their hit in 2019, the machete gangs were popular between 2006-2008 at the height of the frenzied diamond rush that resulted from the discovery of diamonds in Marange in Eastern Zimbabwe. Poverty-stricken Zimbabweans, including children who abandoned school flocked to Marange in search of diamonds, some ASM miners relocating from their communities, but it was not long before machete wielding gangs started circling in. They dominated the diamond rich area, stealing diamond from other miners, driving some away, and killed anyone who stood in their way. Now that gold is increasingly becoming profitable, the criminal gangs have started targeting artisanal gold miners and gold rushes. See Farai Maguwu et al, ‘From Blood Diamonds to Blood Gold - A report on Machete Violence in Zimbabwe’s ASM Gold Sector’ (2020) Centre for Natural Resources Governance Issue 1, https://media.africanportal.org/documents/From_blood_diamonds_to_blood_gold.pdf

⁴⁷¹ International Crisis Group Africa Report N°294 op cit note 409. Maguwu et al op cit note 413.

⁴⁷² Driven by patriarchal and masculine social norms that tolerate violence against women, and by intense competition in mining, the mashurugwi inflict gender-based violence, and women and girls end up being the worst affected. See for example, Owen Mafongoya, Macreynold Maroveke and Samson Muzenda ‘Gender-Based Violence in Artisanal Mining in Zimbabwe’ (2021) *Advancing Learning and Innovation on Gender Norms*, at 9. Available at https://www.alignplatform.org/sites/default/files/2021-07/tydt_-_zimbabwe_briefing_note.pdf.

⁴⁷³ Farai Maguwu et al op cit note 463.

In the recent attacks on ASM towns along Zimbabwe's gold belts, there have been incidences of children being injured and killed at ASM sites, with girls and women raped and boys and men being maimed in attacks by mashurugwi gangs.⁴⁷⁴

Children involved in mining activities also witness and experience violence when the police and the army clamp down on ASM miners to arrest mashurugwi gangs.⁴⁷⁵ The latter often retaliate with violent attacks on authorities. Gun shootings by authorities and the killing of authorities by machete gangs have been reported during these altercations.⁴⁷⁶ When raiding for criminal gangs, the authorities do not distinguish between violent gangs and innocent ASM miners simply pursuing their livelihoods. Thus, the authorities arrest and sometimes assault everyone found on the ASM sites.⁴⁷⁷ Police brutality and arrests have been used to remove innocent ASM miners from rich mining areas under the guise of getting rid of criminals, only for corrupt police to take over mining operations.⁴⁷⁸ In mining operations taken over by the police, only syndicates under the employ of the police or ASM miners who pay illegal entrance fees charged by the police are allowed to operate.⁴⁷⁹ Children and adults who attempt to return to the mining sites to reclaim their livelihood face the prospect of being brutally assaulted.⁴⁸⁰

Apart from the violence caused by criminal gangs and intervening authorities, the ASM sector is also characterised by significant internal conflicts. There are high levels of gender-based violence (GBV) against girls and women working in Zimbabwe's ASM sector.⁴⁸¹ Female children involved in mining activities face physical, sexual, and emotional abuse from both male children involved in mining activities and older men who both push them out of mineral-rich areas and steal their minerals.⁴⁸² GBV is fuelled by discriminatory gender norms that define females as domestic workers who do not deserve to profit from mining since the activity is a preserve of men.⁴⁸³ Girls and women are also victims of forced labour and economic abuse under which they are forced to work and hand over all proceeds to their fathers, older brothers,

⁴⁷⁴ Ibid.

⁴⁷⁵ Ibid.

⁴⁷⁶ Ibid. Also see - International Crisis Group Africa Report N°294 op cit note 458.

⁴⁷⁷ For instance, during the Chikorokoza Chapera and Hakudzokwi operations.

⁴⁷⁸ The police are often the face of the operations, but more powerful government officials and politicians have been revealed to be in charge.

