

# CHILD LABOUR IN AGRI – BUSINESS: A CASE STUDY OF SELECT OUT-GROWER COMMUNITIES AND COMPANIES IN UGANDA'S SUGAR INDUSTRY





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**April 2020**

*All photos in this report were taken in Luuka, Jinja and Buikwe District*

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The UCCA and PILAC would like to express gratitude to all the respondents that participated in this case study. Special thanks to the research team that comprised of PILAC students; Mr. Joel Lutimba Lumala and Mr. Colman Ntungwerisho with the guidance of Mr. Joshua Kisawuzi and the supervision of Mr. Arnold Kwesiga and Ms. Sandra Oryema. We would also like to thank Mr. Joseph Byomuhangi for his input in the research and Ms. Salima Namusobya for the final review and edit of the study report.

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Due diligence was exercised in presenting and interpreting the information obtained for this research accurately. Any errors and omissions in this report should be solely attributed to the UCCA.

Thank you,

Uganda Consortium on Corporate Accountability and the Public Interest Law Clinic, School of Law, Makerere University

## PREFACE

As the Uganda government encourages greater private investment in the pursuit for development and upgrading Uganda to middle income status, the private sector is set to play a key part in the eventual realization of human rights. This means that businesses ought to be mindful of the human rights implications of their activities and follow the Protect, Respect and Remedy framework, which is the overarching guide for business interaction with human rights. Unfortunately, few businesses are aware of this framework and the government is yet to adopt a National Action Plan on business and human rights.

In Uganda's sugar industry, violation of children's rights has put the industry under particular scrutiny. A host of factors such as; the easy access to adult work coupled with the high levels of poverty and the high demand for cheap labour have exposed children to violation of their right to freedom from economic exploitation. In turn, this also affects their right to education and right to health. These human rights violations totally disregard the principle of the best interests of the child. Moreover, Parliament missed an opportunity to put in place safeguards against child labour in the sugar industry when it was debating the recently passed Sugar Act. As a result, it is still difficult to hold sugar producing companies accountable for the human rights violations that occur in their supply chains including out-growers.

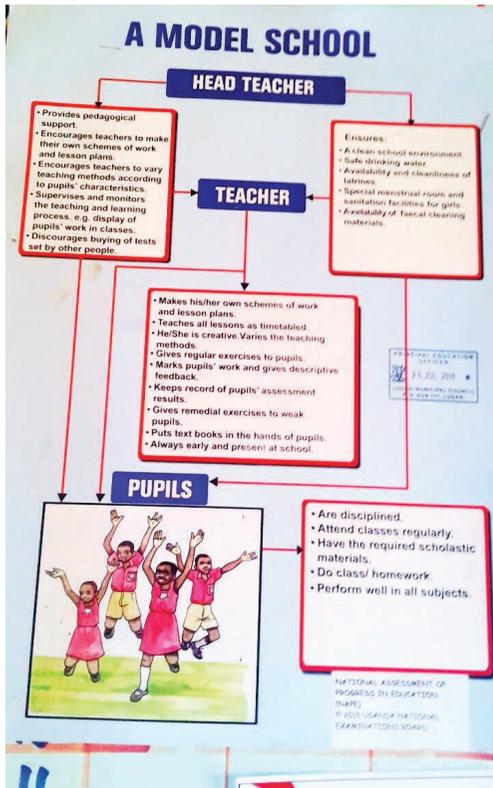
Therefore, this research study examines the occurrence of child labour in select out-grower communities and companies in Uganda's sugar industry. It also highlights the drivers of child labour. Finally, the study makes recommendations to all the stakeholders involved on how to stamp out child labour from the sugar industry.

## LIST OF ACRONYMS

ACRWC	African Charter on the Rights and Welfare of the Child
CRC	Convention on the Rights of the Child
DLG	District Local Government
EOC	Equal Opportunities Commission
FCL	Family Child Labour
ILO	International Labour Organisation
MGLSD	Ministry of Gender, Labour and Social Development
MP	Member of Parliament
UBOS	Uganda Bureau of Statistics
UCCA	Uganda Consortium for Corporate Accountability
UDHR	Universal Declaration of Human Rights
UHRC	Uganda Human Rights Commission
UNGPs	United Nations Guiding Principles on Business and Human Rights
UNICEF	United Nations Children's Fund

# CHAPTER ONE

**CHILD LABOUR IN AGRI – BUSINESS IN UGANDA: A  
CASE STUDY OF SELECT OUT-GROWER COMMUNITIES  
AND COMPANIES IN UGANDA’S SUGAR INDUSTRY**



# CHILD LABOUR IN AGRI – BUSINESS IN UGANDA: A CASE STUDY OF SELECT OUT-GROWER COMMUNITIES AND COMPANIES IN UGANDA’S SUGAR INDUSTRY

## 1.1 Background

The Uganda Consortium on Corporate Accountability (UCCA) is a national civil society consortium aimed at enhancing accountability by Corporations, States, International Financial Institutions and Development Partners for violations or abuses of Economic Social and Cultural Rights (ESCRs). The Consortium in alliance with other organisations seeks to promote the effective understanding, monitoring, implementation and realisation of ESCRs in Uganda—especially in the context of business activities.

The Public Interest Law Clinic “PILAC” of the School of Law of Makerere University is one of the four founding members of the UCCA. PILAC was established in January 2012, becoming the first University Based Law Clinic in Uganda. It was born out of the need to re-engineer the training of law students by incorporating elements in the curriculum that equip students with public interest lawyering skills. In this regard, PILAC partnered with the Centre for Human Rights at the University of Zurich to enroll a select number of students at the 2018 Summer School on business and human rights in Zurich. *The Business and Human Rights - Interdisciplinary Challenges and Opportunities (BHRICO)* Summer School was held from the 8th to 20th July 2018 in Zurich, Switzerland. It was attended by two PILAC students; Colman Ntungwerisho and Joel Lutimba Lumala among other students from across the globe.

This research project is a follow up to the students’ summer school engagement on business and human rights and supplements an earlier Video documentary on the Bitter Taste of Sugar in Luuka District done by UCCA. The project explored the critical issue of child labour in the sugar industry.

This research is titled, **Child Labour in Agri – Business: A Case Study of Select Out-Grower Communities and Companies in Uganda’s Sugar Industry**. The research project was conducted by the two PILAC students, Colman Ntungwerisho and Joel Lutimba Lumala, supported by the Initiative for Social and Economic Rights (ISER) Community Outreach Officer, Mr. Joshua Kisawuuzi. The whole project was supported and guided and supervised by Sandra Oryema of the Public Interest Law Clinic, Makerere University and Arnold Kwesiga of the Uganda Consortium on Corporate Accountability (UCCA).

## 1.2 Introduction

Keeping Children alive, safe and learning are the basic pillars of the Convention on the Rights of the Child. Let us remind ourselves of children's rights and commit to recognizing, respecting and realizing these rights for the children of Uganda.

*– Doreen Mulenga, UNICEF Representative in Uganda*

According to UNICEF, Children under 18 years old account for almost one third of the world's population. In many countries, children and youth make up almost one half of the national population and they are among the most marginalized and vulnerable members of society—needing special protective measures to ensure the wholesome development of the child. With an increase in foreign and local investment—coupled with high poverty levels and demand for cheap labour by corporate entities, it is inevitable that business, whether small or large, will interact with and have an effect on the lives of children both directly and indirectly. Children are key stakeholders of business – as consumers, family members of employees, young workers, and as future employees and business leaders. At the same time, children are key members of the communities and environments in which business operates. As such, child labour in most agri-culture and production enterprises is a major challenge in the promotion of children rights. Similarly, many of the children are often pushed into the labour market by their parents to supplement family financial sources and address dire poverty levels.

In 1990, Uganda ratified the Convention on the Rights of the Child (CRC)—which obligates State parties to ensure that all children – without discrimination in any form, benefit from special protection measures and assistance; have access to services such as education and health care; can develop their personalities, abilities and talents to the fullest potential.

Historically, the idea of children having rights was first viewed as revolutionary largely because children were presumed to lack the capacity of adults and to be under the control of their parents.<sup>1</sup>

However, this changed with the adoption of the UN Convention on the Rights of the Child (CRC), the first legally binding international instrument specifically addressing children's rights comprehensively. It has since its adoption become the

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1 Wald, Michael, "Child's Rights: A Framework for Analysis", *Davis Journal Vol 12 University of California*(1979), p.256.

most widely ratified human rights treaty by many countries in the world, including Uganda.<sup>2</sup> It is evidence therefore of the global acceptance of children's rights today even though their rights still continue to be violated immensely across the world in various forms.<sup>3</sup> Childhood is a time for foundational development, the persistent increase of risks and threats to this opportunity for holistic growth highlights the importance of protecting children as the anchor to ensure the realization of their best potential.

Among the many forms of violations of children's rights, child labour continues to greatly affect children's enjoyment of their rights in most developing countries and ultimately attacking the fundamental human dignity of all children and crippling the urgency to ensure their well-being and development.

The International Labour Organisation (ILO) has defined child labour to mean work that is mentally, physically, socially or morally dangerous and harmful to children; and interferes with their schooling.<sup>4</sup> As the era of sustainable development progresses, albeit a few setbacks, to fruition of successes in various areas, the dilemma of child labour persists worldwide with 152 million children being victims and 73 million of them working in hazardous conditions.<sup>5</sup> Across the African region, an estimated 80 million children aged 5-14 are engaged in child labour, representing one in every three children.<sup>6</sup>

In Uganda, the National Employment Policy 2011 defines Child Labour to mean "Work, which by its nature or circumstances in which it is performed, is likely to harm the health, safety or morals of children."<sup>7</sup> and is found when;

- Children are exposed to dangerous machinery, equipment and tools;

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2 Uganda Ratified the CRC in 1990.

3 Ekundayo Osifunke, *Does the African Charter on the Rights and Welfare of the Child (ACRWC) only Underlines and Repeats the Convention on the Rights of the Child (CRC)'s Provisions?: Examining the Similarities and the Differences between the ACRWC and the CRC,* INTERNATIONAL JOURNAL OF HUMANITIES AND SOCIAL SCIENCE, Vol. 5, No. 7(1) (July 2015), p.143. Accessed at: [http://www.ijhssnet.com/journals/Vol\\_5\\_No\\_7\\_1\\_July\\_2015/17.pdf](http://www.ijhssnet.com/journals/Vol_5_No_7_1_July_2015/17.pdf) on 11 Jan 2019.

4 International Labour Organisation, "Definition: What is meant by child labour?" [Online] Accessed at: [https://www.ilo.org/moscow/areas-of-work/child-labour/WCMS\\_249004/lang-en/index.htm](https://www.ilo.org/moscow/areas-of-work/child-labour/WCMS_249004/lang-en/index.htm), on 11th Jan. 2019.

5 International Labour Organisation, "Child Labour." Accessed at: <https://www.ilo.org/global/topics/child-labour/lang-en/index.htm> on 21st Jan 2019.

6 Ministry of Gender, Labour and Social Development, "National Action Plan on Elimination of the Worst Forms of Child Labour in Uganda 2012/13-2016/17". (2012). p.1 Accessed at: [https://www.unicef.org/uganda/NAP\\_UgandaJune2012.pdf](https://www.unicef.org/uganda/NAP_UgandaJune2012.pdf).

7 Uganda, National Employment Policy 2011, accessed at [https://www.ilo.org/dyn/youth-pol/en/equest.fileutils.dohandle?p\\_uploaded\\_file\\_id=155](https://www.ilo.org/dyn/youth-pol/en/equest.fileutils.dohandle?p_uploaded_file_id=155).

- Children carry heavy loads beyond their capacity;
- Children work in unhealthy environments that expose them to hazardous substances, infectious diseases, excessive noise, temperature or vibrations;
- Children are exposed to harassment or physical, psychological or sexual abuse; - children work underground, in water, or at heights;
- Children are unreasonably confined to the premises of the employers;
- Children work under conditions such as work for long hours;

Broadly, child Labour in Uganda as in many developing economies undermines national economic development plans and strategies by creating cycles of intergenerational poverty.<sup>8</sup> The National Employment Policy 2011 highlights the high incidence child labour as a challenge to labour standards and labour administration and further emphasizes its impediment to education and training programmes, as well as human capital needed for employment creation.<sup>9</sup> It is therefore unsurprising that the regions with high incidents of child labour also rank highly in poverty and poor performance in education and completion rates.

All in all, at these early ages, children are engaged in the potentially hazardous early and end processes of agricultural production. In the sugar industry, children are reported to be involved in activities such as cutting, collecting and carrying sugarcane. Resulting in part from the pervasiveness of poverty, traditional misguided perspectives on work and access to adult work, reports show that child labour continues to undermine children's access to education and health among others.<sup>10</sup>

This research focused on the sugar industry and sought to examine the occurrence of child labour, its drivers and report findings as well as recommendation of possible solutions.

### **1.3 Uganda's Sugar Industry: A Brief Overview**

Uganda's sugar industry has its background in cash crop production that was introduced by the colonialists to service the growing demand for raw materials in Britain and the rest of the Western World. At the time, some of Uganda's cash crops included cotton, coffee and tea.<sup>11</sup> Following the 1920s depression that

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8 *Id.*

9 *Id.*

10 ILO, "Child Labour." *Supra n.5.*

11 Ahluwalia. D.P.S. 1995. *Plantation and the Politics of Sugar in Uganda*. Fountain Publishers Ltd. Kampala Uganda at pp.21 - 22.

that adversely affected the British cash crop production there was need for diversification of produce hence the growth of sugarcane.<sup>12</sup> The growing of sugarcane was led by the Asian businessmen; Nanji Kalidas Mehta and Muljibhai Madhvani.<sup>13</sup> The two set up the Sugar Corporation of Uganda Limited (SCOUL) and Kakira Sugar Works Limited respectively which engaged in large scale production of sugarcane and sugar as an alternative to cotton.<sup>14</sup> Although Uganda's turbulent history especially the expulsion of the Indians in the 1970s by Idi Amin disrupted the sugar industry,<sup>15</sup> it has since expanded from only two industries to many more being set up. Some of the new sugar industries today include: Sugar Allied Industries Limited, Kinyara Sugar Works Limited, GM Sugar Uganda Limited,<sup>16</sup> Sango Bay Estates Limited, Sezibwa Sugar Limited, Buikwe Sugar Works Limited and Mukwano Sugar Factory among others.<sup>17</sup>

Over the years, the sugar industry has contributed greatly to the Ugandan economy and the areas that surround the companies such as Lugazi, Kakira, Masindi and Hoima.

The Uganda Bureau of Statistics (UBOS) reports that the agriculture sector contributes about 25.8% to Uganda's GDP and the Sugar industry is a major contributor to the sector.<sup>18</sup> In addition, the companies have since attracted amenities such as electricity and piped water; they have created employment opportunities in their locations and improved access to social services through building of schools and hospitals within communities in which they operate. However, the sugar business the sugar business has also occasioned human rights

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12 *Id.*, at p.29.

13 *Id.*, at pp.29 - 35.

14 *Id.*,

15 The reign of Idi Amin Dada from 1971 - 1979 saw the expulsion of Asians from Uganda leaving their economic ventures behind which disrupted the sugar business. However, their return much later saw a pick up from departure and fast growth and production. Also see: Kamau John, 'How Uganda overtook Kenya in sugar cane production,' *Daily Nation*, August 29th 2015. Available at: <https://www.nation.co.ke/news/How-Uganda-overtook-Kenya-in-sugar-cane-production/-/1056/2851558/-/ulihw8/-/index.html>

16 Otago Stephen, 'Competition expected as new sugar company joins market,' *Daily Monitor*, April 24th 2013. Accessed at: <https://www.monitor.co.ug/Business/Commodities/Competition-expected-as-new-sugar-company-joins-market/-/688610/1756422/-/rqtmo3/-/index.html>

17 Sanya Samuel, 'Eight firms join sugar production,' *The New Vision*, November 22nd 2011. Accessed at: [https://www.newvision.co.ug/new\\_vision/news/1003681/firms-join-sugar-production](https://www.newvision.co.ug/new_vision/news/1003681/firms-join-sugar-production)

18 The World Bank Group. Agriculture, Value Added (% of GDP). Available online: <https://data.worldbank.org/indicator/NV.AGR.TOTL.ZS>

violations<sup>19</sup> ranging from land grabbing<sup>20</sup> and low remuneration to facilitating the continuation of child labour through its production and supply chain processes.<sup>21</sup> The sugar business has been highlighted as one of the businesses in the agricultural sector that contribute to the persistence of child labour in the sector. Many families including children are directly or indirectly involved in sugar cane growing or working on sugar cane plantations. It is this that underscores the need to unpack the role business entities are playing in the perpetuation of child labour in plantation agriculture especially sugar cane growing.

It is this perspective that informs this case study into the state of children's rights in the sugar industry and how the different stakeholders can address the predicament to ensure that children everywhere are protected within these environments for them to realise their best potential and development. This study explores the understanding of child labour, its varied manifestations and reasons for its persistence in the sugar industry. The study analyses the laws on child labour internationally, regionally and nationally and makes particular mention of the legal recognition of businesses as key players in the realization of children's rights. It beams up the role and capacity of the state in holding businesses accountable for their contributions to the violation of children's rights and to this end, endeavors to recommend possible solutions to remedy child labour in Uganda.

## 1.4 Objectives of the Case Study

The research project sought to;

1. Assess the understanding of child labour, its varied manifestations and reasons for its persistence in the sugar industry.
2. Enhance the role and capacity of the state in holding sugar businesses accountable for their contribution to the violation of children's rights.
3. Assess the available remedies for victims and recommend possible solutions to remedy child labour in the sugar industry.

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19 Anguyo Innocent, 'Uganda has two million child workers - report,' *New Vision*, September 27th 2013 Accessed at: [https://www.newvision.co.ug/new\\_vision/news/1332704/uganda-million-child-workers-report](https://www.newvision.co.ug/new_vision/news/1332704/uganda-million-child-workers-report)

20 Haggai Matsiko, 'Sugar factory owners fuel land grabbing,' *The Independent*, September 18th 2013. Accessed at: <https://www.independent.co.ug/sugar-factory-owners-fuel-land-grabbing/>

21 International Sugar Journal, 'Exploitation of child labour in cane industry must stop,' 2015. Accessed at: <https://internationalsugarjournal.com/exploitation-of-child-labour-in-cane-industry-must-stop/>

## 1.5 STATEMENT OF THE PROBLEM

The 2016 Global Estimates of Child Labour indicate that one-fifth of all African children are involved in child labour, a proportion more than twice as high as in any other region.<sup>22</sup> Moreover, 9% of these African children are in hazardous work, again the highest percentage when placed against the other world's regions.<sup>23</sup>

In the 2016/2017 National Labour Force Survey, the Uganda Bureau of Statistics (UBOS) reported that a total of 2 million children (5-17 years) were engaged in some form of child labour.<sup>24</sup> These constituted 15 % of all children nationally—dropping marginally by one percentage point from the 2011/12 statistics.<sup>25</sup> In addition the report indicates that the proportion of the 5-11 year olds involved in work was almost similar by gender (13 percent for males and 12 percent for females).

The UBOS study considered all at-work 5-11 year-olds, 12-13 year-olds working children except those in light work, and all 14-17 year old in hazardous work or working excessive hours.

These findings of child labour in Uganda have been confirmed by the 2015 Situation Analysis of Children in Uganda carried out by the Ministry of Gender, Labour and Social Development and UNICEF.<sup>26</sup> The report highlighted that 93% of these children lived in rural areas where they were engaged in exploitative work in commercial or subsistence agriculture that exposed them to chemicals, heat, long working hours and harsh conditions.

Worldwide, the agriculture sector accounts for the largest share of child labour—

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22 International Labour Organization, *Global Estimates of Child Labour: Results and trends, 2012-2016* 19 September 2017 available at: [https://www.ilo.org/global/publications/books/WCMS\\_575499/lang-en/index.htm](https://www.ilo.org/global/publications/books/WCMS_575499/lang-en/index.htm)

23 *Child Labour in Africa.* International Labour Organisation. Accessed at: [https://www.ilo.org/ipecc/Regionsandcountries/Africa/WCMS\\_618949/lang-en/index.htm](https://www.ilo.org/ipecc/Regionsandcountries/Africa/WCMS_618949/lang-en/index.htm). on April 28, 2019.

24 Uganda Bureau of Statistics (2018), *National Labour Force Survey 2016/17*, UBOS, Kampala. Available at: [https://www.ubos.org/wpcontent/uploads/publications/10\\_2018Report\\_national\\_labour\\_force\\_survey\\_2016\\_17.pdf](https://www.ubos.org/wpcontent/uploads/publications/10_2018Report_national_labour_force_survey_2016_17.pdf). See Also: Uganda Bureau of Statistics (2018), *2018 statistical abstract*, UBOS, Kampala. Available at: [https://www.ubos.org/wp-content/uploads/publications/05\\_2019STATISTICAL\\_ABSTRACT\\_2018.pdf](https://www.ubos.org/wp-content/uploads/publications/05_2019STATISTICAL_ABSTRACT_2018.pdf).

25 *Id.*

26 Ministry of Gender, Labour and Social Development, UNICEF Uganda, “Situation Analysis of Children in Uganda (2015)” p.77. Accessed at: <https://docs.google.com/viewer?url=https://eprcug.org/children/publications/health/2015-situation-analysis-of-children-in-uganda/download?p=1> on June 30, 2019.

engaging 71% of the 108 million children reported to be engaged in any form of labour.<sup>27</sup> In Africa, agriculture accounts for 85 per cent of all child labour cases.<sup>28</sup> Uganda's agricultural sector (which includes the sugar industry) is not any different. While the sector is the biggest contributor to the national economy making up 24% of the overall Gross Domestic Product, it registers the largest percentage of working children between the ages of 5 – 14 at close to 95%.<sup>29</sup> Child labour in agriculture is primarily characterised by subsistence and commercial farming and livestock herding.<sup>30</sup> Most child labour is unpaid, and most of the children engaged in it are not in an employment relationship with a third party employer, but rather work on family farms and family enterprises.

Human Rights Watch has reported that Child agricultural workers frequently work for long hours in scorching heat, carry heavy loads of produce and are sometimes exposed to toxic pesticides.<sup>31</sup>

Their work is harsh and strenuous which violates their rights to health, education, and protection from work that is hazardous or exploitative.<sup>32</sup>

At early ages, children are engaged in these potentially hazardous agricultural activities including: cutting, collecting and carrying agricultural produce.

The National Child Labour Policy (2006) defines hazardous work to mean work which by its nature or circumstances in which it is performed, is likely to harm the health, safety or morals of children.<sup>33</sup>

All in all, child labour has a variety of negative impacts on not only the child, their full development but also the community they live in and yet it continues to thrive. Persistently fueled by factors such as poverty, limited access to quality education,

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27 Global estimates of child labour: Results and trends, 2012-2016, International Labour Office (ILO), Geneva, 2017, at p.12. Accessed at: [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms\\_575499.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_575499.pdf). on June 3, 2019.

28 *Supra* at n.21.

29 UBOS (2018), *NLFS 2016/17*, *supra* at note 24. Also see: Bureau of International Labor Affairs, "Findings on the Worst Forms of Child Labor (2015)." p.1 Accessed at: <https://ug.usembassy.gov/wp-content/uploads/sites/42/2017/08/Uganda-2015-Child-Labor-Report.pdf>.

30 *Supra* at note 24, p. 12.

31 Human Rights Watch, 'Child Labour in Agriculture.' Accessed at <https://www.hrw.org/legacy/backgrounder/crp/back0610.htm>.

32 *Id.*,

33 The National Child Labour Policy (2006) at p.2.

inadequate agricultural technology, access to adult labour and traditional attitudes towards children's participation in agricultural activities, this problem is bound to become even worse if no efforts are taken by all stakeholders involved including the family and community units to curb its existence. The government including the Local Government must under their broader obligation to protect respect and fulfill, engage all responsible agencies to ensure that private actors including business entities respect human rights of all people especially children due to their underlying vulnerabilities.