⁴⁷⁹ The syndicates working for the police have been identified by some as part of the machete gangs.

⁴⁸⁰ International Crisis Group Africa Report N°294 op cit note 458.

⁴⁸¹ '2021 Trafficking in Persons Report: Zimbabwe' op cit note 268.

⁴⁸² Ibid.

⁴⁸³ Ibid.

and other dominant males in their lives.⁴⁸⁴ Some men participating in ASM believe that menstruation is taboo, and the presence of females makes minerals disappear.⁴⁸⁵ As a result, girls and women experience thorough beatings and sexual harassment to drive them away from ASM operations.⁴⁸⁶ Young girls found in ASM are also forced or coerced into child marriages to the older makorokoza that they interact with so that their families can benefit from the minerals.⁴⁸⁷

Child ASM miners have expressed how older makorokoza within their communities violently dispossess them of the mineral deposits they find.⁴⁸⁸ For the minerals that are not stolen from them, child ASM miners usually get defrauded when they sell to gold or diamond dealers who undervalue the precious stones.⁴⁸⁹ Child ASM miners often return home with very little to no profits, coupled with the consequences of being exposed to conflict, violence, and a lack of security from as early as ten years old.⁴⁹⁰ The consequences include post-traumatic stress from experiencing and witnessing violence and assault.⁴⁹¹ Children exposed to environments of violence and conflict are more likely to develop violent and abusive dispositions, and for children involved in mining activities such dispositions are carried over to school, and other social settings as they grow older.⁴⁹²

Some children are recruited by criminal gangs such as the mashurugwi with the promise of better rewards than strenuous work at the mines.⁴⁹³ There is also a high incidence of children involved in mining activities who end up becoming criminals and never returning to school.⁴⁹⁴ Police brutality and arrest at a tender age also have serious implications for children involved in mining activities.⁴⁹⁵

⁴⁸⁴ Ibid.

⁴⁸⁵ Jackline, Asiimwe, 'Women in Artisanal and Small-scale Mining Uganda: Regulation, Barriers and Benefits' *KAS African Law Study Library* 9(1), pp.4-21.

⁴⁸⁶ Ibid.

⁴⁸⁷ '2021 Trafficking in Persons Report: Zimbabwe' op cit note 268.

⁴⁸⁸ International Crisis Group Africa Report N°294 op cit note 458.

⁴⁸⁹ Maguwu et al op cit note 466.

⁴⁹⁰ '2021 Trafficking in Persons Report: Zimbabwe' op cit note 268.

⁴⁹¹ Ibid.

⁴⁹² Wakatama, Markim. 'The situation of street children in Zimbabwe: a violation of the United Nations Convention on the Rights of the Child' (1989) (Diss. University of Leicester, 2009).

⁴⁹³ '2021 Trafficking in Persons Report: Zimbabwe' op cit 268.

⁴⁹⁴ Green Governance Zimbabwe Trust op cit note 157.

⁴⁹⁵ Ibid.

6.5.2.2. Sexual abuse and prostitution

The inherent illegal nature of ASM activities creates the perfect breeding ground for many other illegal activities and exploitations. Such exploitations include the discrimination and harassment of women and young girls who participate in ASM.⁴⁹⁶ Women and young girls are exposed to sexual violence and abuse at mining sites.⁴⁹⁷ This is facilitated by the disruptive and damaging behaviour involving high levels of alcohol and drug abuse in camps.⁴⁹⁸ Further, due to the rampant poverty and recently, the closure of schools due to the COVID-19 pandemic, children have seen ASM as an option, where they are exposed to prostitution and drug abuse.⁴⁹⁹ This reality was confirmed and condemned by Zimbabwe Miners Federation president Henrietta Rushwaya, who described the practices as “immoral and illegal”.⁵⁰⁰ Even minor females who conduct vending in areas where ASM is conducted are exploited by sex traffickers in illegal mining areas, while adult women are known to increasingly exploit girls as young as twelve years old in sex trafficking in gold mining communities in Mashonaland East, Mazowe, and Shurugwi.⁵⁰¹ During the COVID-19 pandemic, various organizations and media personnel identified hundreds of children in sex trafficking near the Mazowe mines.⁵⁰² The trafficking involves illegal miners forcing girls to enter into “relationships” involving sexual intercourse in exchange for money and food.⁵⁰³ The young girls, at times, assist with mining operations. Reports show that in Chiredzi, young girls as young as 11 years old are recruited by sex traffickers involved in illegal mining.⁵⁰⁴