## **1.6. METHODOLOGY**

### **1.6.1. Study Design**

This research project has been undertaken relying on various methodologies including but not limited to a review of secondary literature, Government Policy documents, reports of government ministries and other relevant laws. In addition, individual interviews, relevant stakeholder meetings, key informant interviews and site inspections of the company plantations and those owned by out-growers were undertaken in a few selected locations.

At the centre of this research project were businesses that are involved in the production of sugar in the eastern and central regions of Uganda. The researchers studied the communities surrounding the sugar producing areas with a particular focus on the involvement of children in the chain of production. The respondents were in several categories but included the following; The Sugar Corporation of Uganda Limited (SCOUL), GM Sugar Uganda Limited and Sezibwa Sugar Limited. The team of researchers also visited sugar cane growing communities to assess the broader impacts on the family and community at large.

### **1.6.2. Scope**

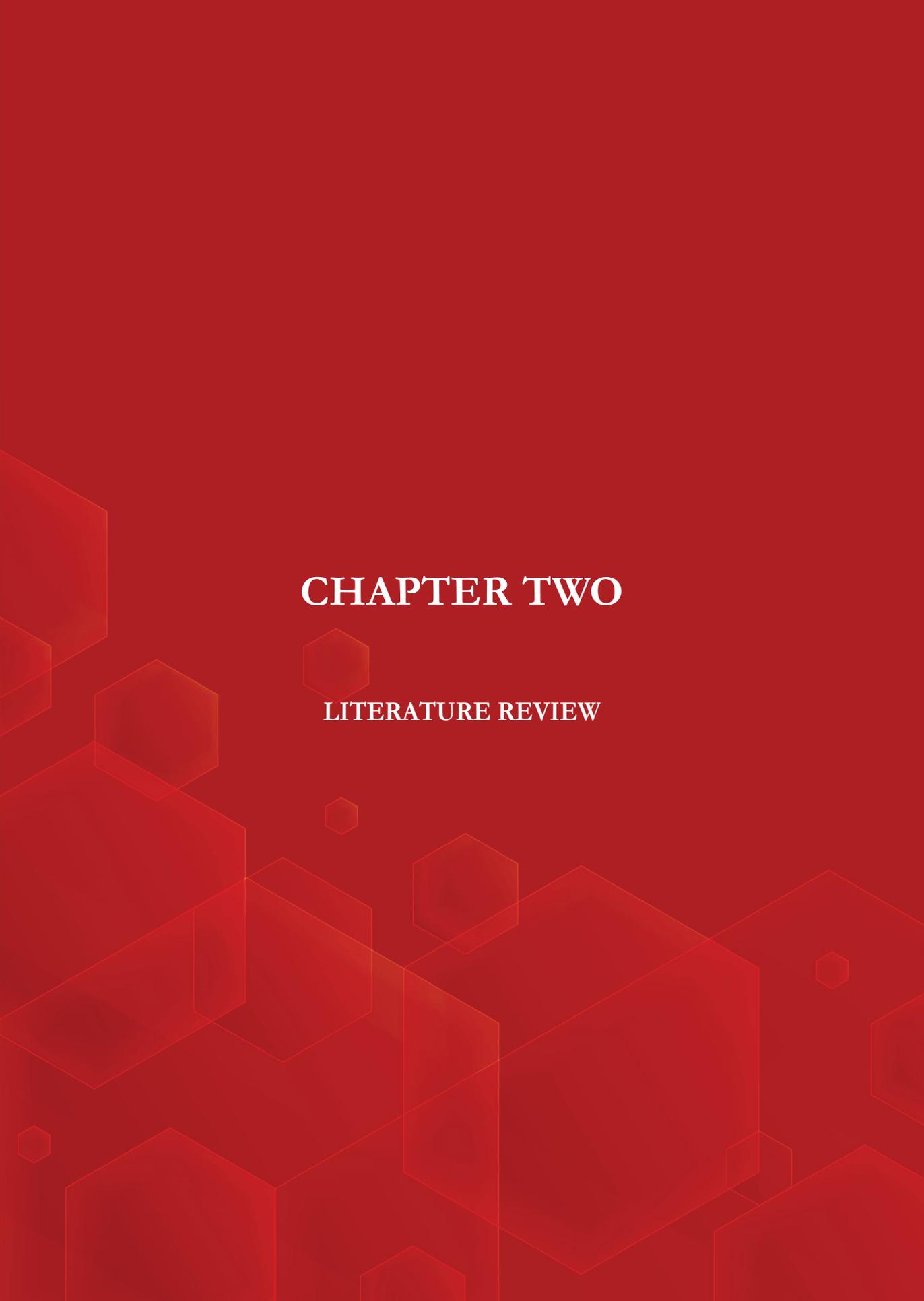
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### **1.6.3. Ethical Considerations**

The researchers have taken care to ensure the confidentiality of the respondents' identities where requested. The objectives and purposes of the research were also disclosed to the respondents in advance such that full and informed consent to participation on the study was obtained.

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# CHAPTER TWO

## LITERATURE REVIEW





## 2.1. LITERATURE REVIEW

In assessing the literature available on child labour in the agribusiness industry, it is pertinent to begin by examining the literature on the definition of a child itself. Even though both the Convention on the Rights of a Child (CRC)<sup>34</sup> and the African Charter on the Rights and Welfare of the Child (ACRWC)<sup>35</sup> define a child as a person below the age of eighteen years, this definition may be at variance with the definition under the African traditional setting where attainment of a certain age is not the only way in which the duration of childhood can be measured.<sup>36</sup> For instance, factors like initiation rites such as traditional male circumcision among the *Bagisu* in Uganda,<sup>37</sup> the *Xhosa* in South Africa and the *Bukusu* in Kenya are the more important considerations in African communities.<sup>38</sup> Ekundayo has also posited that in the African sense, the definition of a child is a communal assessment which is not calculated in terms of age by birth but by the role the child can play or plays in the society at any given stage.<sup>39</sup> Thus, the definition of a child is dictated by situational factors under African traditional settings which in most cases affect the legal justification for who a child is. This understanding of a child is relevant to child labour because once a child has been initiated or passed a traditional rite or assumed a role in society, they are considered an adult and thus have to contribute to the economy of the household often through engagement in work. Similarly, this is critical due to the fact that most child labour situations are at the insistence of the family unit.

The phrase ‘child labour’ for many connotes two perspectives, in part the view that a child is engaged in some form of adult work and the other that they are engaged

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34 Article 1

35 Article 2

36 Ekundayo *supra* at note 3, p.148 – 149.

37 Dominic D.B Makwa ‘MUSICKING AND DANCING IMBALU CIRCUMCISION RITUALS (KHUSHINA IMBALU): PERFORMING GENDER AMONG THE BAGISU OF EASTERN UGANDA’ Masters dissertation at Makerere University, 2010.

38 Wilcken, A; Keil, T & Dick, B., ‘Traditional male circumcision in eastern and southern Africa: a systematic review of prevalence and complications’ *Bulletin of the World Health Organization* 2010;88:907-914, October 29, 2010, accessed at: <https://www.who.int/bulletin/volumes/88/12/09-072975/en/> on June 10th, 2019. *Also see*, Julius Odeke-Onyango ‘Imbalu; turning boys into men among the Bamasaba’ *Daily Monitor*, August 12th, 2018. Available at: <https://www.monitor.co.ug/Magazines/Life/Imbalu--Turning-boys-into-men-among-the-Bamasaba/689856-4708518-bj1vvyz/index.html>

39 Ekundayo, *supra* at note 3, p.148.

in children's work understood as family or societal duties.<sup>40</sup> In both perspectives, the commonality is the notion of work undertaken by a child. Budd defines work as a purposeful human activity involving physical or mental exertion that is not undertaken solely for pleasure and that has economic or symbolic value.<sup>41</sup> Work is intentionally done and manifests itself as a means to an end, often times the sustenance of life.<sup>42</sup>

Children's work on the other hand is a stark contrast to this understanding of work—and is often or should be inculcated in the general upbringing/development of the child. Children's work is characterised by engagement of children in work related activities aimed at equipping them with skills to ease their living, growing their self-esteem and is usually part of a society's socialization process especially as may be understood in African traditions.<sup>43</sup>

However, general cases of child labour have often shown a different undertone to work. In the past, different reports have highlighted the prevalence of child labour in Uganda.<sup>44</sup> This nature of work usually involves physical exertion undertaken for economic gain.<sup>45</sup> In the 2015 MGLSD and UNICEF Report, it was noted that in Uganda an estimated 2.4 million children were engaged in exploitative child labour, out of which 1.7 million of them were below 14 years of age and living in rural Uganda. Almost 93% of them were engaged in business activities.<sup>46</sup> Similarly, the National Development Plan II indicated that over 1.7 Million children in Uganda, below 14 years are engaged in child labour—with 95.5 percent in the agriculture sector.<sup>47</sup> It further notes that this has been largely attributed to high levels of

40 National Research Council Institute Of Medicine (1998), 'Work's Effects on Children and Adolescents,' chapter in *Protecting Youth at Work: Health, Safety, and Development of Working Children and Adolescents in the United States*. Also see: Vision Reporter, 'Ending child labour a must,' *New Vision*, June 12, 2018. Accessed at: [https://www.newvision.co.ug/new\\_vision/news/1479536/child-labour](https://www.newvision.co.ug/new_vision/news/1479536/child-labour)

41 Budd, J. W. 2011. *The thought of work*. Ithaca: ILR Press, at p.2.

42 Rothstein and Liebman (1994), *Employment Law: Cases and Materials*, Foundation Press, at 5.

43 Obikeze. D.S. (1986), *Agriculture and child labour in Nigeria: A Case Study of Anambra State and International Labour Organisation*.

44 These reports include; Ministry of Gender, Labour and Social Development, UNICEF Uganda, '*Situation Analysis of Children in Uganda*' (2015) and Uganda Consortium on Corporate Accountability, '*The Bitter Taste of Sugar: A Photo Story on the Effects of Sugar Production in Luuka District*.' (2018)

45 UBOS 2013, *The National Labour Force And Child Activities Survey 2011/12*. pp.57 -58. UBOS registered that many children engaged in child labour work long hours in work considered hazardous in nature that could harm their health and morals.

46 *Supra*, note 26. at p.77.

47 Second National Development Plan (NDPII) 2015/16 – 2019/20, p.67 – 68. Accessed at: <http://npa.go.ug/wp-content/uploads/NDPII-Final.pdf>

income poverty which limits people from seeking health and education services and is synonymous with high rates of child labour and high school drop-outs.<sup>48</sup>

Furthermore, beyond the agriculture sector, Ugandan children are engaged in various other sectors including: informal trade, fishing and production and manufacturing industry among others. Their labour (work) roles range from hawking, vending, housework (as maids or *shamba* boys), digging and harvesting among others. In many instances these children are engaged by private sector players, individuals or businesses, in work for pay at the expense of their general childhood development. Some of the areas that have been noted for continued engagement of children in labour for pay include Jinja, Kampala, Arua, Hoima, Buikwe, Luuka and Mukono among others.<sup>49</sup> The study done by the Federation of Uganda Employers reported that among these areas Mukono had the biggest percentage of child workers at 23% most of whom work in the agricultural sector on sugar and maize plantations.<sup>50</sup>

The demographics of child labour in Uganda's agricultural sector take on two forms; Child Wage Labour (CWL) and Family Child Labour (FCL).<sup>51</sup> While CWL involves employment of the children on large commercial agricultural enterprises owned by wealthy individuals on their plantations, FCL is work done by children within their homes. Although FCL is assumed to be ordinary chores or an opportunity to equip children with skills for future work and insight into family business, it eventually deteriorates into child labour.<sup>52</sup> CWL and FCL also vary in amount spent at work with the latter usually being fulltime and the former being part-time.

Nonetheless, both involve limited or no time for school attendance for children who are victims of child labour. In fact, most of these areas with high levels of child labour also rank highly in school drop-out rates in the country especially because children are working to acquire resources for both survival and school.<sup>53</sup>

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48 *Id.*

49 Federation of Uganda Employers (FUE), *The Employers' Effort in Eliminating Child Labour Within the Formal Agricultural Sector in Uganda: A Study Conducted by FUE*, April 1999, p.22.