6.5.2.3 Drug abuse

As indicated above, there is extensive abuse of drugs and alcohol in ASM. Child participants are exposed to drug and alcohol abuse.⁵⁰⁵ The World Health Organisation also confirmed that

⁴⁹⁶ Dzvimbo, M .A, Ncube, C and Monga, M 2019 ‘Scratching the Surface: Exploring Women’s Roles in Artisanal and Small Scale Mining in Zimbabwe’ (2019) *Budapest International Research and Critics Institute (BIRCI – Journal): Humanities and Social Sciences* 2, no. 3: 125 – 133.

⁴⁹⁷ Ibid.

⁴⁹⁸ Zvarivadza, and Nhleko. Op cit note 416 at 81.

⁴⁹⁹ Dzvimbo, Ncube, and Monga op cit note 489.

⁵⁰⁰ Vinga op cit note 421.

⁵⁰¹ Covid-19 & poverty’ 10 Sep 2020 <https://www.business-humanrights.org/es/%C3%BAAltimas-noticias/zimbabwe-more-children-increasingly-participating-in-gold-mining-activities-as-a-result-of-covid-19-poverty/> (last accessed: 28/11/2021).

⁵⁰² Covid-19 & poverty’ 10 Sep 2020 <https://www.business-humanrights.org/es/%C3%BAAltimas-noticias/zimbabwe-more-children-increasingly-participating-in-gold-mining-activities-as-a-result-of-covid-19-poverty/> (last accessed: 28/11/2021). Also see – Harris, “Human trafficking remains high in Zim: Report” July 2022, CITE Report . <https://www.google.com/amp/s/cite/org/zw/human-trafficking-remains-high-in-zim-report/amp/>.

⁵⁰³ ‘2021 Trafficking in Persons Report: Zimbabwe’ op cit note 268.

⁵⁰⁴ Ibid.

⁵⁰⁵ Vinga op cit note 421.

studies on alcohol and drug abuse pertaining to child labour in ASM are limited.⁵⁰⁶ Anecdotal observations from studies conducted in the Democratic Republic of Congo (DRC) concerning alcohol and drug abuse, though not specific to women and children, allow reasonable inference that young children are exposed.⁵⁰⁷ Interviews conducted in DRC with adolescent boys (aged 12–17) confirmed both “men and boys were abusing alcohol” and that “adolescent boys and young men were turning to crime to obtain alcohol and drugs.”⁵⁰⁸

In many cases, children are deliberately introduced to drugs and alcohol by traffickers to exploit the children in the mining work, where children are convinced that if they use drugs, they can be stronger and brave to do difficult work.⁵⁰⁹ Children are also exposed to drugs, where traffickers force the children to sell illicit drugs.⁵¹⁰

6.5.3 The impact on education and the vicious circle of poverty

ASM is seen as a growing source of income for the poor in developing countries where unemployment rates are very high, and agriculture has been significantly affected by climate change, resulting in low yields. However, ASM has a devastating long-term impact on education and empowerment. First, ASM promises convenient and immediate income, which has been partly the cause for many children leaving school and participating in ASM.⁵¹¹ This growing culture is echoed in the words of one 16-year-old interviewed by Green Governance Zimbabwe Trust in Nyanga under the Legal for Artisanal and Small-Scale Miners project, he said,

“This work is too much, heavy and painful. After we are dismissed from school, we come to work for gold, during weekends we are involved in ASM activities either as

⁵⁰⁶ WHO (2016) Environmental and occupational health hazards associated with artisanal and small-scale gold mining. Technical paper No. 1; p. 26 World Health Organization; <https://apps.who.int/iris/handle/10665/247195>.