50 *Id.*

51 Kavuma Terence. (2001). *Child Labour in Uganda: The Case of Children in the Agriculture Sector*. Makerere University at p.32.

52 Such work that maybe considered 'child work' is strenuous housework, crop harvesting or even engaging in hawking and vending before and after school. *Also see: Anti-Slavery International (2004): Child Labour*. Available at: [http://www.antislavery.org/homepage/antislavery/child\\_labor.htm](http://www.antislavery.org/homepage/antislavery/child_labor.htm)

53 *Supra.*, n.26, at pp.52 - 53.

These regions also rank lowest in school performance.

An International Labour Organisation study into child labour in the primary production of sugarcane has reported that child labour is prevalent in many sugarcane producing countries.<sup>54</sup> In addition, The United States Department of Labour (USDOL) links sugarcane production to child labour in 17 countries.<sup>55</sup> In fact, six of these were in the top 25 largest exporters of sugar in 2014/15, including Thailand, India, Mexico, Colombia, the Philippines and Paraguay. Whereas there are no specific figures attributed to country reports, Schwarzbach and Richardson (2014) suggest that the total number of children working in sugar is “best measured in tens of thousands if not hundreds of thousands.”<sup>56</sup>

In Uganda’s context, there have been numerous reports of the sugar industry contributing to rampant cases of child labour. In districts such as Kamuli<sup>57</sup> and Luuka,<sup>58</sup> children have abandoned school over time to provide cheap labour at sugarcane plantations risking exposure to extreme temperatures, dangerous machinery, hazardous chemicals and carrying heavy loads which is a total disregard of the principle of best interests of the child. It has been noted that a major factor, amongst many others, that has allowed for persistence of child labour in the industry is lack of access to cheap adult labour.<sup>59</sup>

Other studies have also found that the likelihood of occurrence of child labour in the sugar industry is largely dependent on the way that sugarcane is produced in

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54 *Child labour in the primary production of sugarcane* / International Labour Office, Fundamental Principles and Rights at Work Branch (FUNDAMENTALS) - Geneva: ILO, 2017

55 International Labour Organisation. *Child Labour in the primary production of sugarcane. Fundamental Principles and Rights at Work Branch (FUNDAMENTALS)* - Geneva: ILO, 2017, at p.18. Accessed at: <http://www.ilo.org/ippecinfo/product/download.do?type=document&id=29635>

56 Schwarzbach, Natasha and Richardson, Ben, “*A Bitter Harvest: Child Labour in Sugarcane Agriculture and the Role of Certification Systems*”, UC Davis Journal of International Law & Policy Vol 21, 2014: <http://jilp.law.ucdavis.edu/issues/>

57 Kiirya, D. Uganda: Poor Education Blamed On Child Labour in Busoga | (2010) Business & Human Rights Resource Centre. Accessed at: <<https://www.business-humanrights.org/en/uganda-poor-education-blamed-on-child-labour-in-busoga>> on 13th January, 2019].

58 Uganda Consortium on Corporate Accountability, “The Bitter Taste of Sugar: A Photo Story on the Effects of Sugar Production in Luuka District. (2018). pp.2, 3, 4. Accessed at:<https://www.iseruganda.org/images/downloads/LuukaPhotoEssay.pdf> on January 16, 2019.

59 International Labour Organisation, “Accelerating action against child labour - Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work.” (2010). 99th ed. Geneva. Accessed at: [https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms\\_126752.pdf](https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_126752.pdf)

different countries.<sup>60</sup> In countries where sugarcane is produced on large-scale mechanized plantations, such as Australia and the USA, child labour is not reported to be an issue since there is no need for cheap manual labour.<sup>61</sup> However, in many emerging economies like Uganda, sugarcane is produced on small and medium-sized farms owned by large commercial plantation owners or on a family basis – known as out-growers, and thus child labour is more likely to occur there where children may be employed as unpaid helpers on their family’s farm or contract their labour to the larger commercial plantation owners as planters, cutters and even loading trucks.<sup>62</sup> This trend of child labour manifested in Ugandan family settings has been noted to be more prevalent on out-grower farms as compared to major estates, which usually have Memoranda of Understanding with the unions of workers.<sup>63</sup>

Whereas there are several circumstances that lead to child labour, many authors have identified poverty as the major driver of child labour especially in developing countries.<sup>64</sup> Studies show that where the family lives below the poverty line, chances are high that the parents will turn to children to contribute to their family income and supplement the parents’ income.<sup>65</sup>

In instances where it is single parent families or child-headed families, the likelihood of child labour becomes even greater. In a 2009 study by Rena on Child Labour in Developing Countries, it was found that the high prevalence of poverty amongst developing countries, including Uganda increases the presence of child labour.<sup>66</sup>

Similarly, family size, the HIV/AIDS pandemic and corruption are some of the other drivers of child labour.<sup>67</sup> In a study by the Ministry of Gender, Labour and

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60 Lana Osment (2014), Child labour; the effect on child, causes and remedies to the revolving menace, Thesis at Lunds Universitet, pp.13 – 14. Accessed at: <https://www.lunduniversity.lu.se/lup/publication/4275652> on January 16, 2019.

61 Lana Osment (2014), *Id.*

62 Kiirya, D (2019), *supra* at note 57. *Id*

63 Kavuma (2001) *Supra* at note51, pp. 30 – 31.

64 Bhat BA and Rather TA, (2009). Child labour in the handicrafts home industry in Kashmir: A sociological study, *Int NGO J,4* (9). 391 – 400.

65 Basu, K. and P. H. Van (1998). “The Economics of Child Labor,” *American Economic Review*, 88, 412 – 427.

66 Rena, R. (2009). "The Child Labour in Developing Countries: A Challenge to Millennium Development Goals." *Indus Journal of Management & Social Sciences* 3(1): 1 – 8.

67 Lana Osment (2014), Child labour; The Effect on Child, Causes and Remedies to the Revolving Menace, Thesis at Lunds Universitet, p. 19.

Social Development together with the ILO, it was reported that over 95% of children in Uganda affected by HIV/AIDS end up being victims of child labour.<sup>68</sup>

Broadly, the issue of child labour remains a huge predicament in the broader promotion and realization of children rights in Uganda. The rights of children are continuously violated and their childhoods robbed from them—which affects broader realization of other human rights. Children who work in the sugar industry are exposed to harsh weather conditions, long hours of strenuous work, rendering their overall development and well-being scarred. Nakiwu notes that not only do these long hours affect their school attendance due to fatigue, but the work also adversely affects their self-esteem and gradually results into depression.<sup>69</sup> Additionally, in some agricultural settings, these children are exposed to pesticides and heavy lifting which stunts their growth and is not in any way in their best interest as children. Furthermore, the ILO has reported that these strenuous activities when repetitively done could cause permanent injury to these children's growing spines and limbs especially because in most instances poorly designed equipment is used.<sup>70</sup>

All things considered, child labour and its resultant effects in Uganda as noted above reinforces the critical debate around the effectiveness of the current progressive policy and legal frameworks towards the advancements of children rights and whether they are effective in addressing some of the grave abuses and violations faced by children in the business sectors. Key questions to this discussion are; Is the current legal regime sufficient to prohibit child labour or are the laws simply not being implemented? Is the sugar business responsible for these children's plight or it is circumstances out of their control? In spite of these unanswered questions, it remains important that the impact of the sugar business on communities in general and children in particular is addressed. Does the business sector have the mandate to promote the realization of children's rights? And can they control and influence what happens in their supply chain to curb child labour? This research study attempts to address these questions and the chapters that follow will attempt to interrogate these key issues.

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68 Ministry of Gender, Labour and Social Development, International Labour Organisation (2004), *Report of the thematic study on child labour and HIV/AIDS in Uganda*, MOGLSD, ILO, Kampala.

69 Nakiwu. K. (2008) *Time in Child Labour, Self Esteem and Depression*. Makerere University

70 International Labour Organisation, *Child Labour: a Textbook for University Students*. 2004, at p.58.

# **CHAPTER THREE**

## **THE LEGAL REGIME ON THE PROHIBITION OF CHILD LABOUR**





## THE LEGAL REGIME ON THE PROHIBITION OF CHILD LABOUR

### 3.1. Introduction

In order to holistically analyze the legal framework on the prohibition of child labour it is key to reiterate that children's rights are human rights and as such are universal, indivisible, interdependent and interrelated.<sup>71</sup> This means that any violation of a child's right to freedom from economic exploitation ultimately leads to the violation of enjoyment of other human rights including their rights to health and education among others.

### 3.2. The Internal Legal Framework

The preamble to the 1924 Declaration of the Rights of the Child reinforces that 'mankind owes to the child the best it has to give.'<sup>72</sup> The declaration was the first effort to address the rights of the child at the international level. This consideration of the need to protect the rights of children is additionally reinforced in the 1948 Universal Declaration of Human Rights (UDHR),<sup>73</sup> which is the blueprint for human rights. By proclaiming the rights of all human beings, the UDHR implicitly protects children's rights as well as providing for the protection of family by the society and the state.<sup>74</sup> Although the UDHR was intended to be non-binding, it is now widely accepted and has as a result become part of customary international law, which is binding on states.<sup>75</sup>

Children's rights are comprehensively guaranteed under the Convention on the Rights of the Child (CRC) which has since its adoption in 1989 gone on to become

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71 Committee on the Rights of the Child, General Comment No. 13 (2011) on the right of the child to be free from all forms of violence, Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 41 (A/67/41), annex V, para. 59

72 Declaration of the Rights of the Child, League of Nations Records of the Fifth Assembly, 1924 O.J spec supp. 23 (1924). League of Nation Official Journal

73 It should be noted that the UDHR is a non-legally binding human rights instrument. See: Hannum Hurst, 'The UDHR In National And International Law,' Health and Human Rights Vol. 3, No. 2, Fiftieth Anniversary of the Universal Declaration of Human Rights (1998), 144-158. pp. 147 - 148. Accessed at: <https://cdn2.sph.harvard.edu/wp-content/uploads/sites/125/2014/04/16-Hannum.pdf> on 29 June 2019.

74 Article 16(3) of the UDHR

75 Hannum Hurst, "The UDHR in National and International Law," Georgia Journal of Comparative Law 25(195/ 96)287

the most widely ratified human rights treaty in the world. The convention has been adopted in Africa in the African Charter on the Rights and Welfare of the Child (ACRWC) in order to cater for the specific circumstances of the African child. The CRC and the ACRWC are quite similar—in that both instruments define a child as any person under the age of 18 years.<sup>76</sup> They both emphasize the principle of the best interests of the child as the cornerstone for all decisions that affect children.<sup>77</sup> This principle is the guiding standard for all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies. Furthermore, the African charter introduces specific safeguards for African children like the prohibition of use of children as soldiers<sup>78</sup> which is a much stronger standard as compared to the CRC which allows for children aged 15 and above to be recruited into their national armies.<sup>79</sup> The ACRWC is also alive to the concept of duties that the child has to his family, country and region<sup>80</sup> a feature that is derived from its parent treaty; the African Charter on Human and People's Rights.<sup>81</sup> It emphasizes the need to balance the best interests of children with their duties towards the family and society as a whole—in order to avoid abuse of their rights.

The CRC and the ACRWC are buttressed by Article 10 (3) of the ICESCR which provides for the protection of children from economic and social exploitation and that their employment in work harmful to their morals, health or dangerous to life or likely to hamper their normal development should be punishable by law.

The CRC further obligates State parties to set age limits below which the paid employment of child labour should be prohibited and punishable by law.<sup>82</sup> Additionally, the ILO under its Convention No. 138 (1973) concerning Minimum Age for Admission to Employment obligates all signatories to determine the minimum age under their national laws below which a child is not expected to be employed.<sup>83</sup> The International Labour Organisation defines child labour as work that is mentally, physically, socially or morally dangerous and harmful to children;

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76 Article 1 of the CRC, Article 2 of the ACRWC

77 Article 3 of the CRC, Article 4 of the ACRWC

78 Article 22(2) ACRWC

79 Article 38(2) CRC

80 Article 31 of the ACRWC

81 Article 27 of the ACHPR

82 Article 32 2(c) of the CRC

83 ILO Convention concerning Minimum Age for Admission to Employment (Entry into force: 19 Jun 1976) Adoption: Geneva, 58th ILC session (26 Jun 1973) and was ratified by Uganda on 25 Mar 2003.

and interferes with their schooling.<sup>84</sup>

Furthermore, the ILO Convention (No. 182) on the Worst Forms of Child Labour 1999<sup>85</sup> enjoins member states who have ratified the Convention to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. Some of the worst forms of child labour identified by the Convention are child prostitution, child pornography, slavery, procuring children for illicit activities and work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

In the same spirit, both the CRC and the ACRWC are emphatic in their prohibition of child labour and expressly prohibit the economic exploitation of children.<sup>86</sup> In this regard, the CRC is more specific and breaks down the right into two parts.<sup>87</sup> Firstly, the right to be free from work that interferes with a child's education since children may not be able to manage the dual roles of being a worker and a pupil and this may in turn deny them their right to education. The second protection offered by the CRC is a child's right to be free from work likely to be hazardous to his/her health by posing a physical danger or even a threat to life. Furthermore, under the CRC, States Parties have the obligation to provide for a minimum age for admission to employment and also to provide for appropriate regulation of the hours and conditions of employment.<sup>88</sup>

Similarly, Article 15 of the ACRWC is to the effect that every child shall be protected from all forms of exploitation and from performing any work that is likely to be hazardous or to interfere with the child's physical, mental, spiritual, moral and social development.

The issue of child labour is one that has often been a subject of discussion under international law within broader issues around strengthening the protection and promotion of children's rights. Under General Comment No. 16, the UN Committee on the Rights of a Child emphasizes that when businesses are operating

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84 International Labour Organisation, "Definition: What is meant by child labour?" Accessed at: [https://www.ilo.org/moscow/areas-of-work/child-labour/WCMS\\_249004/lang-en/index.htm](https://www.ilo.org/moscow/areas-of-work/child-labour/WCMS_249004/lang-en/index.htm). on Jan 11, 2019.

85 ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Entry into force: 19 Nov 2000) Adoption: Geneva, 87th ILC session (17 June 1999)

86 Article 32 of the CRC and article 15 of the ACRWC

87 Article 32(1) of the CRC

88 Article 32(2) of the CRC

in situations where protection institutions do not work properly because of conflict, disaster or the breakdown of social or legal order, children may become vulnerable to violation of their rights in the form of child labour.<sup>89</sup> The prohibition of child labour has been further expounded on in relation to the right to work and the right to education by the Committee on Economic, Social and Cultural Rights in its General Comment No. 18 on the Right to Work<sup>90</sup> and General Comment No. 13 on the Right to Education.<sup>91</sup>

It suffices to say that the best interests of the child principle is core within the child rights protection framework and as such, the regional and international legal framework broadly establishes protections for children from exploitation in the form of child labour and forms the basis upon which some of the protections for children in the domestic laws are designed.

### **3.3. The National Legal Framework**

The 1995 Constitution of Uganda recognises child labour as an inhibitor to the realization of children's rights. Article 34(5) prohibits the employment of children under the age of sixteen, except in cases of light work aimed at holistic development of the child. Article 34(4) provides for the protection of children from socio-economic exploitation and restricts them from performance of work that is likely to interfere with their education or that which is hazardous and harmful to their health and their physical, mental, spiritual, moral and social development. This protection is buttressed by Section 8 of the Children's (Amendment) Act that specifically addresses the importance of children's proper development.

The section provides that no child shall be employed or engaged in any activity that maybe harmful to his or her health, education or mental, physical and moral development.

However, the law recognizes the unique nature of Ugandan communities which emphasize the importance of child work for holistic growth. Children above the age

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89 Committee on the Rights of the Child, General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights

90 CESCR, General Comment No. 18 on the Right to Work, Thirty Fifth Session Geneva, 7 25 November 2005 Adopted On 24 November 2005, Para 15.

91 CESCR, General Comment No. 13 on the Right to Education (Art. 13) Adopted at the Twenty-first Session of the Committee on Economic, Social and Cultural Rights, on 8 December 1999 (Contained in Document E/C.12/1999/10), Para 55

of 12 years<sup>92</sup> can be engaged in light work or apprenticeships although this should not be between 7pm and 7am. Even in these instances they are not to be engaged in work that is injurious to their health or exposes them to danger or hazards otherwise unsuitable.<sup>93</sup> Nevertheless, Section 32 of the Employment Act guides that regardless of norm and practice children below the age of 12 shall not be employed in any business undertaking or workplace.

In the event of work, the 2012 Employment (Employment of Children) Regulations, guide and differentiate light work from hazardous work, which is generally harmful to a child's health and safety.<sup>94</sup> Such work should be supervised and under 14 hours a week and it may include working in the garden but not full employment.<sup>95</sup>

Specific to the sugar industry, the regulations stipulate that all children are not to participate in the growing, planting, harvesting or transportation of sugarcane as it exposes them to hazardous conditions especially work with hazardous tools and machinery used in the industry.<sup>96</sup> To this end, employers are required to only engage children of the stipulated age in work after authorization of the Commissioner and registration of the said children.

The law enlists various bodies for the enforcement of the laws against child labour including: the Ministry of Gender Labour and Social Development – particularly the Labour Inspectorate and the Occupational Health and Safety department, the Uganda Human Rights Commission,<sup>97</sup> the police and district local government officials. These offices are empowered with the mandate to regulate and inspect<sup>98</sup> labour conditions in businesses, removal and protection of children engaged in work<sup>99</sup> and the general realization of the rights of all children.

Notably, the 2020 Sugar Act provides for the establishment of a Uganda Sugar Board, comprised of key stakeholders in the Sugar business including corporations, trade unions and out-growers. Among other roles, the board is intended to be responsible for the regulation of the sugar sector including on labour matters,

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92 Notably, the 2012 Employment (Employment of Children) Regulations stipulate 14 years instead.

93 See also. Section 9 of the Children Statute, 1996 (No. 6 of 1996)

94 Section 2 of the 2012 Employment (Employment of Children) Regulations

95 *Id.*, Section 4 (j).

96 *Id.*, Section 6 and First Schedule.

97 Section 7 of the Uganda Human Rights Commission Act

98 Section 95A The Children's (Amendment) Act, 2016

99 Section 42A (4 - 9) The Children's (Amendment) Act, 2016

license sugar mills and regularly review the problems of the sugar industry. This mandate can be leveraged for the elimination of child labour in the sugar industry. Regrettably, the Act makes no specific mention of the prevention of child labour in the sugar industry. Instead, general provisions relating to labour can be inferred from the mandate of the proposed National Sugar Research Institute to institute socio-economic investigations to improve human resource management and enhance development of the sugar industry as an agribusiness as well as to foster research on sustainable productivity, environmental issues and human safety at field and factory levels.<sup>100</sup>

The statutory framework is complimented by progressive policies and plans on the prohibition of child labour and principles there under incorporated in the development plans of the country. These include the National Child Labour Policy of 2006, the National Employment Policy 2011, the Universal Primary and Secondary Education Policies and the 2012 National Action Plan on Elimination of Child Labour, the National Development Plan 2015-2020 as well as the Social Development Strategic Plan II (2012-2017). These policies are designed to complement each other to prevent child labour. Most of these policies and programs give specific recognition to agri – business as a major facilitator of the continuance of the worst forms of child labour in hazardous conditions such as long working hours under the hot sun and exposure to hazardous substances, dangerous tools and machines.

On its part, the National Employment Policy 2011 estimates that if all children aged between 14 – 19 years were in school, there would be a fall in the new labour market entrants of about 100,000 people per year. Henceforth, the policy notes that the successful implementation of the Universal Primary and Secondary Education Policies would directly reduce the number of children in search for employment thus preventing child labour.

The National Child Labour Policy particularly guides and promotes sustainable action aimed at the progressive elimination of child labour, starting with the worst forms and emphasizes enrolment of children in school as a practical action to address this matter. The National Employment Policy 2011 reinforces that, “Children, who join the labour market prematurely before completion of their education, forego the opportunity to gain skills for future decent and productive employment.”<sup>101</sup>

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100 Section 26 of the Sugar Act .

101 The Republic of Uganda, The National Employment Policy For Uganda (April 2011) accessed at [https://www.ilo.org/dyn/youthpol/en/equest.fileutils.dochandle?p\\_uploaded\\_file\\_id=155](https://www.ilo.org/dyn/youthpol/en/equest.fileutils.dochandle?p_uploaded_file_id=155).

However, while the National Child Policy describes the urgent need for the elimination of child labour in the country it is void of specific policy prescription of actions to be undertaken to address the problem.

Nevertheless, the National Action Plan on Elimination of Child Labour outlines more strategies to address the plague of child labour including advocacy and awareness raising about the effects of child labour, withdraw and rehabilitation of children engaged in it and increased access to education for all. These strategies are to be carried out by the Ministry of Gender Labour and Social Development, the Ministry of Education and Sports and Local Government officials.

In conclusion, addressing child labour in Uganda requires multi-faceted approaches involving various state agencies. The issue of child labour extends beyond the child and is an impediment to socio-economic development and broader national development plans and strategies. It is thus imperative that various stakeholders including private actors, civil society actors and the family are incorporated in all strategies and initiatives developed to address the impact of child labour on the holistic development of the child and ripple effects it has on socio-economic development and poverty eradication.

## THE CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS

*“Companies’ single greatest opportunity to contribute to human development lies in advancing respect for human rights of workers and communities largely affected by their activities and touched by their value and supply chains.” – Shift*

Historically, there has been no recognition of the human rights responsibilities of businesses.<sup>102</sup> For a long time, the ‘business of business was to maximise profits.’<sup>103</sup> Over the years, this notion has evolved to generally accepted norms and principles that business enterprises have responsibility to respect human rights.<sup>104</sup> Today, the human rights legal regime confers upon states the obligation to protect human rights and the duty to ensure that the rights of individuals are respected by both state actors and non-state actors including business enterprises.<sup>105</sup>

As the primary duty bearer to protect human rights, the state is obligated to hold businesses accountable for actions that violate and abuse human rights.<sup>106</sup>

In the last few decades, the world has come to the realization that irrespective of nature, form and size—whether local or multinational, actions of businesses invariably affect the realization of human rights.<sup>107</sup>

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102 The Economist Intelligence Unit, *The Road from Principles to Practices: Today’s Challenges for Business in Respecting Human Rights* (October 13, 2015), Accessed at: <https://www.eiuperspectives.economist.com/strategy-leadership/road-principles-practice>. on June 3, 2019.

103 Milton Friedman, “The social responsibility of business is to increase its profits” *New York Times*, September 13th, 1970. Available at: <https://www.nytimes.com/1970/09/13/archives/article-15-no-title.html>.

104 Se’bastien Mena and Marieke de Leede, *Advancing the Business and Human Rights Agenda: Dialogue, Empowerment, and Constructive Engagement*, JOURNAL OF BUSINESS ETHICS (2010).

105 This duty was emphasized by the African Commission on Human and People’s Rights in the case of *Social and Economic Rights Action Centre (SERAC) v Nigeria*, where the commission found Nigeria to be responsible for failing to take or implement measures to prevent environmental pollution by oil companies in Ogoni land which eventually threatened the livelihoods of people living in the area.

106 This understanding is reflected in the resultant 2011 Guiding Principles on Business and Human Rights.

107 Arnold, D, “Corporations and Human Rights Obligations,” *Business and Human Rights Journal*, 1(2) (2016) at p.255 – 275. doi:10.1017/bhj.2016.19 at pp. 256 – 262. Accessed at: [https://www.cambridge.org/core/services/aop-cambridgecore/content/view/23E88D0F8F28CF3CBE61F3D206F8B0BB/S2057019816000195a.pdf/corporations\\_and\\_human\\_rights\\_obligations.pdf](https://www.cambridge.org/core/services/aop-cambridgecore/content/view/23E88D0F8F28CF3CBE61F3D206F8B0BB/S2057019816000195a.pdf/corporations_and_human_rights_obligations.pdf).