⁵⁰⁷ Kelly, J., Greenberg, N., Sabet, D., & Fulp, J. ‘Assessment of human trafficking in artisanal mining towns in eastern Democratic Republic of Congo’ (2014) *Social Impact Inc*; https://womenandmining.org/wp-content/uploads/2019/09/DRC-C-TIP-Assessment-Report_final.pdf. World Bank (2015). Resources and resourcefulness: Gender, conflict, and artisanal mining communities in eastern Democratic Republic of the Congo (Working Paper 95971). World Bank Group; at 7. <https://openknowledge.worldbank.org/handle/10986/21903>.

⁵⁰⁸ GSS (2013). GSS Research – violence and abuse against women, girls, and children in artisanal mining communities of the DRC. Democratic Republic Congo: Good Shepherd Sisters; https://www.fondazionebuonpastore.org/congo/resources/GSS_Congo_Research_Violence_and_abuse_against_women_girls_and_children.pdf.

⁵⁰⁹ <https://www.state.gov/reports/2021-trafficking-in-persons-report/zimbabwe/>

⁵¹⁰ <https://www.state.gov/reports/2021-trafficking-in-persons-report/zimbabwe/>.

individuals or as a family unit I do not have enough time to do schoolwork because of being tired and also overwhelmed with domestic chores such as collecting firewood. At least I am still at school, my peers have dropped out of school and are living the life. Two of my friends now own motorbikes and girls from our school are all over them because they have money, With the COVID-19 pandemic, the situation has also been so good to us for I am now just concentrating on mining only, hoping one day I will also have more money to show off”.⁵¹²

Moreover, the high unemployment rates and visibly high numbers of qualified people participating in ASM further discourage children from any promises of success through education. In an interview by Green Governance Zimbabwe Trust, during a monitoring visit in Nyanga under the Legal for Artisanal and Small-Scale Miners project, one 14-year-old child was quoted as saying,

“the Covid-19 pandemic opened up our eyes and I realised that it is not worth it to go to school, as far as schooling is concerned, I am no longer concerned about it because the money I get from Artisanal Small-Scale Mining is enough to cater for all my needs in life than what school, therefore, it’s better I forget about school.”⁵¹³

The result is the neglect of education, a culture that is passed down with generations, thereby depriving future generations of any potential benefits of education when economies rebound.⁵¹⁴ Being uneducated is devastating and lessens the chance of sustainable empowerment, such that many families will be trapped in perpetual poverty, where many generations neglect education in exchange for short-term riches in ASM.⁵¹⁵

6.6 Conclusion

This chapter set out to study the nature and extent of child labour in ASM in Zimbabwe, to enhance understanding of the problem for which this dissertation seeks solutions. This chapter discussed factors such as the causes and catalysts of child work in ASM in Zimbabwe. This includes the contemporary impacts of Covid-19 lockdowns, which exposed both the fragility and the unpreparedness of the country’s legal and socio-economic systems in protecting children’s rights. The chapter also briefly analysed the role played by parents, guardians, and

⁵¹² Green Governance Zimbabwe Trust op cit note 157.

⁵¹³ Ibid.

⁵¹⁴ Ibid.

⁵¹⁵ Ibid.

“employers” in the involvement of children in the sector. The type of work done by children and the consequences of this practice were also discussed.