There was need to hold businesses accountable for actions that undermined the realization of human rights.<sup>108</sup> In regards to child labour, the turning point for businesses was the international outcry in the 1990s over child labour in the supply chains of shoemakers and chocolate production industry.<sup>109</sup>

Currently, the United Nations Guiding Principles on Business and Human Rights (UNGPs)<sup>110</sup> also known as the ‘Protect, Respect, and Remedy’ framework are the foundation of business and human rights global standards and ‘provide a blueprint for the steps all states and businesses should take to uphold human rights.’<sup>111</sup> This 3-pillar framework consists of;

1. The state duty to protect against human rights abuses;
2. The corporate responsibility to respect human rights; and
3. Greater access by victims to effective remedies.

In effect, the responsibility of business enterprises to respect all human rights encapsulates respect for children’s rights to education, health, protection from abuse and exploitation among others. The framework retaliates the States obligation to protect human rights of all including children, the corporate responsibility to respect human rights—including undertaking due diligence measures to ensure that their activities don’t harm or abuse human rights and where there are violations arising, both state and corporate entity must ensure that effective remedies are accessible.<sup>112</sup>

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108 UN Commission on Human Rights, Human Rights Resolution 2005/69: Human Rights and Transnational Corporations and Other Business Enterprises, 20 April 2005, E/CN.4/RES/2005/69, accessed at: <https://www.refworld.org/docid/45377c80c.html>. on 10 July 2019.

109 King, Fiona; Marcus, Rachel; Fabian, Teresa London, *Big business, small hands: Responsible approaches to child labour*: Save the Children UK, 2000, p. 88 ISBN 1 841 87008 0

110 ‘Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework’ as annexed to the Report of the Special Representative of the United Nations Secretary- General on the issue of human rights and transnational corporations and other business enterprises, /HRC/17/31, United Nations, 21 March 2011, available at: [www.ohchr.org/documents/issues/business/A.HRC.17.31.pdf](http://www.ohchr.org/documents/issues/business/A.HRC.17.31.pdf). Endorsed by the United Nations Human Rights Council in A/HRC/RES/17/4.

111 Z. Ra’ad Al Hussein, “Ethical pursuit of prosperity” *The Law Society Gazette*, March 23rd, 2015, Accessed at: <https://www.lawgazette.co.uk/commentary-and-opinion/ethical-pursuit-of-prosperity/5047796.article> on June 3rd 2019. Also see, Shift, “Business, human rights and the sustainable development goals; forging a coherent vision and strategy” (2016) Accessed at: <https://s3.amazonaws.com/aws-bsdc/BSDC-Biz-HumanRights-SDGs.pdf>. on 30th January 2018.

112 *Supra.*, at note 111, p.18.

Therefore, businesses are not only accountable to their shareholders alone but also to their employees and the community in which they operate and where their activities directly and indirectly affect. This responsibility extends to their value and supply chain. It is as such a responsibility that extends to sugarcane out growers and other suppliers of raw materials.

In Uganda, this perspective is reflected under Article 20(2) of the 1995 Constitution which provides that, ‘the rights and freedoms of the individual and groups enshrined in this Chapter shall be respected, upheld and promoted by all organs and agencies of government and by all *persons*’ [including businesses enterprise]. Uganda’s legal framework further envisages that in spite of the absence of specific stipulation of obligation on private entities, the state, pursuant to the fulfillment of its duty to protect, promote and respect human rights, ought to enact laws requiring non-state actors including corporations to respect human rights of all people including children.<sup>113</sup> As such, actions that directly or indirectly interfere with children’s rights are human rights violations to which businesses must be held accountable under the law.

Other guidelines for businesses in Uganda in regards to protection of children’s rights include the Uganda Human Rights and Business Country Guide<sup>114</sup> and the Children’s Rights and Business Principles.<sup>115</sup> Under these guidelines corporate entities are guided on what it means for businesses to respect and support children’s rights. The Uganda Human Rights and Business Country Guide elaborates on the law, context and status of child labour in the country, the responsible bodies on matters of child labour and emphasize the importance of due diligence on the part of companies to minimise violation of children’s rights.

The Children’s Rights and Business Principles provide the full range of actions they can take in the workplace, market place and community to respect and support children’s rights.

They articulate the difference between the responsibility of business to respect and the encouragement to support children’s rights.

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113 *Supra* at note.33, pp.24 – 28.

114 Uganda Human Rights Commission and Danish Institute for Human Rights, Human Rights and Business Country Guide, Uganda. Accessed at: [http://uhrc.ug/system/files\\_force/ulrc\\_resources/Uganda%20Business%20and%20Human%20Rights%20%20%20Country%20Guide.pdf?download=1](http://uhrc.ug/system/files_force/ulrc_resources/Uganda%20Business%20and%20Human%20Rights%20%20%20Country%20Guide.pdf?download=1).

115 UN Global Compact, Save the Children, UNICEF, Children’s Rights and Business Principles, available at: <https://resourcecentre.savethechildren.net/node/5717/pdf/5717.pdf>.

The responsibility to respect involves doing the minimum requirement to avoid infringing on children's rights in their core business actions through policy commitments, due diligence and remediation measures while the encouragement to support is where businesses take voluntary actions that seek to advance the realization of children's rights. One of the responsibilities that are outlined is contributing to the elimination of child labour, including in all business activities and business relationships.

In conclusion, good business practice must be anchored around ensuring that activities implemented respect human rights of all people involved and communities in which they are operating. Of critical importance, all corporations must undertake measures and have the duty and responsibility to respect children's rights. Beyond the policy and legal framework, business actors must undertake internal measures that protect against child labour and within their corporate social responsibility structures, enhance and support the holistic development of children in the community where they operate. Child labour and its resultant effects to health and education among others is an abuse and a direct violation of national and international law and an impediment to broader realization and enjoyment of human rights and the best interests of the child.

# CHAPTER FOUR

## FIELD RESEARCH FINDINGS





## FIELD RESEARCH FINDINGS

### 4.1. Introduction

This chapter presents the findings from the field visit and responses to the research questions that this research set out to answer. It is divided into five sections. It begins with the community perspective understanding of child labour in Uganda's sugar industry in Part 1 and then traces the causes of child labour in the second part. The other two sections present the challenges of addressing child labour in local communities, an analysis of the corporate responsibility to respect human rights and lastly, conclusions and recommendations to the Central Government, the District Local Government (DLG) and the sugar companies.

The information that is presented in this chapter was collected in Kampala, Mukono, Jinja and Buikwe districts in Central Uganda from April to July 2019. Mukono and Buikwe were selected because they are some of the major sugarcane growing districts in the country. In addition, they have a large presence of sugar industries including, the Sugar Corporation of Uganda Ltd (SCOUL), GM Sugar Ltd and Ssezibwa Sugar Factory. The other major sugar industry is Kakira Sugar Industries, in Jinja. The respondents for this research were stakeholders in the learning and development of children as well as the protection and fulfillment of their rights. These included parents, children engaged in child labour, representatives of the Sugar Companies, the district local government leaders, sugarcane out-growers and representatives of the out-grower associations. The research also had interviews with the police and the Uganda Human Rights Commission. It must be noted that the attitude of the DLG leaders and out-growers was receptive while the sugar companies especially, the large ones were generally apprehensive of being part of this research and their responses were mostly defensive.

Buikwe and Mukono districts have the advantage of being host to many industries, not limited to the sugar industry alone. Whereas the presence of these industries develops the economy of the district, it also has the downside of creating high demand for cheap labour. It was noted that this cheap labour is readily provided by children who develop an affinity for quick access to money.

Pressure from the children's peers has also contributed to luring many children out of school to start working for the out-growers or cane transporters.<sup>116</sup> This early

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116 Interview with Hajji Sulaiman Mubiru, an opinion leader and a representative of the Kabaka of Buganda in Buikwe held on April 16, 2019.

relationship that children develop with money causes them to become short sighted and to gradually lose interest in school.<sup>117</sup> In order to skip school, the children have resorted to carrying an extra pair of shorts that they wear on top of their school uniforms to go to the sugarcane fields instead of school.<sup>118</sup>

## 4.2. Child Labour in Uganda's Sugar Industry

There are various understandings of child labour in the district of Buikwe. In our community engagements, there were divergent views on what amounts to child labour from different people—mainly depending on literacy levels. To the semi illiterate or illiterate people, their understanding of child labour depended on the age of the child and the intensity of work involved. One respondent, a local elder and representative of the Kabaka of Buganda in Buikwe, reiterated the need for children to work alongside their parents—to learn and grow while contributing to the family's income or even to their own school fees, until they leave their parents households.<sup>119</sup> However, the latter is not always the case since some people have a limited appreciation of the importance of education. As a result, there is limited effort to ensure that a child gets education up to the highest levels of learning. For those members of society who had attained some level of education, child labour was understood to mean work whether it is paid or unpaid that involves children and denies them the freedom to enjoy other basic rights like the rights to education and health.<sup>120</sup> It was discovered that child labour is often disguised as domestic work by parents, who go beyond training their children in domestic chores to employment in real work to supplement the household income.

This kind of child labour which is disguised as being domestic in nature is difficult to wipe out because parents always put up the defence that children have to contribute to the household's sustenance or else they will not have anything to eat themselves.<sup>121</sup> Some community members look at child labour from the perspective of training children to be able to work.

From the interactions with the representatives of three sugar companies,<sup>122</sup> the team

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117 Interview with Mr. Kiruta Semisambo Elly, the Buikwe District Senior Labour Officer.

118 Interview with Mr. Mukula the CID In-charge at Central Police Station Buikwe held on April 16, 2019.

119 Interview with Hajji Sulaiman Mubiru, an opinion leader and a representative of the Kabaka of Buganda in Buikwe and an opinion leader held on April 16, 2019.

120 Interview with Mr. Ssewanyo Sam Kiggundu, the Buikwe District Community Development Officer held on April 16, 2019.

121 Interview with Mr. Kiruta Semisambo Elly, the Buikwe District Senior Labour Officer

122 SCOUL, GM Sugar Limited and Sezibwa Sugar Mills Limited.

was informed that all of them have company policies against hiring children to work on their plantations. However, none of the companies were willing to share the said policies. The companies further noted that they do not condone child labour and do not have any children on their pay-roll. This notwithstanding, the research found out that many children end up working on plantations owned by the companies especially under the form of helping their parents contracted to work on the plantations. It was also seen that the plantation supervisors do not strictly enforce the company policy of having no children working on their plantations—especially where they are accompanied by their parents. In most cases, this kind of child labour is unpaid and affects the children’s rights to education and to health.

During the field visit, the researchers visited one plantation known as the Mawangala Estate which is owned by the Kakira Sugar Works during school time. The team found five children in the company of their parents together with other adult workers who are officially under the employment of the company. The research team spoke to one woman, working with her two children aged 9 and 13. When asked about the presence of children among the workers, the plantation supervisor responded that they were simply helping out their parents and were not company employees.

On interviewing the woman working with her two children, she noted that her 9-year-old son was out of school due to unpaid school fees. Regarding her 13 year-old daughter, the woman responded that she completed her primary school education and there is no plan for further education as she has no money to take her to secondary school. As a result, the daughter had to help her with her work. Generally, it was evident that the sugar companies have not done enough to ensure that child labour is stamped out in all their sugarcane plantations and other suppliers including out-growers.

The so-called child labour policies must be enforced on all plantations irrespective of whether children were working with their parents. The team observed that child labour was still prevalent along the supply chain of the sugar industries especially within the the private out-growers. Nevertheless, both the companies and the out-growers the research team spoke too denied this vehemently.<sup>123</sup> According to the legal officer at GM Sugar, the company regularly supervises the out-growers with whom it has supply agreements and employs spies to report any use of child labour on their plantations. A similar method of supervision is also employed by SCOUL

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123 Interview with Mr. Kato Paul, the Deputy Human Resource Manager at SCOUL and Ms. Nankya Justine, the Legal Officer at GM Sugar Limited.

which has out-growers as far deep in the community as Luuka District. Child labour was also reported during a field visit by the Ugandan Consortium on Corporate Accountability team in Luuka district. Many Children were found cutting sugar cane and some on top of trucks loading it.<sup>124</sup>

Furthermore, both the District Labour Officer of Buikwe District and the L.C III Chairman of Najembe Division in Buikwe district confirmed that most of the child labour in the sugar industry takes place on the plantations owned by the out-growers.<sup>125</sup> This was also corroborated by the Uganda Human Rights Commission which has discovered during its work that companies tend to separate themselves from the out-growers.<sup>126</sup>

Whereas some of the out-growers hire children willing to offer their labour cheaply, others use their own children to supplement the work done by hired labour in order to cut their costs since family members are not paid.<sup>127</sup>

### 4.3. Reasons for the Increasing Cases of Child Labour?

#### 4.3.1. High Levels of Poverty

In various discussions with stakeholders, it was reported that poverty is the leading cause of child labour in the sector. Numerous respondents the research team spoke to strongly associated child labour with the high levels of poverty in the family and community and mentioned the push family units have in maintaining child labour in the sugar growing plantations to supplement on family income. As a result of poverty, children are forced to contribute to their families' income from a very young age.<sup>128</sup> It was also reported that in some instances the reasons for engaging in child labour is intentional for children to raise money to pay for their own school fees although this should not validate the act of child labour.<sup>129</sup> In some cases,

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124 Uganda Consortium on Corporate Accountability, *The Bitter Taste of Sugar: A Photo Story on the Effects of Sugar Production in Luuka District*, Kampala: UCCA, 2018.

125 Interview with Mr. Kiruta Semisambo Elly, the Buikwe District Senior Labour Officer/ Head of the Labour and Employment Court held on April 16, 2019 and Mr. Kiwanuka Willy Mubiru, the L.C III Chairman of Najembe Division, Buikwe District.

126 Interview with Ms. Ruth Ssekindi, Director Monitoring and Inspection at the Uganda Human Rights Commission held on July 11, 2019.

127 Interview with Mr. Kiruta Semisambo Elly, the Buikwe District Senior Labour Officer.

128 Interview with Mr. Kiwanuka Willy Mubiru, the L.C III Chairman of Najembe Division, Buikwe District held on April 16, 2019.

129 *Id.*,

children were reported to attend school for just half the day and then escape in afternoons to go work on sugarcane plantations. It is for this reason that some children carry pangas and change of clothes in their bags while going to school.<sup>130</sup>

Poverty has also led many parents to sell off their land cheaply or lease it out to sugarcane out-growers for a long period of time—some stretching to ten years leaving little or nothing to grow food crops, vegetables and fruits. This affects their family food production and some are forced to work on the same land they leased to out-growers. It was noted that like in many areas engaged in large scale plantation agriculture, the greater Mukono area has been affected by food insecurity.<sup>131</sup>

In fact, malnutrition and stunted growth have started to become a concern since no land is allocated to growing vegetables. Some children reported that when they get hungry, their parents feed them on sugarcane. The UHRC has thus started campaigns to sensitise the communities not to sell off or lease out all of their land for sugarcane growing but to leave a sizeable portion to grow food crops.<sup>132</sup>

Generally, high levels of poverty in the areas has been a big trigger to child labour in the area. Most children who cannot afford to stay in school are pushed into working on plantations and others find themselves working alongside their parents to supplement on family income or to make some money to support their education. To deal with this predicament, a multi faceted approach which includes the local government, community and sugar companies must be developed to ensure that children remain in school, families do not lease out all their land to out-growers and business actors are held accountable for child labour on their plantations and other supply chain.

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130 Interview with Mr. Mukula, the CID In-charge at Central Police Station Buikwe held on April 16, 2019.

131 Interview with Ms. Ruth Ssekindi, Director Monitoring and Inspection at the Uganda Human Rights Commission held on July 11, 2019.

132 *Id.*,

### 4.3.2. High School Dropout Rates

Another prominent cause of child labour in the sugar industry is the high levels of school dropouts. The phenomenon of dropping out of school is unique because it can be both the effect of child labour as well as the reason why there is child labour in the first place. Whereas, the big sugarcane producers like SCOUL and Kakira Sugar Works have built schools right from nursery to secondary education for the children of their employees, it was discovered that many of the schools, especially those that are in the deeper locations of the plantations are dilapidated. In addition, the plantations are big and the schools especially those that offer secondary education are few and unevenly distributed in the huge plantation areas. Noteworthy, is that these schools only cater for the children of employees and do not extend to individual out growers who operate outside the plantation catchment area.

Similarly, the attitude of parents towards education also suggests that they do not appreciate the importance of maintaining their children in school. It is for this reason that some prefer working with their children in the sugar plantations.

Moreover, the government has failed to set up Universal Secondary School (USE) schools to complement those set up by the company. For instance, there is no seed secondary school or USE school in Najembe Division in Buikwe district.<sup>133</sup> As a result, children who want to pursue secondary education have to walk long distances to school daily.<sup>134</sup>

In other cases, when children whose parents work on the sugar plantations are transferred to other company plantations in far-off locations where there are no schools, the education of the children is interrupted—as they move with their parents.

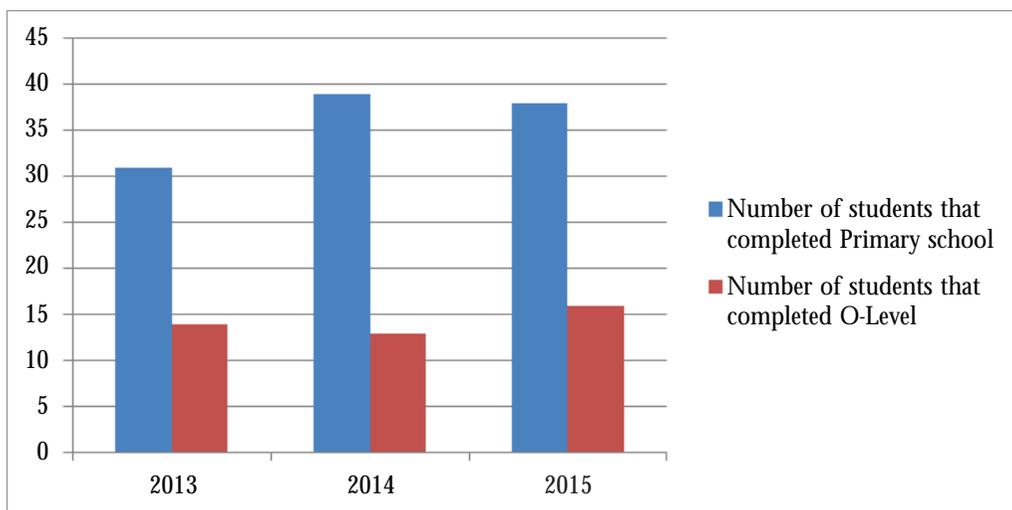
A survey was carried out at Buwumbo Primary School which is located in the heart of the SCOUL sugarcane estate to determine the levels of class attendance, the completion rates of primary seven and the number of students who advance to complete at least the Ordinary Level (O-Level) examinations. The number of those who sat for their O-level completion exams was arrived at by determining those who picked up their Primary Leaving Examination (PLE) pass slips which are a mandatory requirement for one to register for the O-Level Examination.

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133 Interview with Mr. Kiwanuka Willy Mubiru, the L.C III Chairman of Najembe Division, Buikwe District.

134 *Id.*,

**Graph Showing the Education Continuation Rates of students at Buwundo Primary School from Primary to Secondary school.**



According to the Principal Education officer of Lugazi Municipal Council, the irregular pattern of school attendance by the students from sugar growing communities is one of the signs that children are engaged in child labour on sugar plantations.

The irregular attendance increases in the seasons of planting and cutting sugar cane where the children stay away from school in order to support their parents who may be employed on plantations or are out-growers of sugar cane themselves. Even where the students limit their participation in the sugarcane industry to only weekends, they were reported to turn up for school on Monday looking tired and worn out from the weekend's hard work.<sup>135</sup> This has had a negative effect on the children's learning and performance.<sup>136</sup> It was also noted that in some instances, children whose parents are regularly shifted between the different sugarcane estates are also forced to remain at home to take care of their younger siblings. As a result, such children end up providing labour themselves in order to support the family livelihood and sustenance.

Furthermore, the presence of many single parent and child-headed families also drives children into providing labour to the sugarcane out-growers in order to fend for their younger siblings. The single parent families are attributed to migrant

135 Interview with Mr. Wanzusi Paul, the Head Teacher of Buwundo Primary School.

136 Interview with Mr. Edwin Musoke, the Principal Education Officer of Lugazi Municipal Council.

workers (abakasanvu) who come from other regions of the country seeking work on the sugar plantations and after returning to their homes, leave young families behind. On the other hand, the child headed families are mainly linked to the HIV/AIDS pandemic which has led to the death of one or both parents. In some instances, the children are forced to engage in work on sugar plantations in order to get money to sustain the family and also be able to pay their own school fees.<sup>137</sup>

### **4.3.3. Ancient traditional cultural beliefs**

The traditional African culture and family is communal in nature and every person is part and parcel of the wider community. When rights of an individual clashed with wider societal or communal rights, communal rights would prevail. As such, the duties and responsibilities of children as members of the community were always towards the broader goals of the community—majorly towards harmonious living and sustenance of the community among others. On the subject of labour, most traditional communities often looked at all members of the community—including children as contributors towards the labour force.

In fact, children were initiated and trained to work from a young age and there was nothing like child labour in the legal sense especially when it was sanctioned by the parents or community heads. It is from this perspective that ancient cultural beliefs remain a major reason for the presence of child labour in traditional societies including the sugar production industry.

Traditionally, children in Africa had duties and responsibilities not only in the home but also the wider community. As already discussed in Chapter 2, the African Charter on the Rights and Welfare of the Child recognises the fact that children in Africa have duties that exist, but also hand in hand with their rights. Whereas the ACRWC and the Children’s (Amendment) Act place provides for safeguards against the exploitation of the child, such as the requirement that the work allocated to a child should be commensurate to is age and capability. However, these safeguards and protections have not been strictly respected and enforced at state level. In most circumstances, the enforcement of these provisions has often reawakened the debate around the best interests of the child and at to what extent the state can interfere with parental responsibility to raise their children. Indeed, an elder and also representative of the Kabaka of Buganda in Buikwe remarked that “as long as a child is still in his/her parents’ home, he is expected to work and contribute to the

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137 Interview with Mr. Kiwanuka Willy Mubiru, the L.C III Chairman of Najembe Division, Buikwe District.

family's income."<sup>138</sup>

In conclusion, it is important to note that any form of child engagement in work would not be a problem if it were not exploitative, and does not interfere with the child's full development factoring in their rights to education of health. Unfortunately, as it was observed during this study and others reported, working on sugarcane plantations is an extremely exploitative form of work. Child labour in plantation agriculture harms the child's body physically, and time involved often denies them the chance to attend school thus hindering their wholesome growth and development as a child.

#### **4.3.4. Corporate Approaches to Human Rights in the Sugar Industry.**

In many business enterprises the concept of corporate social responsibility (CSR) has often been understood to be synonymous with corporate accountability. The three companies that the research team interacted with were quick to emphasize that they had vibrant CSR activities including school fees bursaries, tree planting activities and other forms of scholarships among others. When the representatives of the companies were asked whether they had a human rights policy, the responses ranged from conceding that they did not have a human rights policy<sup>139</sup> to claiming to have one but that it was not available for the team to take a look at.<sup>140</sup> However, all the companies admitted that they were not aware of the United Nations Guiding Principles on Business and Human Rights.

Nevertheless, the team found that the major sugar companies including Sugar Corporation of Uganda Limited (SCOUL), Ssezibwa Sugar Mills and GM Sugar Ltd have made efforts to sensitize the private sugarcane out-growers (through their associations) about the illegality of employing child labour on their farms.<sup>141</sup> The companies also threatened to terminate the supply contracts of those out-growers that employ child labour in their sugar cane plantations.<sup>142</sup>

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138 Interview with Hajji Sulaiman Mubiru, a Representative of the Kabaka of Buganda in Buikwe and an opinion Leader held on April 16, 2019.