A general finding from this chapter is that ASM is understudied. Hence, it is very difficult to obtain data on the various subjects discussed herein. The chapter found that children are driven into ASM in various ways, including by their parents and by the closure of schools, as was the case with the COVID-19 pandemic lockdowns. Poverty and dilapidated schools are the major drivers of children's participation in ASM. Children participate in ASM in various ways, including selling food and illegal drugs, smuggling minerals and prostitution. Whilst in ASM, children are exposed to violence, drug and alcohol abuse and significant health risks that may last for a lifetime and be the cause of death. Exposure to drug abuse, alcohol abuse and prostitution is, in certain instances, deliberately perpetuated by adult traffickers who seek to exploit children. More broadly, the devastation of child labour in ASM is highlighted when one observes the drop in interest in education and the resultant cycle of poverty where successive generations in a family neglect education for the more convenient, short-term term and yet exploitative earnings from ASM.

As noted in the chapter, data on the participation and impact of child labour in ASM in Zimbabwe is extremely limited, and this renders it challenging to grasp the full extent of the devastation of ASM on children and society. Further studies are required to understand the phenomenon in Zimbabwe. The chapter hinted at the solution to child labour in ASM to be the formalisation of ASM, where authorities can set labour standards, organize miners, and protect children. The feasibility of formalisation depends on many factors, whilst the involvement of politicians in the sector presents significant challenges as they stand to lose. Therefore, the eradication of child labour in ASM also hinges on the eradication of corruption by law enforcement officers and politicians currently involved in the sector.

The next chapter concludes the discussion of this dissertation by providing a summary of findings and recommendations for the issues raised in this study.

CHAPTER 7

CONCLUSION AND FINDINGS

7.1 Introduction

This study set out to examine the adequacy of the regulatory framework on child labour in the ASM sector in Zimbabwe. This chapter renders a summary of this study by outlining the findings of this research and the recommendations for the challenges identified in this study.

7.2 Findings

As defined under Chapter 1 of this thesis, the focus of this study is child labour in ASM and the adequacy of the law to deal with the challenge of child labour in ASM in Zimbabwe. Poverty, high unemployment, growing income, and wealth inequality, coupled with the COVID-19 pandemic, have driven the explosive growth of ASM activities in many developing countries and Zimbabwe.⁵¹⁶ This increase in ASM activity threatens the rights and safety of children, as an increasing number of children are drawn into ASM, either lured by lucrative earnings or as part of poor families that seek to earn a living. Considering this possibility, ASM cannot continue operating without regulatory measures specifically targeted at eliminating child labour in the sector.

Chapter 2 extended the background of this dissertation laid out in Chapter 1 of the dissertation. The chapter briefly defined, unpacked, and linked the concepts of child labour, ASM and poverty, laying the ground for subsequent chapters dedicated to discussing in-depth the concept of poverty, child labour and ASM. In this chapter, it was found that there is a link between these three concepts, where poverty draws children into child labour in ASM, which is prevalent in poor communities.

Chapter 3 set out to understand ASM in Zimbabwe. In Zimbabwe, ASM is largely illegal, with an increasing number of registered small-scale mines. The ASM activities exist in the extraction of over 30 minerals, with gold and diamonds dominating ASM activities. It has been shown that the continued ban on ASM does not prevent child labour abuse. The legal

⁵¹⁶ Vinga op cit note 381.

recognition of the sector and promoting it as profitable employment for adults can alleviate household poverty and improve the country's economy, which can remove the necessity for children to work. The country is revising its formalisation efforts for ASM after exemplary efforts by the country as a global leader for ASM formalisation were abandoned in the 2000s.

Chapter 4 set out to examine child labour in the ASM sector in Zimbabwe, covering factors such as the causes and catalysts of child work in ASM in Zimbabwe. It was found that ASM is understudied; hence, the difficulty of obtaining data on the subject. The chapter found that children are driven into ASM in various ways, including by their parents and by the closure of schools, as was the case with the COVID-19 pandemic lockdowns. Poverty and dilapidated schools are the major drivers of children's participation in ASM. Children participate in ASM in various ways, including selling food and illegal drugs, smuggling minerals and prostitution. When working in ASM, children are exposed to violence, drug and alcohol abuse and significant health risks that may last for a lifetime or ultimately lead to death. Exposure to drug abuse, alcohol abuse and prostitution is, in certain instances, deliberately perpetuated by adults, both female and male traffickers, who seek to exploit children. More broadly, the devastation of child labour in ASM is highlighted when one observes the drop in interest in education and the resultant cycle of poverty, where successive generations in a family neglect education for the more convenient and yet exploitative earnings from ASM.