139 Interview with Mr. Kato Paul, the Deputy Human Resource Manager at SCOUL held on April 23, 2019.

140 Interview with Ms. Nankya Justine, the Legal Officer at GM Sugar Ltd held on April 18, 2019.

141 Interview with Mr. Kato Paul, the Deputy Human Resource Manager at SCOUL and Ms. Nankya Justine, the legal officer at GM Sugar Ltd.

142 Interview with Ms. Nankya Justine, the legal officer at GM Sugar Ltd.

These sensitisation sessions were confirmed by the chairman of the Mukono Sugarcane Out-Growers Cooperative Society Limited.

This is an out-growers association of about 6000 members in the greater Mukono area who supply their cane mainly to SCOUL.<sup>143</sup> The association was started in 2001 and covers the four districts of Kayunga, Buikwe, Mukono and Buvuma. According to the chairman SCOUL has held numerous discussions and made directives against the employment of child labour on their farms and has gone further to employ extension representatives who inspect the plantations to monitor compliance with this directive against child labour. However, the information received from some out-growers indicated that these extension representatives rarely visit their plantations—a claim SCOUL emphatically denied.<sup>144</sup>

Furthermore, it was noted that a big percentage of the labour force on sugarcane plantations comes from other regions like West Nile, Mbale, Arua and Masindi. Such workers are locally referred to as the *abakasamvu*.<sup>145</sup> Most of these labourers are sourced by employment agencies who ferry youths to Buikwe and other sugar cane growing areas to work on the plantations. There is no form of licensing for these kinds of employment agencies from the Ministry of Labour Gender and Social Development and therefore there is a risk that without regulation or ascertainment of workers' age, this is one of the channels for the recruitment of children to work on sugar cane plantations. It highlighted the far-reaching nature of child labour in Uganda. While the study looked at select out-grower communities and companies in Uganda's sugar industry located around the areas in Busoga region, the research team found that it was not only the children living in the area but also children from other far districts. This spider web nature of child labour needs to urgently be addressed with a wide geographical perspective.

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143 Interview with the Chairman of the Mukono Sugarcane Outgrowers Cooperative Society Ltd, Mr. Paddy Mubiru on April 17, 2019.

144 Interview with Mr. Kato Paul, the Deputy Human Resource Manager at SCOUL

145 Interview with Mr. Kiwanuka Willy Mubiru, the L.C III Chairman of Najembe Division, Buikwe District April 16, 2019.

### 4.3.5 Challenges of Addressing Child Labour in Local Communities

The research team conducted interviews with the sugar producing companies, out growers, opinion leaders and parents to understand why the issue of child labour remains prevalent in sugarcane plantations. In an interview with the representative of the Buganda Kingdom in Buikwe district, it was confirmed that child labour exists in the region but it is not only unique to the sugar industry.<sup>146</sup> He noted that the vice was also prevalent in the fishing, tea and vanilla industries. He further noted that children in the area are also engaged in brick laying, sand mining and stone quarrying which are also hazardous to their well-being and wholesome development.<sup>147</sup>

However, he noted that in comparison to the other sectors faced with child labour, he maintained that the sugar industry has greater economic exploitation because it involves more strenuous work like sugarcane cutting and loading even when all this does not necessarily translate into better pay.<sup>148</sup> As a result, the use of child labour in the sugar industry exposes them to greater health risks and is an impediment to the best interests of the child.

In Buikwe district, poverty came up as one of the major reasons for the existence and persistence of child labour in the area. It was noted that due to the abject poverty in the area and traditional responsibilities attached to children, once children reach adolescence, they are expected to contribute to the family's income and sustenance.<sup>149</sup> This can be in form of participating in the domestic work in the home or the family's business. In these situations, most children find themselves providing labour to out-growers of sugar cane who are always looking to hire cheap labour.

Secondly, it was reported that the weak enforcement mechanisms of laws and policies against child labour have led to the persistence of the vice in Buikwe district and other areas. As explained in Chapter 2, the domestic legal framework especially

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146 Interview with Hajji Sulaiman Mubiru, a representative of the Kabaka of Buganda in Buikwe and an opinion leader held on April 16, 2019.

147 Interview with Mr. Ssewanyo Sam Kiggundu, the Buikwe District Community Development Officer held on April 16, 2019.

148 Interview with Hajji Sulaiman Mubiru, a representative of the Kabaka of Buganda in Buikwe and an opinion leader held on April 16, 2019.

149 Interview with Hajji Sulaiman Mubiru, a representative of the Kabaka of Buganda in Buikwe and an opinion leader held on April 16, 2019.

the 1995 Uganda Constitution and the Children's (Amendment) Act emphatically prohibit the use of child labour. However, the concerned authorities like the welfare officers, labour officers as well as the police have not enforced this law both consistently and strictly. It was highlighted that this failure was largely due to budgetary constraints as well as political interference.<sup>150</sup> The District Labour Officer explained that in the past, his office had carried out operations where they arrest children found on sugar plantations or sugar transporting trucks. When the parents come to inquire about their children, they are arrested for failing to take their children to school while the children are released with stern warnings. Such operations were reported to force children to go to school instead of working on plantations but once they stop, the children return to the sugarcane plantations.

As such child labour continues to flourish at the expense of the education and health of the children in the sugarcane growing areas. Discussions with the police indicated that attempts had been made in collaboration with the office of the District Education Officer to apprehend parents whose children are found at home or in gardens during school times but these are inconsistent and also prove problematic as it creates another problem of who then cares for the children when parents are apprehended.<sup>151</sup>

Furthermore, the research team was confronted with the failure of the District Local Government (DLG) officials to carry out regular inspections of workplaces or companies or even sensitization of the concerned stakeholders like the parents, the out-growers and the companies on relevant standards and regulatory frameworks and sanctions for failure to adhere. For instance, the Chairman of the Mukono Sugarcane Out-Growers Cooperative Society Ltd mentioned that throughout the two-year period he had been chairman, the DLG had not had any engagements with the association on the issue of child labour. The Buikwe District Senior Labour Officer cited political interference as one of the reasons why companies or out-growers cannot be held liable for the use of child labour since many of the plantation owners are well connected to political actors in the region.<sup>152</sup>

The chairman further noted that the irregularity of their field inspections on budgetary constraints which limits the frequency by which they inspect sugarcane plantations and other industries to monitor and hold accountable those engaged in child labour.<sup>153</sup>

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150 Interview with Mr. Kiruta Semisambo Elly, the Buikwe District Senior Labour Officer.

151 Interview with Sgt. Mukula, the CID in Charge at Central Police station Buikwe, held on April 16, 2019.

152 Interview with Mr. Kiruta Semisambo Elly, the Buikwe District Senior Labour Officer

153 *Id.*,

# CHAPTER FOUR

## CONCLUSIONS AND RECOMMENDATIONS





## CONCLUSIONS AND RECOMMENDATIONS

### 5.1. Conclusion

The issue of child labour is one that requires multifaceted approaches with all stakeholders including government, CSOs, communities, parents and companies to stamp it out of plantation agriculture and the sugarcane industry. As noted, there are various factors responsible for the prevalent of child labour. High levels of poverty and traditional cultural beliefs around family work remain key triggers of child labour and in effect an impediment to realization of other rights. The policy and legal framework is very clear regarding child labour. However, the weakness in regulating and enforcement against the community and the companies has largely perpetuated the rampant child labour. Coupled with this, is the traditional and cultural perception regarding family work and the duties of children, continue to impede enforcement measures. In most cases, enforcement of laws would ultimately trigger arrests and prosecution of parents or guardians of children involved in child labour.

Similarly, powerful corporate entities and private individuals in the region with political protection hinder enforcement of the the legal and policy framework against child labour. There is overreaching political interference as some key politicians are either out-growers themselves or are invested in the operations of out-growers. This limits the extent local government officials can monitor, inspect and enforce regulatory frameworks against some powerful entities.

This political interference and corporate influence also extends to elected officials who are often threatened by some rich owners of sugar plantations to finance their opponents campaign during the next election cycle.

### 5.2. Key Recommendations

#### A. TO THE CENTRAL GOVERNMENT

1. Partner with other stakeholders like the sugar companies, District Local Government leaders, and the church to conduct sensitization of parents and other community members in order to make them appreciate the negative effects of child labour and the benefits of education to their children. These sensitization initiatives should target estate communities (workers who live and work in the

company estates), those with many out-growers as well as the different associations of out-growers.

2. Parliament should amend the Sugar Act 2020 to include clear safeguards for children against child labour, such as the monitoring of sugarcane plantations and factories. The Sugar Board should also be vested with the authority to revoke operating licenses of sugar companies that facilitate human rights abuses such as the employment of child labour on their farms among others.
3. The Government should fast track the development of a National Action Plan on Business and Human Rights with clear policy frameworks that advance respect for human rights in various sectors and enhance accountability for abuse of human rights including children exploitation by both parents and companies and strongly condemn and ensure legislation against child labour.
4. The government should set up more seed secondary schools in the region in order to encourage children to remain in school without having to engage in child labour to pay their own school fees or even to survive.
5. Ensure that members of the DLG like the D.E.O, the Labour Officers and the Probation officers are well facilitated to monitor the enforcement of all policy and legal frameworks against child labour and sanction parents whose children are not at school during school.
6. Furthermore, the government through its regulatory bodies such as the Uganda National Bureau of Standards should establish certification labels for sugar that confirm that no child labour is involved in the production of sugar. Sugar that is made by companies that do not meet the requirement for non-use of child labour in their supply chains should be denied such labels, as well as access to both local and foreign markets. This will create an economic incentive for the companies to clean their supply chains of child labour. Certification labels have been showed to work in the cases of chocolate whose raw material- cocoa is plagued by the employment of child labour.
7. Government agencies such as the Uganda Human Rights Commission (UHRC), Equal Opportunities Commission (EOC) and

the Uganda Investment Authority (UIA) should collaborate better to monitor report and enforce policy stipulations against child labour. UIA which licences and regulates investors to should enforce regulations that hold companies accountable for abuse and violation of stipulated safeguards and measures. They should make sure that companies whether foreign or domestic are human rights compliant while carrying out their activities and where there are abuses, revocation of licenses should be undertaken.

## **B. TO THE DISTRICT LOCAL GOVERNMENT**

1. Enact ordinances with punitive measures for parents who deliberately force their children to work on sugar plantations as well as those who deny their children the chance to attend school.
2. The ordinance should also target those who employ children on their sugarcane plantations especially the out-growers who were singled out as the most common employers of child labour.

## **C. TO THE SUGAR COMPANIES**

1. In addition, the sugar companies should build more secondary schools within their estates to cater for the education needs of their employees and save them from long distances they travel to school which has been seen to discourage them from going to school hence ending up providing labour on sugarcane farms. More secondary schools also ensure that no matter which part of the estate the parents are assigned to work on, their children are still able to access school and get an education. The government and the sugar companies should also set up early childhood development centres to cater for the very young children of sugar estate employees in order to allow their older siblings to continue attending school instead of remaining at home or working to take care of them.
2. Sugar companies should make greater efforts to ensure that child labour is not used for the production of sugarcane and other products on their supply chain especially those that are supplied by out-growers. Whereas there are directives from the companies to the

out-growers prohibiting the use of child labour, the adherence to these directives is not strictly supervised or enforced. Therefore, sugar companies should formulate more strict agreements with their out-growers whereby the sustenance of the contract is subject to adherence to set standards such as the non-employment of child labour.

3. The companies should employ extension workers to monitor the sugarcane plantations owned by out-growers who supply their companies with sugarcane to make sure that child labour is not involved right from the time of preparing the gardens, planting, cutting and loading onto transport trucks. These efforts should be supplemented with more sensitization to the out-growers throughout their associations so that the out-growers can understand the reasons as to why children are protected from child labour.

#### **D. TO CIVIL SOCIETY ORGANISATIONS**

1. In partnership with national human rights institutions develop initiatives that build capacities of DLG officers to monitor and enforce regulations against child labour and sensitize the communities especially families on the effects of child labour on the holistic development of the child.

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