Chapter 5 focused on appreciating the concept of child labour and the regulatory framework governing child labour-related matters internationally, regionally, and domestically. International instruments covered include the ILO Minimum Age Convention (Convention 138), Worst Forms of Child Labour Convention 182, United Nations Convention on the Rights of the Child, 1989. Regionally, the African Charter on the Rights and Welfare of the Child, 1990 was examined whilst domestically, Zimbabwe's Constitution, Labour Act (the Act) and Children's Act were discussed. The chapter distinguished between child labour and child work, with the former being prohibited for its disruptive effect on the development of children and the latter understood to be acceptable and necessary for the socialisation of children. Further, the four classes of child labour, namely, light work, child labour other than non-hazardous child labour, hazardous child labour and worst forms of child labour, were examined.

Chapter 6 set out to study the nature and extent of child labour in ASM in Zimbabwe, to enhance understanding of the problem for which this dissertation seeks solutions. This chapter discussed factors such as the causes and catalysts of child work in ASM in Zimbabwe. This

includes the contemporary impacts of Covid-19 lockdowns, which exposed both the fragility and the unpreparedness of the country's legal and socio-economic systems in protecting children's rights. The chapter also briefly analysed the role played by parents, guardians, and "employers" in the involvement of children in the sector. The type of work done by children and the consequences of this practice were also discussed.

A general finding from this chapter is that ASM is understudied. Hence, more data-gathering studies are necessary to obtain data on the various subjects discussed herein. The chapter found that children are driven into ASM in various ways, including by their parents and by the closure of schools, as was the case with the COVID-19 pandemic lockdowns. Poverty and dilapidated schools are the major drivers of children's participation in ASM. Children participate in ASM in various ways, including selling food and illegal drugs, smuggling minerals and prostitution. Whilst in ASM, children are exposed to violence, drug and alcohol abuse and significant health risks that may last for a lifetime and be the cause of death. Exposure to drug abuse, alcohol abuse and prostitution is, in certain instances, deliberately perpetuated by adult traffickers who seek to exploit children. More broadly, the devastation of child labour in ASM is highlighted when one observes the drop in interest in education and the resultant cycle of poverty where successive generations in a family neglect education for the more convenient, short-term term and yet exploitative earnings from ASM.

It was found that data on the participation and impact of child labour in ASM in Zimbabwe is extremely limited, and this renders it challenging to grasp the full extent of the devastation of ASM on children and society. Therefore, further studies are required to understand the phenomenon in Zimbabwe. The chapter hinted at the solution to child labour in ASM to be the formalisation of ASM, where authorities can set labour standards, organize miners, and protect children. The feasibility of formalisation depends on many factors, whilst the involvement of politicians in the sector presents significant challenges as they stand to lose.

The major findings from this research are that ASM has become an important source of livelihood for many poor people in resource-rich developing countries. As a result of poverty and the high cost of living in poor economies with high unemployment and little to no social security, entire households engage in ASM for survival. Children are brought into ASM to help their parents or, in the case of child-headed families, to earn a living. The study also found that many children have been exposed to drug abuse, alcohol abuse, violence, and prostitution in

ASM, while some children feel education does not afford them to earn a living in ASM. This research also found that at the centre of the harmful child labour in ASM is the participation of politicians who protect ASM miners from law enforcement while they exploit the miners. Moreover, this research found that the existing regulatory framework is sufficient to deal with the scourge of child labour in ASM, however, the real challenge is the implementation of these international, regional, and domestic instruments, considering the lived realities of the people and the structures of the ASM sector.

7.3 Recommendations

To deal with the challenges identified in this study, this research makes the following recommendations.

7.3.1 Formalisation of the ASM sector

To ensure a close reach of the hand of the law and compliance by participants in ASM, the state must intensify efforts to formalise ASM in Zimbabwe by streamlining the processes of granting licenses and further providing funding to the small-scale miners. This regulation of ASM allows the state greater oversight, and miners will have an urgency not to employ child labour. Employment of children in ASM is difficult to detect and eradicate without targeted and specific policy attention to bring the sector into legal recognition and monitoring.⁵¹⁷

7.3.2 Education Funding Assistance – BEAM

As stated in the discussion on poverty above, children are forced into ASM mainly to supplement their poor family`s incomes and fund their education. To lessen the burden of school fees on poor parents and to capitalise on the long-term utility of education in facilitating an escape from the poverty trap of children from poor families, the states must extend the BEAM scheme to be easily accessible and widely available across the country. Whilst BEAM helps with school fees and other school-related necessities, the programme can be designed to facilitate the absorption of former beneficiaries into the workplace.

⁵¹⁷ Mpufane op cit note 97 at 10.

7.3.3 Skills Development

The expansion of the ASM sector is attributed to high unemployment. The government must promote skills development from the high school level to enable learners to earn a living from self-employment and avoid adding to the high unemployment in the formal sector. This skills development programme can complement the efforts to formalise ASM, where skilled operators/miners sustainably grow the small-scale mining sector, thereby absorbing a significant portion of the unemployed. This initiative will assist poor families, thereby eliminating the poverty driver of child labour.

7.3.4 Social Security Provision

To assist poor families and child-headed homes, noting that social security barely exists in Zimbabwe, the government must introduce social grants to cushion these vulnerable groups and make ASM a last resort. Social security, if properly designed, will lighten the burden on poor families and remove the desperation to drag children to work in ASM, where children are exposed to health risks, sexual exploitation, and abuse.

7.3.5 Awareness Campaigns

In poor communities, the harm of child labour to children is barely understood; somehow, child labour is seen as helpful in the livelihood of the family unit and for the continued education of the children. The government, in cooperation with NGOs, must launch and intensify awareness campaigns against child labour. These awareness campaigns will assist in turning the culture of normalising child labour and, in turn, can influence even poor parents to protect their children from child labour.

7.3.6 Further Research

Noting the dearth of data and literature on child labour in ASM, the government, NGOs, and institutions of higher learning must promote child labour in ASM-related research by availing funding and dedicated publications. This will assist in highlighting the devastating impact of child labour in ASM and amplify the call to stakeholders to deal with these challenges.

7.4 Final Thought

The exploitation of mineral resources has been the basis of many livelihoods since time immemorial. Governments across the world rely on the exploitation of mineral resources to develop economies, whilst giant enterprises have emerged in the mining industry. For the ordinary person, mining benefits through the government are negligible whilst the poor have found ways to directly engage in ASM activities to directly benefit from mineral resources. For this research, the central concern is the harmful participation of children in ASM, where they engage in labour in environments that are detrimental to their physical and psychological development. Instead of spending their childhood as children, children in poor communities are forced by circumstances to prematurely mature either to assist their families to fend for a living or to earn a livelihood in child-headed families in developing countries that do not provide any or sufficient social security to the indigent. Whilst work may be beneficial in equipping children with valuable life skills, ASM exposes very young children to environments characterised by crime, prostitution, drug abuse, human trafficking, exposure to dangerous chemicals and accidents. The solution to this problem is largely to formalise the ASM sector and bring it under government supervision, where clear compliance rules are laid down for all participants in the sector where matured children and women are given special accommodation whilst authorities must monitor health and safety protocol, prevent crime and prohibit the participation of young children. Further, the government must provide a comprehensive package of social security measures, including free education for children from poor communities and social grants for rural and poor communities. This will mitigate the urgency for the participation of children in ASM.

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